

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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# W35a

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Staff:	D. Venegas-V
Staff Report:	12/18/14
Hearing Date:	1/7/15

## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-88-794-A5

**Applicant:** Bert J. Kelley

**Agent:** Stanley W. Lamport / Peter Hersh, Cox, Castle & Nicholson LLP

**Location:** 26530 Latigo Shore Drive, City of Malibu, Los Angeles County (APN: 4460-019-143)

**Description of Amendment:** Request for after-the-fact approval for a structural support system for an existing single family residence consisting of an as-built 10 inch thick, 900 sq. ft. concrete pad and a structural retaining wall above the concrete pad. In addition, this amendment includes the installation of new diagonal steel tubing to reinforce the foundation above the concrete pad; excavation and removal of 18 cu. yds. of soil to eliminate an unpermitted, as-built flat landscaping pad area, and removal of an unpermitted, as-built railroad tie stairway and exterior non-structural walls.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed amendment with 8 special conditions. The project site is located on a beachfront lot (APN: 4460-019-143) located along Latigo Shore Drive, within the City of Malibu in Los Angeles County (Exhibits 1-4). The project site is visible from Pacific Coast Highway, Latigo Shore Drive, and the sandy beach. The site is located approximately 100 ft. to the east (downcoast) of two vacant undeveloped beachfront parcels owned by Los Angeles County and approximately 500 feet west (upcoast) of Dan Blocker State Beach (there are no formal improved accessways located on either the adjacent portion of Dan

Blocker State Beach or the two County-owned parcels). Additionally, easements for both vertical and lateral public access on and across the subject parcel have been recorded. The lateral public access easement is located along the sandy beach portion of the subject lot between the mean high tide line and the approximate toe of the bluff. The vertical public access easement is located on the western (upcoast) side of the property and extends from the northern property boundary to the mean high tide line to the south.

Existing development on the subject site consists of the existing single family residence (constructed pursuant to the underlying coastal development permit). The site is also developed with a below-grade soldier pile/grade beam retaining wall along the western (upcoast) property line that extends in a north/south direction from the northern property line to the sandy beach to the south, a 6 ft. high block wall in the front yard and a second 6 ft. high concrete block wall is also located along the western property line on top of a portion of the soldier pile wall which were each approved after-the-fact pursuant to CDP Amendment No. 5-88-794-A4. In addition, unpermitted grading has occurred on site involving the construction of an artificial fill slope on the sandy beach with a flat pad area located at the top of the slope, immediately seaward of the residence. The portion of the unpermitted flat pad located seaward of the residence has been planted with an unpermitted lawn while the portion of the flat pad landward of the deck driplines (under the residence) has been developed with an unpermitted concrete slab approximately 900 sq. ft. in size. Unpermitted non-structural framing/walls have been constructed on the unpermitted concrete pad and the concrete underfloor area effectively functions as a walkway, patio, and storage area for the residence. Lastly the project site also contains an unpermitted rail road tie stairway.

To address the unpermitted development on the site and pursuant to a previously issued Commission approved Cease and Desist Order, CCC-05-CD-05, the applicant is requesting an amendment to Coastal Development Permit (CDP) No. 5-88-794 for after-the-fact approval of a structural support system for an existing single family residence consisting of an as-built 10 inch thick, 900 sq. ft. concrete slab/pad and a structural retaining wall above the concrete pad. In addition, this amendment includes the installation of a new diagonal steel tube element (consisting of slanted steel tubes with steel stud framing covered with DensGlass) at an approximately 40 degree angle above the concrete pad and abutting the as-built structural retaining wall; removal of 18 cu. yds. of soil to eliminate as as-built unpermitted flat landscaping pad area, and removal of an as-built unpermitted railroad tie stairway and exterior non-structural walls .

Although the project site is located in the City of Malibu, an area with a certified Local Coastal Program (LCP), the Commission retains authority over coastal development permits issued by the Commission and; therefore, the Commission is processing the subject amendment request. Jurisdiction over consideration of CDP amendments is set forth in Malibu LIP Section 13.10.2 (B)(2). However, the standard of review for the proposed amendment is the policies and provisions of the certified City of Malibu Local Coastal Program (LCP). As conditioned, the proposed amendment is consistent with all applicable policies of the Malibu certified LCP.

This application was filed on August 8, 2014. Under the provisions of the Permit Streamlining Act, the latest possible date for Commission action is February 4, 2015. As such, the Commission must act on Coastal Development Permit Amendment Application No. 5-88-794-A5 at the January 7, 2015 Hearing.

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## APPENDICES

### Appendix 1 Substantive File Documents

#### EXHIBITS

- Exhibit 1. Vicinity Map
- Exhibit 2. Parcel Map
- Exhibit 3. Aerial Photo
- Exhibit 4. Site Photo
- Exhibit 5. Recorded Public Access Easements
- Exhibit 6. Site Plan
- Exhibit 7. Grading Plan
- Exhibit 8. Geologic Cross Section
- Exhibit 9. CDP No. 5-88-794 Permit
- Exhibit 10. Engineering Report for Concrete Slab/Pad (4/24/14)

#### LOCAL APPROVALS RECEIVED: N/A

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**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the Executive Director determines that a proposed amendment is immaterial, but the applicant or an objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regulations Section 13166. In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect conditions required for the purpose of protecting a coastal resource.

## I. MOTION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

#### Motion:

*I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-88-794-A5 pursuant to the staff recommendation.*

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

**Resolution:**

*The Commission hereby approves the coastal development permit amendment on the ground that the development, as amended and subject to conditions, will be in conformity with the policies of the City of Malibu Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

**II. STANDARD AND SPECIAL CONDITIONS**

**NOTE:** Unless specifically altered by the amendment, all standard and special conditions previously applied to Coastal Development Permit 5-88-794 and subsequent amendments remain in effect. In addition, the following 8 special conditions are hereby imposed as conditions upon the proposed project as amended pursuant to CDP 5-88-794-A5.

**III. SPECIAL CONDITIONS**

**1. Construction Responsibilities, Debris Removal And Interim Erosion Control Plans**

- A. By accepting this permit, the applicant shall agree to comply with the following construction-related requirements:
1. The applicant shall not store or place any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no heavy machinery shall be allowed on the sandy beach at any time, or be stored or placed in the sandy beach or intertidal zone at any time.
  2. Construction equipment shall not be cleaned on the beach.
  3. Construction debris and sediment shall be properly contained and secured on site with best management practices to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.
  4. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours. Debris shall be disposed at a debris disposal site outside of the coastal zone or at a location within the coastal zone authorized to receive such material.
  5. During construction activities authorized pursuant to this permit, the applicant shall be responsible for removing all unsuitable material or debris within the area of placement should the material be found to be unsuitable for any reason, at any time, when the presence of such unsuitable material/debris can reasonably be attributed to the

placement material. Debris shall be disposed at a debris disposal site outside of the coastal zone or at a location within the coastal zone authorized to receive such material.

**B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan are in conformance with the following requirements:

1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any staging areas and stockpile areas.
2. Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
3. The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
4. The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install temporary drains and swales; sand bag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.
5. The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
6. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
7. All temporary, construction related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics) and must be removed when permanent erosion control measures are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.

**C.** The final Interim Erosion Control and Construction Best Management Practices Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any

necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## **2. Plans Conforming to Geotechnical Engineer's Recommendations**

By acceptance of this amendment, the applicant agrees to comply with the recommendations contained in all of the geology, geotechnical, and/or soils reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, sewage disposal, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

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

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

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

## **4. Deed Restriction**

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

long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **5. Future Development Restriction**

Special Condition Number Seven (7) of the underlying Coastal Development Permit 5-88-794 shall be superseded and replaced in its entirety with the following language (Note: the modification/replacement of this condition shall only apply to the project site that is the subject of Coastal Development Permit Amendment 5-88-794-A5 at 26530 Latigo Shore Drive, APN: 4460-019-143. The original terms and conditions shall continue to apply to Parcels 4460-019-144 and 4460-019-145).

- A. This permit, as amended, is only for the development described in Coastal Development Permit No. 5-88-794, as amended. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resource Code Section 30610(a) shall not apply to the entire property. Accordingly, any future improvements on the property, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13250(a)-(b) shall require an amendment to Coastal Development Permit No. 5-88-794 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. No permanent improvements shall be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures with the exception of: (1) one public path or stairway within the footprint of the previously recorded public vertical public access easement, (2) the soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line; noted on the present approved plans, (4) 10 inch thick, 900 sq. ft. structural concrete pad, (5) structural retaining wall above the concrete pad and (6) diagonal steel tube element above the concrete pad.

## **6. Landscaping Plans**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

### **A) Landscaping Plan**

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days after issuance of the amendment. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants appropriate for coastal bluffs as listed by the California



Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- 5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover shall not be used.
- 6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

**B) Monitoring**

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

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved

pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

## **7. Removal of Excavated Material**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

## **8. Condition Compliance**

Within 90 days of Commission action on this coastal development permit amendment application or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

# **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

## **A. AMENDMENT DESCRIPTION AND BACKGROUND**

The applicant is requesting an amendment to Coastal Development Permit (CDP) No. 5-88-794 for after-the-fact approval of a structural support system for an existing single family residence consisting of an as-built 10 inch thick, 900 sq. ft. concrete slab/pad and a structural retaining wall above the concrete pad. In addition, this amendment includes the installation of a new diagonal steel tube element (consisting of slanted steel tubes with steel stud framing covered with DensGlass) at an approximately 40 degree angle above the concrete pad and abutting the as-built structural retaining wall (as shown on Exhibit 7); removal of 18 cu. yds. of soil to eliminate as as-built unpermitted flat landscaping pad area, and removal of an as-built unpermitted railroad tie stairway and exterior non-structural walls (Exhibit 7).

The project site is located on a beachfront lot (APN: 4460-019-143) located along Latigo Shore Drive in the City of Malibu (Exhibits 1-4). The project site is visible from Pacific Coast Highway, Latigo Shore Drive, and the sandy beach. The site is located approximately 100 ft. to the east (downcoast) of two vacant undeveloped beachfront parcels owned by Los Angeles County and approximately 500 feet west (upcoast) of Dan Blocker State Beach (there are no formal improved accessways located on either the adjacent portion of Dan Blocker State Beach or the two County-owned parcels). In addition, there is an existing vertical public access

developed with a public stairway on the bluff slope at the eastern (downcoast) end of Latigo Shore Drive approximately 380 ft. to the east of the subject site which provides public access from Latigo Shore Drive to the sandy beach. This stairway was constructed pursuant to the Commission's approval of CDP No. 5-85-299 (Young and Golling) which required that property owner to record an offer to dedicate a vertical public access easement to allow the public to use the stairway access. This vertical public access easement has been accepted and is operated by Mountains Recreation and Conservation Authority.

In addition, easements for both vertical and lateral public access on and across the subject parcel have been recorded. The lateral public access easement is located along the sandy beach portion of the subject lot between the mean high tide line and the approximate toe of the bluff. The vertical public access easement is located on the western (upcoast) side of the property and extends from the northern property boundary to the mean high tide line to the south. The lateral public access easement was accepted by Access For All on September 23, 2004 and the vertical public access easement was accepted by Mountains Recreation and Conservation Authority (MRCA) on August 30, 2011.

