

## CALIFORNIA COASTAL COMMISSION

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



# Th21a

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original staff report](#)

## ADDENDUM

**DATE:** February 9, 2015

**TO:** Commissioners and Interested Parties

**FROM:** South Central Coast District Staff

**SUBJECT:** Agenda Item 21a, Thursday, February 12, 2015, Coastal Development Permit Appeal No. A-4-MAL-14-0046 (Carsey, Malibu)

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The purpose of this addendum is to 1) respond to the appellant's submitted correspondence following the release of the January 28, 2015 Staff Recommendation Report and 2) to attach correspondence received since the January 28, 2015 staff report.

### 1) Response to the appellant's comments dated February 3, 4 and 5, 2015:

The appellant suggests that a previous Commission action for 27852 PCH (CDP P-7428 from 1976) would shed light on the development at this site, including an existing public access easement. The address included as the project site for P-7428 is 27852 PCH but the approved development was on a different lot. Prior to the filed appeal, the appellant requested files associated with 27852 PCH. Staff requested materials related to 27852 PCH from the Commission's file archives at the state archives in Sacramento. Unfortunately, the file for CDP P-7428 could not be located in the archives. However, staff was able to locate information regarding the lateral access easement required as a condition of P-7428.

From the legal description of the property in the lateral access easement document, it is clear that the property that was the subject of P-7428 is not the subject property (even if the address is the same). The property involved in CDP P-7428 is a beachfront lot, while the lot subject to the current appeal is not. The legal description associated with the easement required as part of P-7428 matches 4460-032-008, a beachfront parcel currently located seaward of the subject property. In any case, the involved easement is a lateral easement, not a vertical easement extending to Pacific Coast Highway. As such, the information that might be gained from the permit file for P-7428 (if it were available) would not be pertinent to the subject appeal.

The appellant has stated that a gate approved in the original City permit (CDP 09-043) blocks existing public access to the beach. Although this gate is not part of the permit amendment (CDP Amendment 13-006) that is the subject of this appeal, staff has reviewed the public access map

for the Malibu LCP and the CCC staff records of access easement OTD's and confirmed that no vertical access easements have been required for the subject property. There is no vertical access easement or easement offer to dedicate required by CCC recorded on the subject site.

The appellant also included references to plans and other materials related to CDP 5-88-175. That CDP was for the construction of a single family residence on an adjacent parcel (4460-032-009). At the time CDP 5-88-175 was considered by the Commission, the subject site was developed with a single family residence. Accordingly, it is unclear whether the discussion of habitat on the adjacent parcel indicated what if any habitat existed on the subject site at that time.

In any case, these issues raised by the appellant relate to the original CDP 09-043 approved by the City which was not appealed and is now final. The issues raised do not relate to the CDP amendment considered in this appeal.

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## Pismo Beach Hearing Feb 11-13 Re: Carsey 27852 PCH Malibu

HMH [beverlyhillsmayor@gmail.com]

**To:** Ainsworth, John@Coastal; Hislop, Kristen@Coastal; Dreher, Nicholas@Coastal;  
Lester, Charles@Coastal; Pederson, Chris@Coastal; sharilyn.sarb@coastal.ca.gov;  
Miller, Vanessa@Coastal

**Cc:** Rodriguez, Barbara@Coastal; Christensen, Deanna@Coastal; Wayman, Dick@SCC;  
HMH PCH [pchmayor@gmail.com]

**Attachments:** (2) [Download all attachments](#)  
[gate exhibit.pdf \(2 MB\)](#) [Open as Web Page]; [WebPage.pdf \(4 MB\)](#) [Open as Web Page]

Tuesday, February 03, 2015 6:09 PM

You replied on 2/3/2015 6:41 PM.

Ladies and Gentleman,

What do I need to do to gain your support where we can move forward. We need a solution to reach your goals as neighbors, allies, and as friends. I believe there is some ambiguity to my goals. Please provide me some time to I need your help to request from the coastal commission an extension until we are able to obtain the "missing" coastal commission files related to the below properties that were supposedly available for viewing last year. The documents have disappeared during the appeal process. It does not allow us and coastal staff to properly prepare for the hearing without all the information available. We will ask Barbara and Jack Ainsworth to help for the extension until we obtain the documents.

Last month, I had requested the files in the public comment hearing at the CA coastal commission in Santa Monica. I have no idea if they have been recovered as i was never notified after repeated requests. Please note that Mrs Carsey agreed to remove most of the invasive trees from the property but waited for nesting season to end but as of yet nothing has been done except for 2 trees. #rd party reports provide possible ESHA and fuel modification allowing trees close to the structures less than 50 feet. How is this allowed? FIRE HAZARD in a FLOOD HAZARD zone. the more stringent applies, and in this matter its seems by the limited information available, its not substantive or is it De novo?

Most of the documents are not included here for the staff report to make a determination however, it only shows what the city of malibu prepared limited based off a roaming staffer Nick Dreher since Deanna Christensen familiar with this matter has been promoted. The property just sold for \$60MM supposedly with the same business manager/CPA for both buyer and seller. The 100 years that this road and access existed there was never a gate. The below gates are misrepresented, they were never existing gates. Based on the limited staff report, they sited many technical matters to make it not substantial. At the end of the road(the horizontal beach) is PUBLIC. There are multiple CDP violations here including the invasive landscape and for whatever reason, none of them seem to catch CCC attention. I am requesting an extension until we gather and produce the documents available to be properly communicated to all parties.

Below are the newly planted King Palm trees and show never such gates existed. Please notice the 100 foot plus crane with a metal roof glare on the left and the imported invasive tree laying on the 18 wheel flat bed. Also, No existing Gates except a temporary chain link. Photos below depicting before, during and after. Please call anytime to discuss and would like a site walk with all parties prior to the hearing including any commissioners willing to be present. 18005256989 or contact [PCHMAYOR@gmail.com](mailto:PCHMAYOR@gmail.com) how can I gain your support? Additionally, please contact me regarding the possibility of an extension of this matter. Please forward to all Coastal commissioners and please confirm receipt by replying via email. Thanks

Michael Hakim



EXISTING 6' HIGH  
BLACK WROUGHT IRON  
FENCE APPROVED  
AS AN O.C. APPLICATION  
ON DECEMBER 4, 2013

EXISTING GATE  
APPROVED UNDER  
RESOLUTION #10-21  
ON APRIL 6, 2010

EXISTING GATE  
APPROVED AS AN  
O.C. APPLICATION ON  
DECEMBER 3, 2012

5/199;

922147

RECORDED IN OFFICIAL RECORDS  
COUNTY, CA

Land Use in Vicinity:

REFER TO PG 3057 COMMUNITY  
CLIP NO. 13-26 25.04.94  
06-043

This is in an area of mixture of private residences and private roads between the Pacific Coast Hwy. and the ocean. About  $\frac{1}{2}$  mile to the east is Paradise Cove, a private recreational/commercial area. The private roads limit beach access except for the property owners who live adjacent to it. The property is at the toe of a coastal bluff or sea cliff which descends from the Pacific Coast Hwy. to the beach. This is a reasonably wide sandy beach readily accessible only to property owners in the immediate area or those renting trailer space at Paradise Cove.

Permit History:

The applicant previously applied for a permit (P-4017) to totally demolish the existing