However, although the vertical public access easement on the subject property has been accepted, MRCA has not been able to actually open and operate the easement because an unpermitted concrete block wall and residential landscaping (a lawn and privacy hedge with trees) have been constructed/installed on the adjacent parcel (APN: 4460-019-025), which effectively blocks all access from Latigo Shore Drive to the recorded public easement on the subject site. Parcel 4460-019-025 is a vacant parcel adjacent to the site that is not subject to this amendment application. The portion of Parcel 4460-019-025 where the unpermitted development is located has been developed and utilized as the applicant's front/side yard area for the subject residence, although actual ownership of this separate parcel is held under an incorporated entity identified as "Parachute Productions Co." A review of historic aerial photographs by Commission staff shows that the portion of this adjacent parcel where the unpermitted development is located was previously a dirt turnout/road shoulder along Latigo Shore Drive. In addition, an unpermitted retaining wall and fill have been constructed along the northern road shoulder of Latigo Shore Drive on Parcel 4460-019-025. The unpermitted retaining wall and fill occupy a portion of the road shoulder historically used by the public for beach access parking. However this amendment application does not address any development on the adjacent parcel (APN: 4460-019-025). Thus, the Commission's Enforcement Division will evaluate further actions to address the unpermitted development on the adjacent parcel.

Existing development on the subject site (APN: 4460-019-143) consists of the existing single family residence (constructed pursuant to the underlying coastal development permit). The site is also developed with a below-grade soldier pile/grade beam retaining wall along the western (upcoast) property line that extends in a north/south direction from the northern property line to the sandy beach to the south, a 6 ft. high block wall in the front yard and a second 6 ft. high concrete block wall is also located along the western property line on top of a portion of the soldier pile wall which were each approved after-the-fact pursuant to CDP Amendment No. 5-88-794-A4. In addition, unpermitted grading has occurred on site involving the construction of an artificial fill slope on the sandy beach with a flat pad area located at the top of the slope, immediately seaward of the residence. The portion of the unpermitted flat pad located seaward of the residence has been planted with an unpermitted lawn while the portion of the flat pad landward of the deck driplines (under the residence) has been developed with an unpermitted

concrete slab approximately 900 sq. ft. in size. Unpermitted non-structural framing/walls have been constructed on the unpermitted concrete pad and the concrete underfloor area effectively functions as a walkway, patio, and storage area for the residence. Lastly the project site also contains an unpermitted rail road tie stairway.

Commission staff notes that the applicant has previously requested after-the-fact approval for the as-built 900 sq. ft. concrete pad, as-built non-structural framing/walls around existing caissons and the as-built rail road tie stairways in CDP Amendment No. 5-88-794-A4, however, the Commission denied the development on the grounds that the development did not conform with the policies of Chapter 3 of the Coastal Act and the Malibu Local Coastal Program. Moreover, Special Condition Seven (7) of the underlying CDP specifically prohibited any development below the understory of the approved residence (where the unpermitted slab is located) in order to minimize adverse impacts to public views, public access, and coastal processes while ensuring geologic and engineering stability on site. Further, the applicant had failed to provide evidence as part of the previous amendment application that the concrete slab/pad was necessary for geologic stability of the residence and, in fact, the concrete slab was being utilized as additional patio area and mechanical equipment/storage.

As stated by the applicant, during the attempted removal of the as-built concrete slab/pad (previously denied by the Commission) and retaining wall above the concrete pad, the applicant's contractor discovered that the removal created multiple stress cracks in the concrete tie beams supporting the residence. The applicant's structural engineers recommended that the removal of the concrete pad and retaining wall stop immediately. Additionally, the structural engineer determined that the as-built retaining wall is acting as support for the concrete tie beams and limit their vertical deflection. Furthermore, the applicant's structural engineers determined the structural concrete slab/pad on grade is acting as a tie diaphragm for the existing concrete caisson piles and limits the lateral movement of the piles. Lastly, the removal of the as-built concrete pad and retaining wall is jeopardizing the structural integrity of the residence and their retention is necessary to restore structural support of the lower floor of the residence. Therefore, the applicant is now requesting after-the-fact approval of the concrete pad and retaining wall as necessary improvements to provide structural support for the existing single family residence. In addition, the applicant has worked with staff to revise the originally proposed project to include the construction of a diagonal steel tube element (consisting of slanted steel tubes with steel stud framing covered with DensGlass and constructed at an approximately 40 degree angle) which would extend from the top edge of the as-built retaining wall to the seaward edge of the concrete pad to both provide additional bracing that will strengthen and increases the structural stability of the existing residence while also ensuring that the concrete pad beneath the residence will not be utilized as additional patio area, or mechanical equipment/storage space for the residence as shown on Exhibit 7.

## **B. PAST COMMISSION ACTION**

The subject site has been subject to several previous coastal development permit applications and enforcement actions. The subject parcel (APN: 4460-019-143) and the two adjacent lots to the east were created pursuant to the Commission's approval of Coastal Development Permit No. 5-88-794 (Lachman Preferred Financial Corp.), which was issued on June 13, 1990, for the subdivision of a single 37,130 sq. ft. lot into three separate parcels and the construction of three single family residences subject to ten (10) special conditions. The westernmost of the three

created parcels (APN: 4460-019-143) created by the underlying permit is the applicant's parcel that is the subject of this coastal development permit amendment. The special conditions of approval included the recordation of offers to dedicate both lateral and vertical public access, recordation of a deed restriction to inform the property owner and all future property owners that any improvements on site would require the issuance of a coastal development permit and specifically prohibiting any development "under the floors or seaward of the existing structures" and prohibiting the construction of any development at beach level.

In addition, as a condition of CDP No. 5-88-794, Special Condition Seven (7) required the applicant to record a future improvements deed restriction requiring that any future development, additions, or improvements to any of the three subject properties would require a new coastal development. Further, this deed restriction specifically provided that no permanent improvements, with the exception of one public path or stairway, shall be allowed or constructed within the geologic setback area, under the floors of the approved structure (no underfloor areas), or seaward of any of the existing structures. The Commission found that this condition was necessary to ensure that future development on site would not be constructed in areas of the subject site prone to hazards from wave action, wave caused erosion of the bluff slope, and landslide which would require the construction of a new shoreline protective devices in order to ensure structural and geologic stability.

Although the underlying permit approved by the Commission in 1988 authorized construction of residence on each of the two parcels immediately downcoast of the subject parcel, no residences on those parcels were built at that time. Instead, residences were constructed on each of these downcoast lots at a later date pursuant to the Commission's subsequent approval of Coastal Development Permit Nos. 4-97-168 and 4-97-169 in November 1997. However, the Commission notes that all conditions for the underlying subdivision of land required by CDP No. 5-88-794 remain in effect on the subject site, as well as each of these two neighboring parcels, including Special Condition Two (2) which required the provision of lateral public access along the sandy beach across each of the three sites, as well as Special Condition Seven, which required the recordation of a deed restriction in order to put all future owners on notice that the construction of any development under the approved floor level of each residence or seaward of the approved deck stringline is prohibited.

In addition, the applicant has submitted four separate applications to the Commission, each seeking to amend CDP No. 5-88-794. However, only one amendment (CDP 5-88-794-A4) has been previously approved (subject to the Commission's action to approve that amendment in part and deny in part, as described in greater detail below). Staff notes that a previous amendment application, CDP No. 5-88-794-A1, was submitted by Jeanette Goldbaum on April 2, 1990. Staff deemed the application incomplete and returned the application to Mrs. Goldbaum on April 25, 1990.

### **1. Amendment Application No. 5-88-794-A2**

The applicant previously submitted amendment application No. 5-88-794-A2 on January 9, 1998. The application sought after-the-fact approval for the following development:

- a. As-built relocation of the residence and septic system approximately 10 ft. further seaward from the plan approved by the Commission under CDP No. 5-88-794;

- b. As-built soldier pile/grade beam retaining wall (consisting of 20 soldier poles) along the western (upcoast) property line;
- c. As-built 6 ft. high concrete block, sideyard wall on top of the soldier pile retaining wall;
- d. As-built 6 ft. high concrete block frontyard wall between the residence and Latigo Shores Drive.

Staff deemed this application complete, and the matter was scheduled to be heard by the Commission during the November 1998 Commission hearing, although the matter was postponed until the April 1999 Commission hearing. Subsequently, Mr. Kelley withdrew this application prior to the April 1999 hearing.

## **2. Amendment Application No. 5-88-794-A3**

On October 13, 1998, the applicant, Mr. Kelley, once again sought to amend CDP No. 5-88-794. He submitted application No. 5-88-794-A3, requesting after-the-fact approval for all the same development previously proposed as part of CDP Application 5-88-794-A2, however, the applicant also requested:

“authorization for the removal of the previously recorded offer to dedicate a vertical a public access easement on his property, which had been previously required by the Commission as Special Condition Three of the underlying permit as mitigation for the approved subdivision and construction of the residence”

Staff deemed this application complete and the matter was scheduled to be heard at the November 1998 Commission hearing. As with CDP Application 5-88-794-A2, this matter was postponed, rescheduled for the April 1999 Commission hearing, and subsequently withdrawn by the applicant prior to the hearing.

## **3. Cease and Desist Order (CCC-05-CD-05), Executive Director Cease and Desist Order (ED-05-CD-01), and Recorded Notice of Violation (CCC-05-NOV-03):**

On March 3, 2005, Commission staff confirmed that unpermitted development was occurring on the project site involving the use of heavy equipment on the beach to grade the beach/bluff and construction of an approximately 90-foot long rock revetment immediately seaward of the unpermitted fill slope/flat pad and unpermitted lawn area on the applicant’s property. Pursuant to his authority under Coastal Act Section 30809, the Executive Director issued a Notice of Intent to Issue an Executive Director Cease and Desist Order (“EDCDO NOI”). When the applicant failed to provide a timely and satisfactory response, as required by Coastal Act Section 30809(b) and as defined by Section 13180 of the Commission’s Regulations, the Executive Director issued Executive Cease and Desist Order No. ED-05-CD-01 (“EDCDO”). The EDCDO directed the applicant to immediately cease and desist all unpermitted development activity, including the ongoing construction of the rock revetment.

On May 12, 2005, the Commission approved Cease and Desist Order CCC-05-CD-05 requiring the removal of the unpermitted rock revetment. As part of the approved Cease and Desist Order, Mr. Kelley stipulated to the recordation of a Notice of Violation (CCC-05-NOV-03) for the subject parcel in the office of the Los Angeles County Recorder. In addition, the Cease and

Desist Order also required the applicant to remove all other unpermitted development on the subject site, including the as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles); the as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; the as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive; the as-built railroad tie stairway; the as-built concrete slab; the as-built exterior non-structural framing around slab and existing caissons, and all as-built grading for the fill slope and flat yard on the sandy beach. Thus, pursuant to the requirements of Cease and Desist Order CCC-05-CD-05, the applicant is proposing the removal of 18 cu. yds. of soil to eliminate as as-built unpermitted flat landscaping pad area, and removal of an as-built unpermitted railroad tie stairway and exterior non-structural walls. Furthermore, the applicant is seeking retention of the as-built concrete pad and as-built retaining wall for structural integrity of the residence.

#### **4. Amendment Application No. 5-88-794-A4**

On August 9, 2006, the Commission approved in part and denied in part, an amendment to CDP No. 5-88-794.

The Commission approved the following development:

- a) Relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location;
- b) An as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line;
- c) As as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall;
- d) An as-built 6ft. high concrete block wall between the residence and Latigo Shore Drive.

The following development was denied by the Commission:

- a) An as-built concrete slab;
- b) As-built non-structural framing/walls around existing caissons and concrete pad;
- c) As-built railroad tie stairway
- d) Unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located;
- e) The request that Special Condition Seven of CDP 5-88-794 be revised to delete the restriction that prohibits development “under the floors or seaward of the existing structures.

The applicant has not yet fulfilled all the required prior to issuance special conditions of this amendment and therefore this approved amendment has not yet been issued to the applicant.

#### **C. HAZARDS AND WATER QUALITY**

The proposed development is located on a sandy beachfront property along the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu/Santa Monica Mountains coastal area include storm waves, wave runup, erosion and flooding. In addition, fire is an inherent treat to the indigenous chaparral community of the coastal mountains. By nature, coastal beach areas are subject to erosion from sheet flow from impervious surfaces on the beach such as residentially related

development and from wave action along the sandy beach and particularly the developed landward areas of the sandy beach.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and shoreline development that are applicable to the proposed development.

Sections 30253 of the Coastal Act states, in pertinent part, that 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, 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.*

In addition, the following LCP polices are applicable in this case:

- 4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.
- 4.4 On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.
- 4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geological hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.
- 4.16 All applications for new development on a beach, beachfront or blufftop property shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effect of said development in relation to the following:
  - The profile of the beach;
  - Surveyed locations of mean high tide lines acceptable to the State Lands Commission;
  - The availability of public access to the beach;
  - The area of the project site subject to design wave uprush;
  - Foundation design requirements;
  - The need for a shoreline protection structure over the life of the project;
  - Alternatives for protection of the septic system;
  - The long term effects of proposed development on sand supply;



- Future projections in sea level rise; and,
  - Project alternatives designed to avoid or minimize impacts to public access.
- 4.22 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.
- 4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.
- 4.24 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.
- 4.26 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:
- No stockpiling of dirt or construction materials shall occur on the beach;
  - All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;
  - Measures to control erosion shall be implemented at the end of each day's work;
  - No machinery shall be allowed in the intertidal zone at any time to the extent feasible;
  - All construction debris shall be removed from the beach.
- 4.42 As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

Additionally, Section 30231 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.*

In addition, the following LUP polices pertain to the protection of water quality:

- 3.95 New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:
- a. Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.
  - b. Limiting increases of impervious surfaces.
  - c. Limiting land disturbances activates such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.
  - d. Limiting disturbance of natural drainage features and vegetation.
- 3.96 New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board’s municipal stormwater permit and the California Ocean Plan.
- 3.97 Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize “pollutants of concern,” new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.

The LCP contains numerous development standards applicable to all new development on sites located in or near an area subject to geologic hazards. This includes the requirement to submit geologic, soils, and geotechnical reports addressing the proposed development, and that all recommendations of the geologic consultants are incorporated into the project.

The Malibu LCP policies require that new development minimize risk to life and property in areas of high geologic, flood and fire hazard and assure stability, structural integrity nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Coastal beach areas are unique geomorphic features that are characteristically unstable. By nature, coastal beaches are subject to erosion from the sheet flow runoff of landward areas, developments located on the beach and from the wave action along the beach. The Commission, through permit actions, has typically prohibited new development directly on a beach, with the exception of developed beach properties and improvements needed to provide public access from a roadway to the beach below. It is recognized that in many areas

of the coast, there would be no other means of providing access to the beach and public tidelands.

The applicant is requesting after-the-fact approval of an at-grade concrete slab/pad that has been constructed on the bluff slope under the floor level of the residence. In addition, the applicant constructed non-structural framing/walls around three sides of the concrete pad and the existing caissons in order to create an underfloor area which functions as an additional patio, walkway, and storage area under the residence without the required coastal development permit. Although the applicant has included the removal of these unpermitted non-structural framing/walls in the project description of this amendment application, the applicant is already required to remove these non-structural framing/walls pursuant to the Commission approved Cease and Desist Order. The applicant is also proposing the removal of 18 cu. yds. of soil to remediate the unpermitted grading for the unpermitted as-built flat pad area where the existing unpermitted lawn is located.

The topography on the subject site is characterized by a relatively steep bluff slope that descends from Latigo Shore Drive (old Pacific Coast Highway) to the sandy beach. In its approval of the underlying Coastal Development Permit 5-88-794, the Commission found that the sandy beach on the subject site is subject to periodic inundation by wave uprush and that; therefore, the toe of the bluff on site is expected to be subject to wave-caused erosion over time. Further, the Commission finds that development located along the shore, such as the proposed project is subject to inherent potential hazard from storm generated wave damage. The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California coast. In addition, the subject site is located immediately adjacent to the toe of a large landslide located on the neighboring upcoast properties and extending offsite to the north which results in inherent potential hazard to development on site.

The Commission notes that Special Condition Seven (7) of the underlying coastal development permit (CDP No. 5-88-794) specifically required the recordation of a future improvements deed restriction requiring that any future development, additions, or improvements to the subject property would require a new coastal development permit. Further, this deed restriction included the additional provision that, no permanent improvements, with the exception of one public path or stairway, shall be allowed or constructed within the geologic setback area on the subject site, under the lowest level of the residence, or seaward of the approved structure. Furthermore, Special Condition Seven (7) of CDP No. 5-88-794 was amended pursuant to CDP Amendment No. 5-88-794-A4 to allow for the after-the-fact approval of a soldier pile wall along the western property line that was necessary to provide additional protection for the residence from landslide hazard.. Specifically, in order to minimize adverse impacts to visual resources, shoreline sand supply and coastal processes while ensuring geologic and engineering stability of development on site, the amendment revised Special Condition Seven, to ensure that no permanent improvements would be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures with the exception of: (1) one path or stairway within the footprint of the previously recorded public vertical access easement, (2) the soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, and (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line.

In this case, the bluff slope of the site immediately seaward of the residence is subject to significant wave hazard as evidenced by the erosion of the slope that occurred during the 2005 storm season. In addition, a geologic setback area has been identified on the site by the applicant's geologic engineering consultant and the setback area is recorded on the Los Angeles County Assessor's Map for the property. The purpose of the setback is to provide a buffer between residential development and the landslide located on the property immediately to the west of the subject parcel. Special Condition Seven of the underlying permit was also required to ensure that no future development, other than the approved public access stairs, should be allowed within that portion of the site. In its approval of the CDP 5-88-794, the Commission found that without these provisions to ensure geologic and engineering stability of new development on the project site, approval of the underlying project would not have been consistent with the policies of the Coastal Act and Malibu/Santa Monica Mountains certified LUP.

In past permit actions in the Malibu area, the Commission has required that new structures located on beachfront lots be designed using a caisson/grade beam foundation that extends to bedrock to ensure stability of the structure regardless of whether the soils on the site are subject to erosion or washout. In this case, although the residence was constructed on a caisson/grade-beam foundation, the unpermitted underfloor concrete pad area was not. As part of the CDP Amendment No. 5-88-794-A4, a Geologic Update Report by GeoSystems dated December 24, 1998 was submitted. The report stated:

*The fill slope is approximately 18-feet high with a gradient at about 1.5:1 gradient. The toe of the fill slope is on the beach, and the top of slope supports a level pad with a patio slab about 10-feet below the lower level of the residence. The patio slab extends under a portion of the residence and was poured around the existing columns supporting the residence. However, we understand the slab is not structurally tied to the residence.*

*Because the toe of the fill slope appears to extend into the wave uprush zone, the slope is considered to be subject to erosion and failure which may result in undermining and failure of the patio slab.*

As previously stated above, during the removal of the as-built concrete slab/pad (previously denied by the Commission) and retaining wall above the concrete pad, the applicant's contractor discovered that multiple stress cracks in the concrete tie beams supporting the residence had appeared during the attempted removal of the slab. The applicant submitted a site observation and structural evaluation letter, prepared by Max Falamaki, dated February 22, 2012, which stated:

*During our visual observation, we noticed fresh cracks in the concrete tie beams and tile flooring above, which resulted after the removals began.*

*We recommend that the removal of masonry wall and the structural slab on grade immediately stop. The existing masonry walls are acting as support for the concrete tie beams and limit their vertical deflection.*

*The removal of the masonry walls and structural slab on grade is jeopardizing the structural integrity of the residence...*

The applicant's engineering consultants have further found that the piles on site were not originally designed to adequately withstand earth movement from the nearby landslide. As part of this application, the applicant's engineering consultants have also provided new information indicating that, the as-built concrete pad and retaining wall is necessary to maintain structural support of the residence. Therefore, the applicant is requesting after-the-fact approval of the concrete pad and retaining wall, along with the construction of a diagonal steel tube element (consisting of slanted steel tubes with steel stud framing covered with DensGlass and constructed at an approximately 40 degree angle) that would extend from the top of the retaining wall to the seaward edge of the concrete pad to provide additional bracing that will strengthen and increases the structural stability of the residence. Additionally, the diagonal steel tube element will effectively function to prevent the as-built concrete pad from being used as additional patio or storage area.

Furthermore, on July 10, 2014, the applicant submitted a new updated letter from Max Falamaki addressing the geologic stability of the diagonal wall. The update letter reiterated their conclusion in their February 22, 2012 letter that retaining wall and concrete pad are an integral part of the residence structural system and are necessary for the stability of the site, in addition to addressing whether the proposed diagonal wall will affect the geological stability of the site. Specifically, the letter states:

*The proposed slanted structure will be located entirely within the area of the existing concrete slab and the masonry wall. It will not be in contact with any surrounding geology and will not change the geology of the site.*

*The proposed diagonal element will provide additional bracing that will strengthen and increase the structural stability of the existing masonry wall support by the existing structural concrete slab. Although not necessary for the structural or geological stability of the site, the proposed diagonal element will provide additional geological stability for the site and the residence structure.*

Commission staff and Dr. Lesley Ewing, the Commission's staff engineer, has reviewed the information submitted by the applicant and concurs that the concrete slab/pad and retaining wall will serve to increase the stability of the foundation for the residence. Thus the Commission finds that the concrete slab and retaining wall are necessary to ensure the geologic stability of the previously approved residence consistent with the provisions of Section 30253, as incorporate in the City of Malibu LCP and with policies of the LCP regarding geologic hazards.

However, the Commission notes that Special Condition Seven (7) of the underlying permit required the recordation of a future improvements deed restriction that specifically prohibits development on the subject site seaward of the approved residence. Thus, in order to ensure that the development on site approved pursuant to this amendment is not inconsistent with a deed restriction that has been previously recorded and to provide for the after-the-fact approval of the concrete pad and retaining wall in its as-built location and the construction of a diagonal steel tube element above the concrete pad, it is necessary to amend Special Condition Seven (7) of the underlying permit. Therefore, Special Condition Five (5) of this amendment requires the applicant to record a new deed restriction that will supersede and replace the previous deed restriction required by Special Condition Seven. As previously required, the new deed restriction

will still provide that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed pursuant to a coastal development permit or amendment application by either the Commission or the City of Malibu for compliance with the policies of adopted Malibu LCP. Special Condition Five (5), will further revise the previous restrictions required by Special Condition Seven of the underlying permit to ensure that no permanent improvements shall be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures with the exception of: (1) one path or stairway within the footprint of the previously recorded public vertical access easement, (2) the soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line, 4) 10 inch thick, 900 sq. ft. structural concrete pad, (5) structural retaining wall above the concrete pad and (6) diagonal steel tube element above the concrete pad.

In addition, the proposed amendment includes the removal of the unpermitted rail road tie stairway and the removal of unpermitted fill slope seaward of the residence and will result in disturbed areas on site. The Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, Special Condition Six (6) requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site. Special Condition Six (6) also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the native bluff vegetation in the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in Special Condition Six (6). In addition, the Commission also finds that landscaping improvements with intensive watering requirements, such as lawn and turf species, will result in potential adverse effects to the stability of the bluff slope due to increased groundwater infiltration on the subject site. Therefore, in order to ensure stability of the bluff slope, Special Condition Six (6) specifically provides that irrigated lawn, turf and ground cover shall not be used on the project site.

Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, the Commission requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer. Furthermore, to ensure that the potential for construction or demolition activities to adversely affect the marine environment are minimized, Special Condition One (1) requires the applicant to ensure that stockpiling of materials shall not occur on the beach area, that no machinery will be allowed in on the sandy beach at any time, all debris resulting from the construction or demolition is promptly removed from the beach area, all grading shall be

properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation from the property. Furthermore, Special Condition No. Seven (7) requires the applicant to provide of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material.

However, the Commission further notes that the proposed development is located along the shoreline in Malibu area. This area of the coast has historically been subject to substantial damage as the result of storm and flood occurrences, most recently, and perhaps most dramatically, during the past 1998 El Nino severe winter storm season.

The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 ft. These storms caused substantial damage to structures in Los Angeles County. Thus, ample evidence exists that all beachfront areas in the City of Malibu are subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The subject site, even after the completion of the proposed project, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, such as the seawall replacement project, even as designed and constructed to incorporate the recommendations of the applicant's coastal engineer, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

Thus, in this case, the Commission finds that due to the possibility of storm waves, tsunamis, surges, flooding, erosion, landslide, and wildfire the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by Special Condition Three (3), will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the development it protects, and will effectuate the necessary assumption of those risks by the applicant.

Lastly, Special Condition Four (4) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as a restriction on the use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction is imposed on the subject property.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30253 of the Coastal Act and as a response to the risks associated with the project:

- Special Condition 1: Construction Responsibilities, Debris Removal And Interim Erosion Control Plan
- Special Condition 2: Plans Conforming to Geotechnical Engineer's Recommendations

- Special Condition 3: Assumption of Risk, Waiver of Liability and Indemnity
- Special Condition 4: Deed Restriction
- Special Condition 5: Future Development Restriction
- Special Condition 6: Landscaping Plan
- Special Condition 7: Removal of Excavated Materials

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 and 30231 of the Coastal Act, which is incorporated as part of the LCP of the Coastal Act.

#### **D. PUBLIC ACCESS AND RECREATION**

The Malibu Local Coastal Program (LCP) provides for the protection and enhancement of public access and recreation opportunities in the City of Malibu. The policies contained in the Malibu LCP are intended to maximize the provisions of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as provided in Section 30210 of the Coastal Act. Several additional policies contained in the Coastal Act, which are incorporated into the Land Use Plan, work to meet this objective. The following policies from the Coastal Act and Malibu Land Use Plan (LUP) are applicable in this case:

#### **Coastal Act Policies**

##### **Coastal Act Section 30210**

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

##### **Coastal Act Section 30211**

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

##### **Coastal Act Section 30212**

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
  - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
  - (2) adequate access exists nearby, or,
  - (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.
- (b) For purposes of this section, "new development" does not include:



- (1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610,
- (2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.
- (3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.
- (4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.
- (5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

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

- (c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

#### **Coastal Act Section 30214**

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
  - (1) Topographic and geological site characteristics.
  - (2) The capacity of the site to sustain use and at what level of intensity.
  - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
  - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.
- (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under section 4 of Article X of the California Constitution.
- (c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative

access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

### **Land Use Plan Policies**

- 2.2 New development shall minimize impacts to public access to and along the shoreline and inland trails. The City shall assure that the recreational needs resulting from proposed development will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and/or development plans with the provision of onsite recreational facilities to serve new development.
- 2.5 New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.
- 2.63 Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.

The policies of the adopted Malibu LCP and Sections 30210 and 30211 of the Coastal Act mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches.

In the case of the proposed amendment, consistent with the requirements of the Cease and Desist Order approved by the Commission for the removal of the unpermitted development on site, the applicant is proposing to eliminate the as-built unpermitted flat landscaping pad area and restore the slope to its pre-disturbed condition; remove the as-built unpermitted railroad tie stairway; and remove the exterior non-structural walls above the concrete slab/pad under the residence. Additionally, portions of the unpermitted flat landscaping pad area and the rail road tie stairway are located within the vertical public access easement area. Thus, this project will serve to remove unpermitted development located within the vertical public access easement on site, and allow for the potential future construction of a public access stairway.

The Commission's experience in reviewing shoreline projects in Malibu indicates that individual and cumulative impacts on public access resulting from new development include, among others, encroachment on lands subject to the public trust thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other beach areas; overcrowding or congestion of such tidelands or beach areas; and visual or psychological interference with the public's ability to use lands subject to the public trust. In past permit decisions, based on the access, recreation, and development sections of the Coastal Act and the adopted Malibu LCP, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The subject site is a beachfront lot located between Latigo Shore Drive and the ocean. Easements have been recorded for both public vertical and lateral access on and across the subject property. The lateral public access easement, accepted by Access for All, is located along the sandy beach portions of the subject lot between the mean high tide line and the toe of the bluff. The vertical public access easement, accepted by Mountains of Recreation and Conservation Authority, is located on the western (upcoast) side of the property and extends from the northern property boundary to the mean high tide line to the south.

In addition to the formally recorded public access easements on site, the State also owns tidelands, which are those lands below the Mean High Tide Line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

Where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is relation to the ordinary high water mark. In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary

seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

The Commission must consider a project's direct and indirect effect on public tidelands. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands. In the case of the proposed project amendment, the State Lands Commission (as stated in a letter dated October 31, 2013) does not assert a claim that the project intrudes onto sovereign lands.

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. The applicant seeks Commission approval of the removal of an unpermitted rail road tie stairway and the removal of an unpermitted fill slope. No permanent development is proposed within public tidelands and the proposed development will not indirectly affect tidelands.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. In the case of the proposed project, the potential for the permanent loss of sandy beach as a result of the change in the beach profile or steepening from potential scour effects, as well as the presence of a residential structure out over the sandy beach does exist.

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In this case, when the Commission previously approved the underlying coastal permit (CDP 5-88-794) in 1988 for the subdivision of a single 37,130 sq. ft. lot into three separate parcels and the construction of three single family residences the permit was approved with two specific special conditions requiring the provision both vertical and lateral public access on the subject site. Specifically, these conditions required the applicant to record, prior to issuance of the permit, an offer to dedicate a 10-ft wide vertical easement along the western property boundary from Pacific Coast Highway to the mean high tide line and a lateral access easement that extended the entire width of the property from the mean high tide line to the line approximating the toe of the bluff. The Commission determined that providing access to the beach in this area of the Malibu coastline was necessary to bring the project into conformity with the public access policies of the Coastal Act and, therefore, included a requirement of recordation of an Offer to Dedication (OTD) for a vertical and lateral public access easement.

Both offers to dedicate lateral and vertical public access easements were recorded prior to the issuance of the coastal development permit and have since been accepted by the non-profit organizations previously discussed in detail above. Although the vertical public access easement on the subject property has been accepted, Mountains Recreation and Conservation Authority have not yet been able to actually open and operate the vertical public access easement due to the unpermitted development currently obstructing the vertical accessway as previously discussed above. Although this amendment application includes the removal of the unpermitted development on the subject site, an unpermitted concrete retaining wall would still block the easement on the adjacent parcel. Thus the Commission's enforcement division will evaluate further actions to address the unpermitted development on the adjacent parcel.

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that public access to the sea be provided adequate to allow use of dry sand and rocky coastal beaches. Sections 30220 and 30221 of the Coastal Act require that coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected. Furthermore, Section 30214 requires that the provision of public access opportunities take into account site geology and other characteristics, protection of natural resources, and the need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

The proposed amendment seeks the removal of the as-built unpermitted landscaped fill pad and as-built rail road tie stairway located on the bluff slope on the western side of the property. The existing stairway to be removed provides private access from the top of the bluff to the unpermitted fill pad located partially down the bluff slope and immediately seaward of the residence. In the approval of the underlying permit, the Commission approved the construction of a public access stairway on the bluff slope on the western portion of the subject site in order to provide formal public access from Latigo Shore Drive to the sandy beach. The public access stairway was approved in the same footprint as the required public vertical access easement. Although the as-built private rail road tie stairway crosses and occupies portions of the public easement and is located in the same general area of the site where the public stairway was to be located, it is not constructed in the same configuration as the previously approved public stairway nor entirely within the footprint of the recorded public vertical easement. Therefore, the unpermitted rail road tie stairway currently obstructing the vertical access easement will be removed. The removal of the development will allow for the potential construction of a public access stairway in the future.

In conclusion, the Commission finds that the proposed improvements within previously recorded vertical public access easement will serve to improve public access and recreational opportunities on the site consistent with the policies and provisions of the Coastal Act. Thus, the Commission finds that the proposed project, as conditioned, will not significantly impact public access or recreational opportunities at the project site, and therefore the project is consistent with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

#### **E. VISUAL RESOURCES**

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The Malibu LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development minimize adverse impacts to views from scenic roads or public viewing areas. Where it is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act, as incorporated into the Malibu LCP, requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 states that:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.*

In addition, both the certified Malibu Land Use Plan and Local Implementation Plan contain scenic and visual resource protection policies and ordinance requirements to carry out the provisions of the Coastal Act and the LUP, respectively. The primary intent of these policies is to require that new development is sited and designed to minimize impacts to visual resources, and where feasible, to preserve bluewater ocean views by limiting the height and siting of structures to maintain views over the site and/or to provide view corridors to maintain an ocean view through the site. The following policies from the Land Use Plan (LUP) portion of the LCP are applicable in this case:

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

- 6.2 Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.
- 6.3 Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:
- a. Pacific Coast Highway
  - b. Decker Canyon Road
  - c. Encinal Canyon Road
  - d. Kanan Dume Road
  - e. Latigo Canyon Road
  - f. Corral Canyon Road
  - g. Malibu Canyon Road
  - h. Tuna Canyon Road
- 6.4 Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.
- 6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.
- 6.7 The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is

lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.

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

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

In its approval of the underlying permit for the residence on the subject site, the Commission found that the construction of a large residential structures on the bluff slope/beach would result in adverse impacts on public visual resources. In order to minimize these impacts, the Commission found it necessary to require, pursuant to Special Condition Nine (9) of CDP No. 5-88-794, that the applicant submit revised plans to reduce the proposed residence from a 4-level structure to no more than a 3-level structure. Specifically, Special Condition Nine (9) of CDP No. 5-88-794 stated:

*“Prior to transmittal of the permit, the applicant shall submit revised plans that limit the development to three levels. For purposes of this condition, a mezzanine and a basement are each levels.”*

In addition, to ensure that adverse impacts to scenic resources were minimized, Special Condition Seven (7) of CDP No. 5-88-794 prohibited any new development below the lower level of the structure approved on the project site. However, the applicant constructed a unpermitted artificial fill slope on the sandy beach with a flat pad area planted with an unpermitted lawn, an unpermitted concrete slab approximately 900 sq. ft. in size and unpermitted non-structural framing/walls above the concrete pad and in result the concrete underfloor area effectively functions as a walkway, patio, and storage area for the residence. Additionally, the construction of the unpermitted underfloor area has resulted in the appearance of a 4-level structure when viewed from the beach and therefore inconsistent with Special Conditions Seven and Nine of the underlying permit. The applicant previously requested after-the-fact approval of the listed above unpermitted development in amendment application no. 5-88-794-A4, however, the Commission denied the development on the grounds that the development did not conform with the visual policies of Chapter 3 of the Coastal Act and the Malibu Local Coastal Program

This amendment application includes the removal of the unpermitted non-structural framing/walls above the concrete slab/pad and the removal of 18 cu. yds. of soil to remediate the unpermitted grading for the unpermitted as-built flat pad area, where the existing unpermitted lawn is located, to restore the slope back to its approximate pre-disturbed grade. Additionally, the applicant is requesting after-the-fact approval for the concrete slab/pad and retaining wall as necessary improvements to provide structural support for the existing single family residence. Furthermore, the installation of the diagonal steel tube element will strengthen and increases the structural stability of the existing residence while also ensuring that the concrete pad beneath the residence will not be utilized as additional patio area, or mechanical equipment/storage space for the residence.



As a result of removing the unpermitted non-structural framing/walls and the unpermitted flat pad area and retaining the minimum concrete slab area necessary to ensure geologic and engineering stability for the existing residence, the residence will no longer appear to contain a fourth floor. Therefore, the proposed development will be consistent with Special Condition Nine of the underlying permit and the proposed amendment will minimize adverse impacts to public views.

However, the proposed structural improvements to the foundation of the residence would be inconsistent with Special Condition Seven (7) of the underlying CDP 5-88-794 which specifically states that any future improvements on the property would require an amendment to the underlying coastal development permit or require an a new coastal development permit. Further, this deed restriction included the additional provision that “no permanent improvements...shall be allowed or constructed ...under the floors, or seaward of any of the existing structures.” In this case, construction of the underfloor area has effectively resulted in the appearance of a 4-level structure and is inconsistent with this condition. As discussed in detail above, the applicant has submitted evidence that the concrete pad area is necessary to ensure the structural stability of the residence.

Furthermore, the Commission notes that Special Condition Seven of the underlying permit required the recordation of a future improvements deed restriction that specifically did not allow for any permanent improvements to be constructed under the floors of the existing structure. Thus, in order to ensure that the development on site approved pursuant to this amendment is not inconsistent with a deed restriction that has been previously recorded and to provide for the after-the-fact approval of concrete pad area in its as-built location, under the residence, it is necessary to amend Special Condition Seven (7) of the underlying permit. Therefore, Special Condition Five (5) of this amendment requires the applicant to record a new deed restriction that will supersede the previous deed restriction required by Special Condition Seven and which will provide that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed as coastal development permit or amendment application by either the Commission or the City of Malibu for compliance with the polices of adopted Malibu LCP in addition to the public access policies of the Coastal Act. Special Condition Five (5), will revise the previous restrictions required by Special Condition Seven of the underlying permit to ensure that no permanent improvements shall be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures within the exemption of: (1) one path or stairway within the footprint of the previously recorded public vertical access easement, (2) the soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line; noted on the present approved plans, (4) 10 inch thick, 900 sq. ft. structural concrete pad, (5) structural retaining wall above the concrete pad and (6) diagonal steel tube above the concrete pad.

Lastly, Special Condition Four (4) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as a restriction on the use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

The Commission finds that the proposed amendment, only as conditioned, is consistent with the applicable policies of the Malibu LCP, including Section 30251 of the Coastal Act, which is incorporated as part of the LCP.

#### **F. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without the required coastal development permit including: 1) unpermitted concrete slab approximately 900 sq. ft. in size, 2) unpermitted grading involving the construction of an artificial fill slope on the sandy beach with a flat pad area located at the top of the slope, immediately seaward of the residence, 3) unpermitted non-structural framing/walls on the unpermitted concrete pad, and 4) unpermitted rail road tie stairway. This amendment application proposes to address the unpermitted development noted above.

Specifically, this amendment application includes after-the-fact approval of the unpermitted 900 sq. ft. concrete slab/pad. Additionally, the amendment application includes the removal of the non-structural framing/walls on the concrete slab/pad, removal of the unpermitted rail road tie stairways, and the removal of 18 cu. yds. of soil to remediate the unpermitted grading for the unpermitted as-built flat pad area where the existing unpermitted lawn is located to restore the slope back to its approximate pre-disturbed grade. Although the applicant has included the removal of the unpermitted non-structural framing/walls and unpermitted rail road tie stairway in the project description of this amendment application, the applicant is already required to remove these non-structural framing/walls and rail road tie stairway pursuant to the Commission approved Cease and Desist Order CCC-05-CD-05, which has been previously discussed in detail further above.

In order to ensure that the portion of the proposed amendment that involves unpermitted development that will be approved after-the-fact by this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions as a prerequisite to the issuance of this permit, as required by Special Condition Eight (8) within 90 days of Commission action. Only as conditioned, is the proposed development consistent with the Coastal Act.

Additionally, the project site does contain a vertical public access easement on the subject property which has been accepted by MRCA, however, MRCA has not been able to actually open and operate the easement because an unpermitted concrete block wall and residential landscaping (a lawn and privacy hedge with trees) have been constructed/installed on the adjacent parcel (APN: 4460-019-025), which effectively blocks all access from Latigo Shore Drive to the recorded public easement on the subject site. Parcel 4460-019-025 is a vacant parcel adjacent to the site that is not subject to this amendment application. The portion of Parcel 4460-019-025 where the unpermitted development is located has been developed and utilized as the applicant's front/side yard area for the subject residence, although actual ownership of this separate parcel is held under an incorporated entity identified as "Parachute Productions Co." A review of historic aerial photographs by Commission staff shows that the portion of this adjacent parcel where the unpermitted development is located was previously a dirt turnout/road shoulder along Latigo Shore Drive. However this amendment application does not address any development on the adjacent parcel (APN: 4460-019-025). Thus, the Commission's Enforcement

Division will evaluate further actions to address the unpermitted development on the adjacent parcel.

Although development has taken place prior to Commission action on this permit amendment, consideration of the application by the Commission is based solely upon policies of the adopted Malibu LCP and the public access policies of the Coastal Act. Commission action on this permit amendment application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment.

Only as conditioned, is the proposed development consistent with the policies of the adopted Malibu LCP and the public access policies of the Coastal Act.

#### Special Condition 8. Condition Compliance

### **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

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

#### Special Conditions 1 through 8

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

## **APPENDIX 1**

### **Substantive File Documents**

City of Malibu, Local Coastal Program; Coastal Development Permit No. 5-88-794, A1, A2, A3, & A4; Cease and Desist Order CCC-05-CD-05; Executive Director Cease and Desist Order ED-05-CD-01; Recorded Notice of Violation CCC-05-NOV-03; California State Lands Commission Determination dated 10/31/2013; Wave Uprush Report by David C. Weiss Structural Engineer & Associates dated 11/7/13; Engineering Report Letter, by Ficcadenti & Waggoner, dated 8/13/10 and 2/14/11; Structural Evaluation Letter, by Max Falamaki, dated 8/8/06, 4/6/10, 4/22/01, 2/22/12, and 4/24/14.

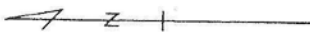


**Project Location**

**Exhibit 1  
Vicinity Map  
CDP No. 5-88-794-A5**

4460 19  
SHEET 1  
SCALE 1" = 100 & 200'

2012



75092280  
80096010  
810421  
810420-81  
810420-87  
810420-87  
810420-87  
810420-87  
810420-87

5908019400/002-07  
990204  
910379-00200-07  
910606  
940710  
200560304006001-07

BK. 4459

LATIGO CANYON RD.

OCEAN

June Line 1969

C.S.B. - - - - -

DR. PACIFIC

DR. PACIFIC

DR. PACIFIC

DR. PACIFIC

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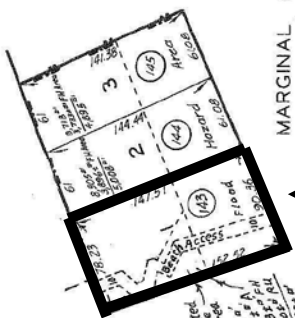
DR. PACIFIC

DR. PACIFIC

DR. PACIFIC

DR. PACIFIC

DR. PACIFIC



MARGINAL MAP  
SCALE 1" = 100'

# Subject Parcel

Por. Lots 16,2, P.M. 237-74, 75 are  
subject to Geological Hazard.

PARCEL MAP --- P. M. 237-74-75

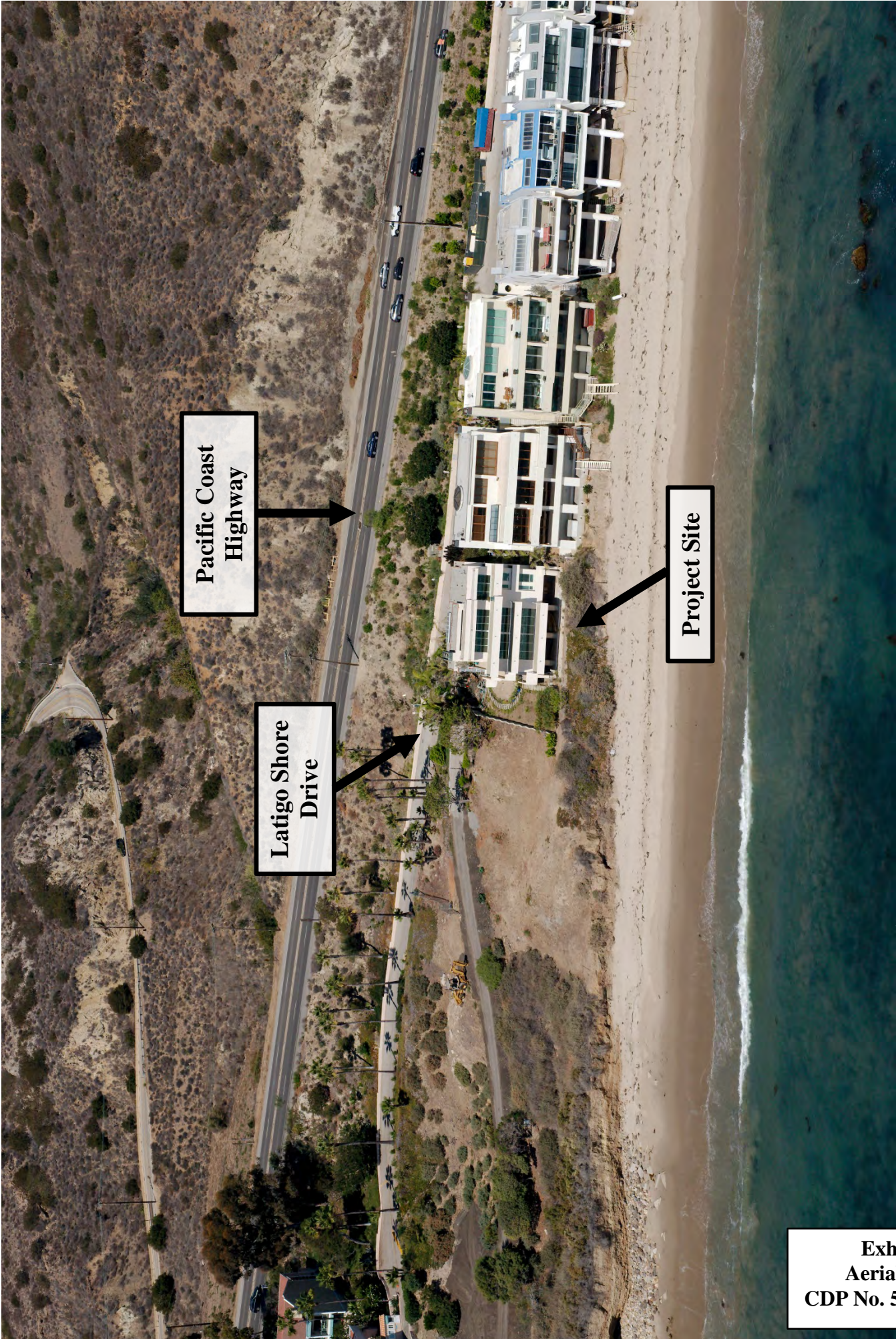
SCALE 1" = 200'

CONDOMINIUM  
TRACT NO. 44383 .. M.B. 1130 - 17 - 18  
LAND OF MATTHEW KELLER IN THE RANCHO  
TOPANGA MALIBU SEQUIT R.F. 534  
CONDOMINIUM  
TRACT NO. 37848 - M.B. 1046 - 55 - 58

REV. ASSMT SEE:  
19 & 20

**Exhibit 2  
Parcel Map  
CDP No. 5-88-794-A5**

ASSESSOR'S MAP  
COUNTY OF LOS ANGELES, CALIF.



**Pacific Coast Highway**

**Latigo Shore Drive**

**Project Site**

**Exhibit 3  
Aerial Photo  
CDP No. 5-88-794-A5**



**Latigo Shore Drive**

**Unpermitted Development on Adjacent Parcel 4460-019-025**

**Pacific Coast Highway**

**Unpermitted Rail Road Tie Stairway**

**Unpermitted Lawn, Fill Slope**



**Unpermitted Concrete Slab/Pad**

**Proposed Fill Removal**

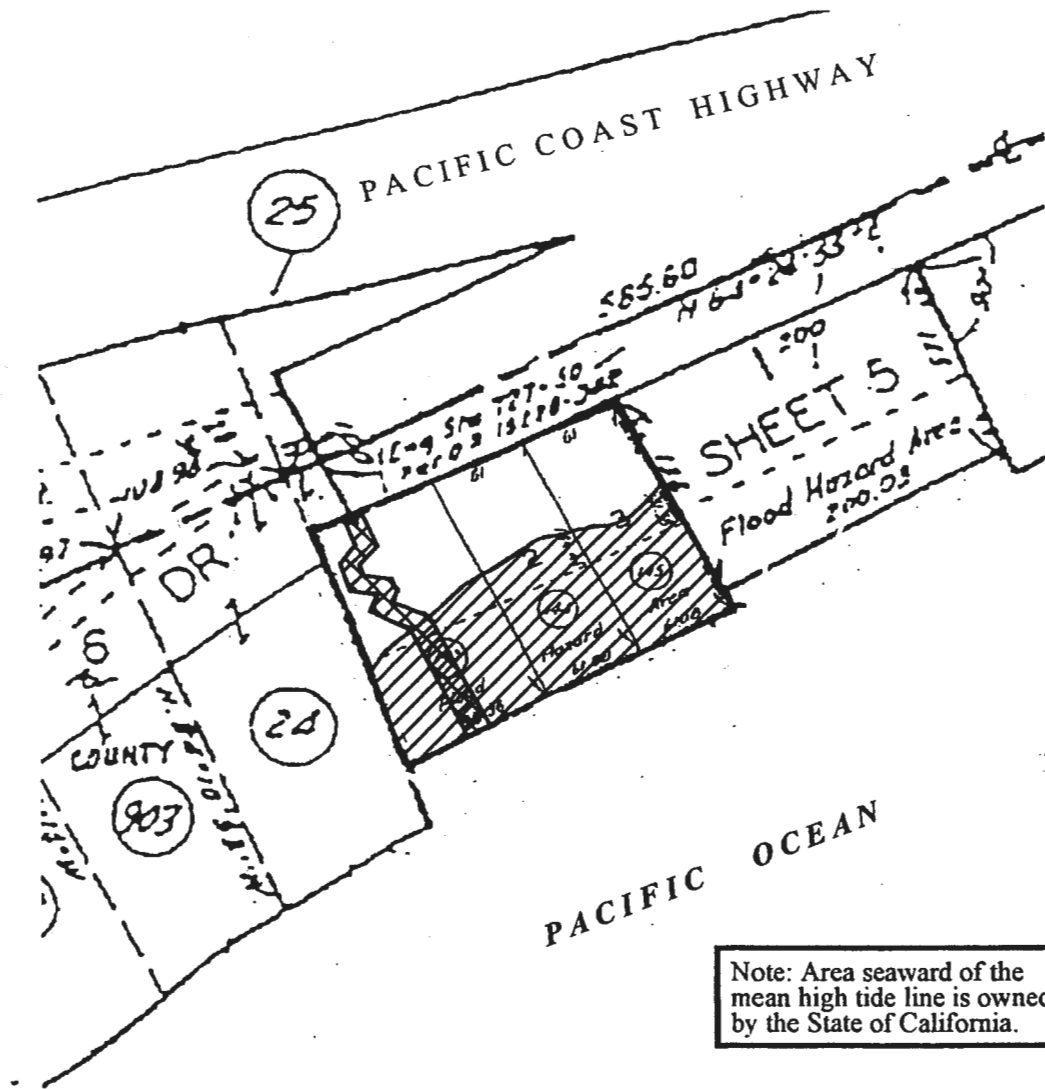
**Exhibit 4  
Site Photo  
CDP No. 5-88-794-A5**






# Offer To Dedicate Public Access

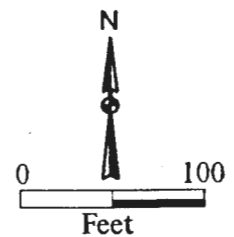
GOLDBAUM (CDP# 5-88-794)

Malibu, Los Angeles County



Note: Area seaward of the mean high tide line is owned by the State of California.

-  10 Foot Wide Vertical Access Easement (Extends from Northerly Property Line to Mean High Tide Line)
-  Lateral Access Easement (Extends from Mean High Tide Line To the Toe of the Bluff)
-  Property Boundary  
L. A. County APN 4460-019-144



Note: All Locations Approximate.

**Exhibit 5**  
**Recorded Public**  
**Access Easements**  
**CDP No. 5-88-794-A5**



California Coastal Commission  
 Coastal Access Program

Source: California Coastal Commission  
 Base Map Source: L. A. County Assessor

RESEARCH: X	PREPARED FOR: BURT KELLEY 26530 PACIFIC COAST HWY MALIBU, CA 90265	PREPARED BY: STEVE OPDHL SURVEYING 889 PIERCE COURT, SUITE 104 THOUSAND OAKS, CA 91360 (805)495-6438	SHEET 1 OF 1
			REVISION 07/19/06 A
			DATE 07/14/06
			JOB # 0504002
			DRAWN BY PJM

TOPOGRAPHY PARCEL 1 PM NO. 22050

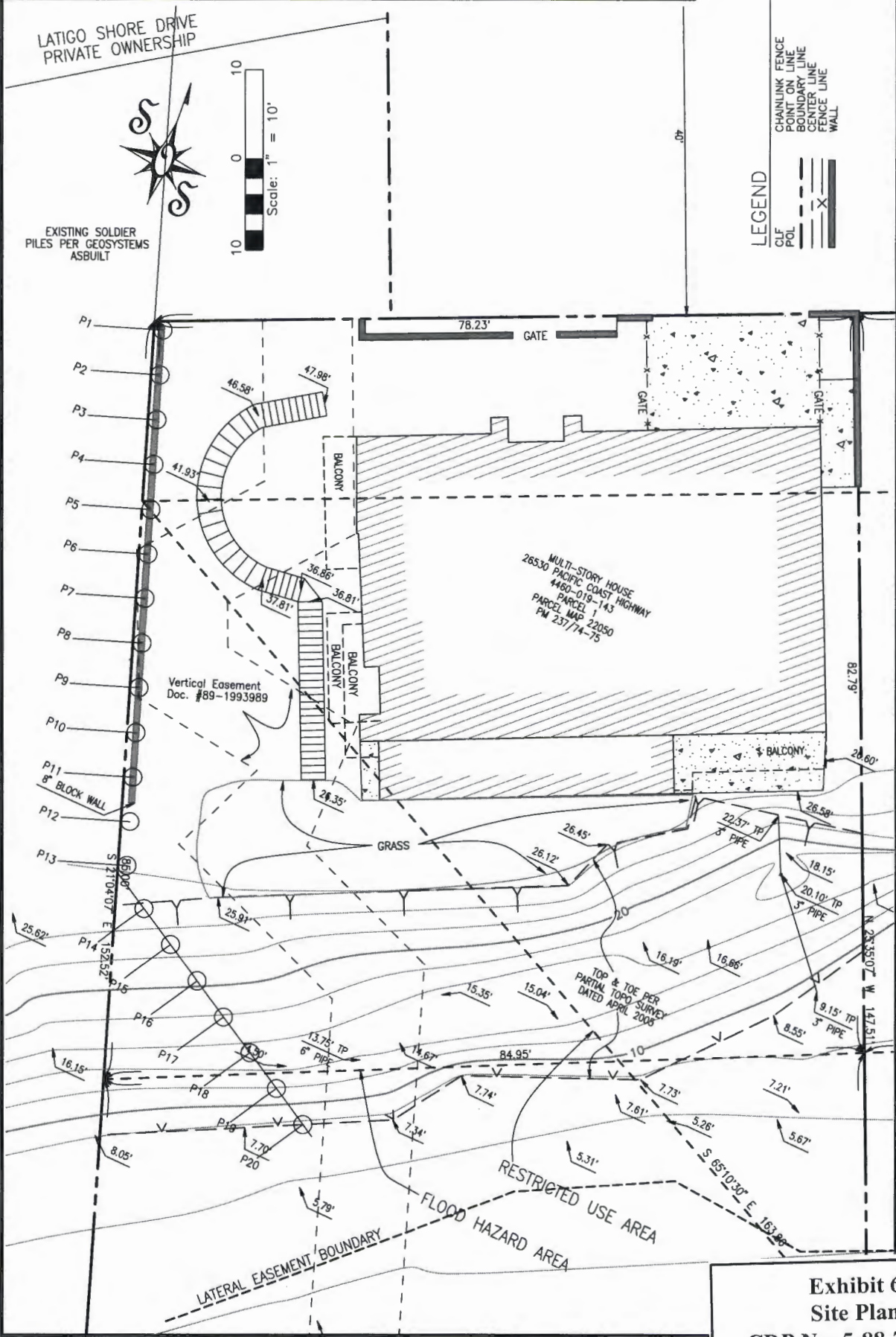
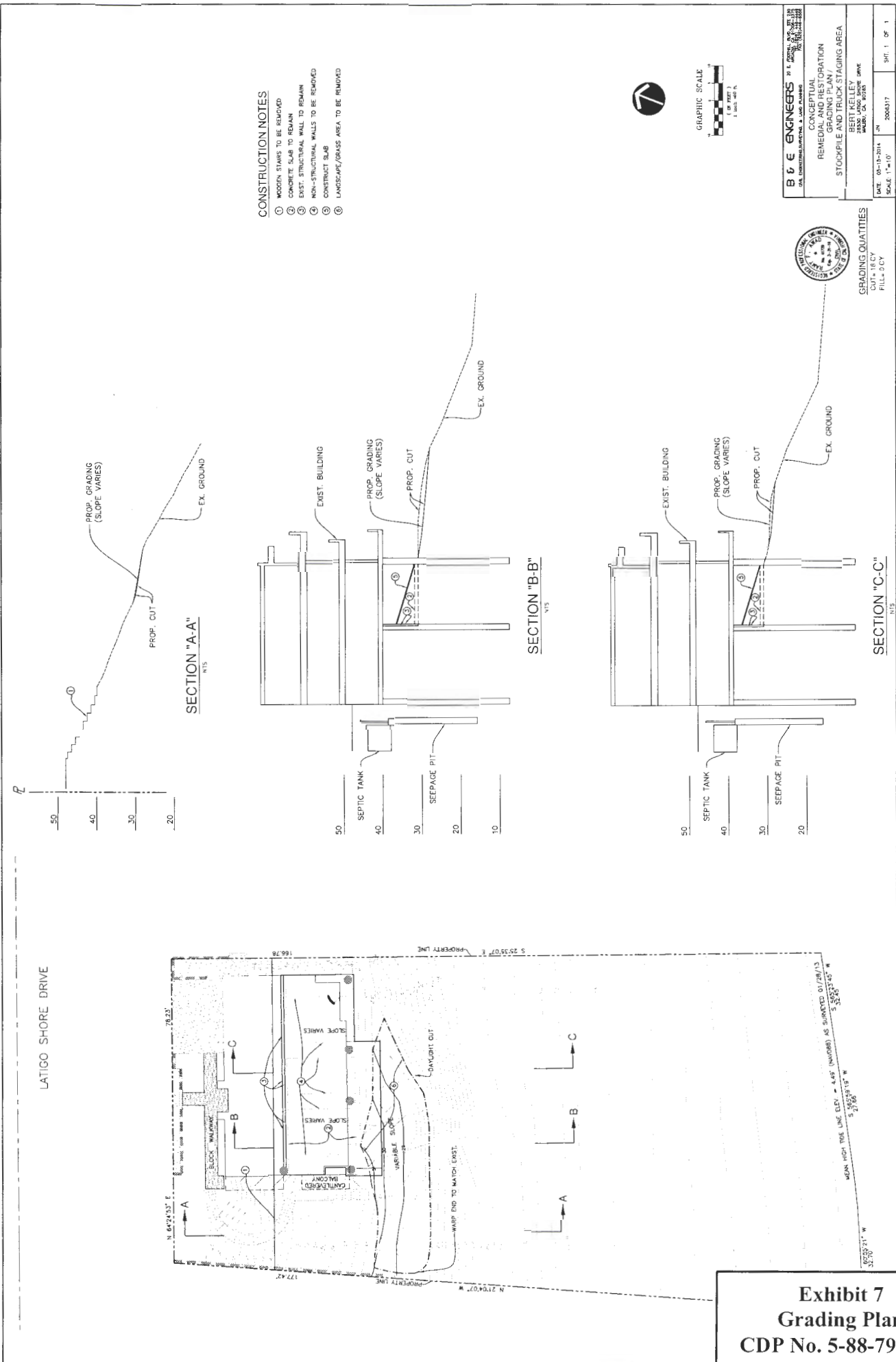


Exhibit 6  
Site Plan  
CDP No. 5-88-794-A5

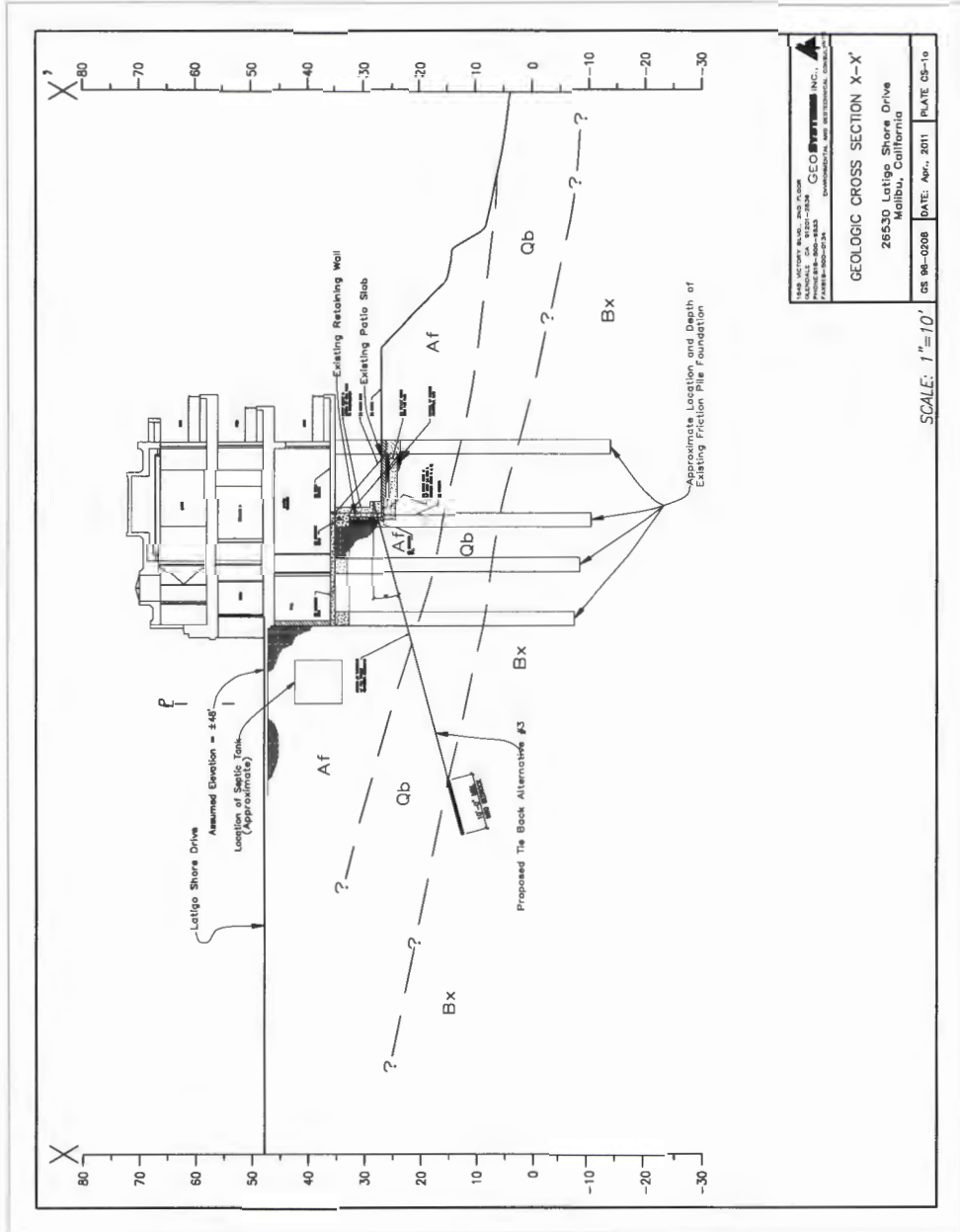


**Exhibit 7**  
**Grading Plan**  
**CDP No. 5-88-794-A5**

ROCK

DEC 10 2013

SC 11



**Exhibit 8**  
**Geologic Cross Section**  
**CDP No. 5-88-794-A5**

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
(213) 596-5071



Page 1 of \_\_\_\_\_  
Date: June 13, 1990  
Permit No. 5-88-794

COASTAL DEVELOPMENT PERMIT

On December 13, 1988, the California Coastal Commission granted to

Jeanette Goldbaum  
this permit subject to the attached Standard and Special conditions, for development consisting of:

Subdivision of 35,130 sq. ft. lot into three parcels and construction of three single family houses.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 26520-26524 Pacific Coast Highway, Malibu CA APN 4460-19-26.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS  
Executive Director

By: *Pamela D...*

Title: Staff Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee

Exhibit 9  
CDP No. 5-88-794 Permit  
CDP No. 5-88-794-A5

COASTAL DEVELOPMENT PERMIT

Page 2 of 6  
Permit No. 5-88-794

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Assumption of Risk.

Prior to transmittal of the permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from shoreline erosion, flooding, and bluff erosion, and the applicant assumes the liability from such hazards; (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards.

PE:tn  
5178D

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

## 2. Lateral Access

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for 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.

The easement shall extend the entire width of the property from the mean high tide line to the line approximating the toe of the bluff, shown as elevation 16 on the maps provided by the applicant. (Exhibit 3)

The easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

## 3. Vertical Access

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for public access for pass and repass from Pacific Coast Highway to 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.

The easement be described in metes and bounds and shall extend from the Pacific Coast Highway to the ordinary high tide of the Pacific Ocean, generally within the geologic setback along the western property line. The easement shall not be less than 10 feet in width, and shall be sited and designed to accommodate reasonable and safe pedestrian access from the highway to the area along the beach dedicated in condition 2.

A more detailed description may either follow the stairway proposed in Exhibit 3, or otherwise follow a potential switch-back within the general area identified as geologic setback in Exhibit 3 if the stairway cannot be feasibly constructed. The exact configuration of the easement shall be determined by the Executive Director. The easement shall enable a private or public agency accepting maintenance and liability to enter, improve and maintain the access in order to provide pedestrian access to the shoreline.

The easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

In addition to all other recording, there shall be an explanatory note on the final parcel map.

If and when a vertical public access way has been constructed within 500 feet of the applicant's property and such accessway has been opened for public use and either a private association acceptable to the Executive Director or a public agency has accepted the responsibility for operation and maintenance of the accessway, the applicant may request an amendment to this permit to remove the recorded easement. Such amendment must be approved by the California Coastal Commission prior to the removal or revision of the recorded easement.

4) State Lands

Prior to the transmittal of a permit the applicants shall obtain a written determination from the State Lands Commission that:

(a) No State lands and/or lands subject to the public trust are involved in the development, or

(b) State lands and/or lands subject to the public trust are involved in the development and all permits that are required by the State Lands Commission have been obtained, or

(c) State lands and/or lands subject to the public trust may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

5) Storm Design.

Prior to the transmittal of the Coastal Development Permit, the applicants shall submit certification by a registered civil engineer that the proposed structure is designed to withstand storms comparable to the winter storms of 1982-83.



6) Construction Methods and Materials.

Prior to transmittal of the permit the applicant shall provide subject to the review and approval of the Executive Director 1) revised grading plans with plan notes and 2) an agreement with the Executive Director both of which provide a) that no stockpiling of dirt shall occur on the beach, seaward of elevation 20, b) that all grading shall be properly covered, sand bagged and ditched to prevent runoff and siltation, c) that earth-moving operations shall be prohibited between November 1 and March 31, d) that measures to control erosion must be implemented at the end of each day's work, and e) evidence that plans for this erosion prevention conform to applicable County ordinances, f) entry for excavation shall be from Pacific Coast Highway and Latigo Shores Drive and shall not be from the beach.

Pursuant to this agreement, during construction, disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be re-deposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or construction material. No road or ramp shall be constructed to the beach. The applicant shall prevent siltation or discharge of silt, chemicals or waste concrete on the beach.

7) Future improvements

Prior to transmittal of the permit the applicant shall provide a deed restriction for recording in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-88-794 is for the approved development only, and that any future additions or improvements to the property will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The document should note that no permanent improvements with the exception of one public path or stairway noted on the present plans shall be constructed within the geologic set back area or under the floors or seaward of the existing structures. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. It shall remain in effect for the life of the development approved in this permit.

8) No beach level development

Prior to issuance the applicant the applicant shall agree that this approval is based upon his assertions that no beach development, including leachfields or seawalls will be necessary to protect the development. Prior to issuance of the permit the applicant shall present final working drawings for an approved approved by Los Angeles County Health department for a septic system that 1) requires no seawall, 2) involves no waivers of the Los Angeles County Plumbing code, 3) is not located on the beach (below elevation 16 as shown on Exhibit 3)

9) Revised plans

Prior to transmittal of the permit the applicant shall submit revised plans that limit the development to three levels. For purposes of this condition a mezzanine and a basement are each levels.

10. Cumulative Impact Mitigation Condition

Prior to issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on one building site in the Santa Monica Mountains Coastal zone for each new building site created by the permit. The method used to extinguish the development rights shall be either

a) one of the five lot retirement or lot purchase programs contained in the Malibu Santa Monica Mountains Land Use Plan (policy 272 2-6),

b) a TDC-type transaction, consistent with past Commission actions such as 5-84-789 (Miller),

c) or participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

The building site on which residential uses are extinguished must either be a legal lot in a small lot subdivision or a potential building site located in a Significant Watershed. Unsubdivided land within Significant Watersheds may be used to generate building sites in numbers based on densities consistent with the proposed densities of the Land Use Plan; sites that are unable to meet the County's health and safety standards shall not be counted.



MAX FALAMAKI  
STRUCTURAL ENGINEERS  
DIVISION OF ANGELES FABRICATORS INC.

April 24, 2014

JUL 10 2014

Mr. Bert Kelley  
26530 Latigo Shore Drive  
Malibu, CA 90265

**RE: COASTAL COMMISSION LETTER OF JANUARY 15, 2014 FOR  
26530 LATIGO SHORE DRIVE, MALIBU- JOB # 14108**

Dear Mr. Kelley:

Pursuant to your request, we are providing this addendum to our report dated February 22, 2012, as requested in the Coastal Commission's January 15, 2014 letter.

In our structural evaluation report dated April 6, 2010, we noted that as a result of natural forces, the upper section of the second row of piles became exposed by over 9 feet, which exposed the tie beam out of the natural grade. Our report described how the structural slab and the masonry wall that are proposed to be retained were constructed to address the stresses on the residential structure that resulted from the foregoing conditions. We concluded in our April 6, 2010 report that the structural slab is acting as lateral support for the piles and that the masonry retaining wall is supporting the exposed tie beam as well as preventing failure of the site to the North. We noted that the masonry wall and the structural slab are an integral part of the residence structural system and are necessary for the stability of the site by retaining the hill to the North, the septic system, as well the floor system of the residence. We reiterated this conclusion in our February 22, 2012 report as well as in our evaluation letter of April 24, 2012.

The geologic conditions and the resulting need for the masonry wall and structural slab have not changed. The proposed diagonal structural element, not necessarily a concrete slab, has been added in response to Coastal Commission staff's request for addition of an element that would keep the concrete slab from becoming a usable understory. The proposed slanted structure will be located entirely within the area of the existing concrete slab and the masonry wall. It will not be in contact with any surrounding geology and will not change the geology of the site.

The proposed diagonal element will provide additional bracing that will strengthen and increase the structural stability of the existing masonry wall support by the existing structural concrete slab. Although not necessary for the structural or geological stability of the site, the proposed diagonal element will provide additional geological stability for the site the residence structure.

Although the existing structural concrete slab and masonry wall could support a concrete diagonal slab, it is preferable to construct the diagonal element out of material that would impose less dead load on the existing concrete slab and masonry wall. For that reason, we recommend that the diagonal element be constructed using slanted steel tubes bolted to the top of the masonry wall and at the southerly end of the concrete slab, with steel stud framing covered with DensGlass with a finish that would look like concrete. ( See the attached SK-1.)

Page two  
Bert Kelley  
April 24, 2014

Based on our visual observation of the site and existing structural elements, the proposed diagonal structure as described above will not adversely affect the geologic stability of the site. The new steel elements will provide additional bracing for the existing masonry wall and the residence.

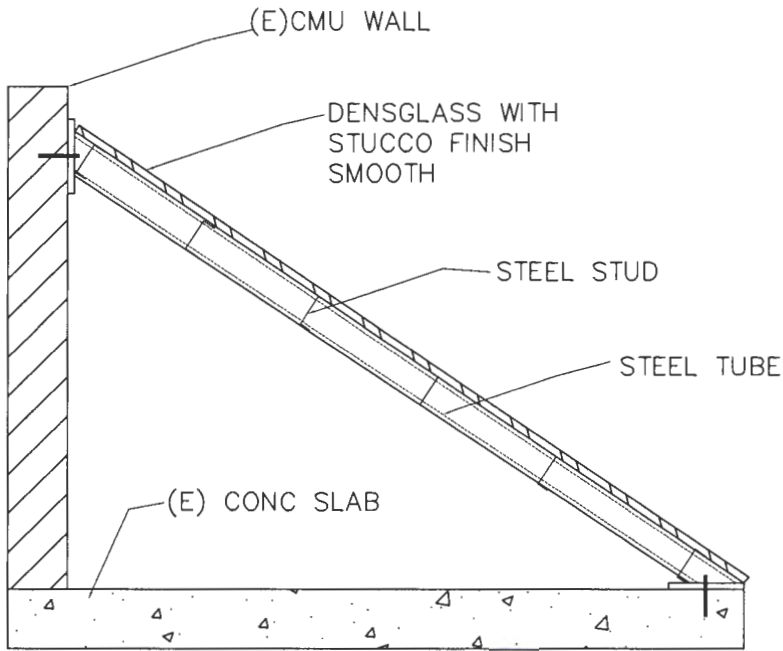
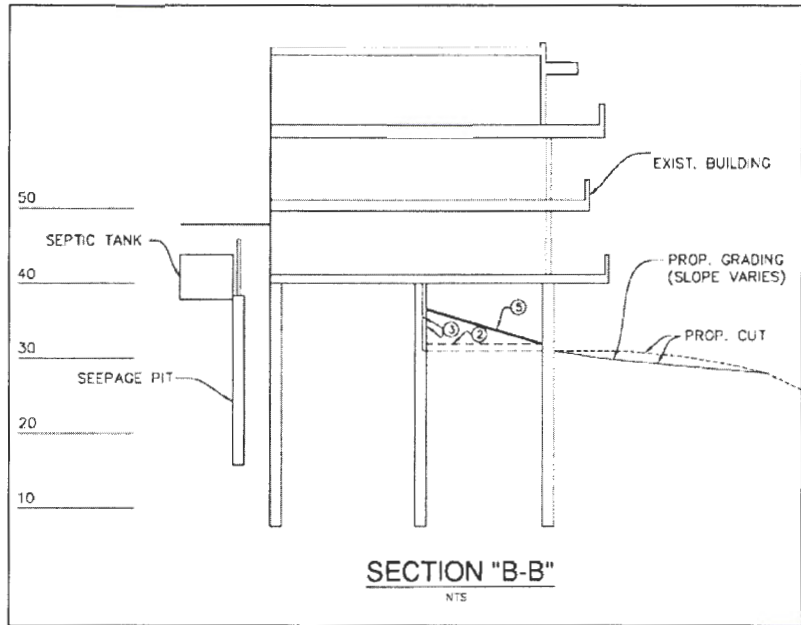
If you have any questions or comments regarding this matter please do not hesitate to call us.

Sincerely,




Max Falamaki, SE  
President

cc: 14108-Latigo-SE-re1



NEW DIAGONAL ELEMENT

SHEET TITLE:		DIAGONAL (SLOPED) CLOSURE			
 <b>MAX FALAMAKI</b> STRUCTURAL ENGINEERS Email MAX@FALAMAKI.COM	836 S. BUNDY DRIVE LOS ANGELES, CA 90049 Tel (310)820-8206 Fax (424)204-6014	PROJECT: 26530 LATOGO SHORE DRIVE MALIBU, CA	SHEET NUMBER: <b>SK-1</b>		
	DRAWN HP7300	CHECKED	APPROVED MF	JOB NO: 14108	SCALE: NONE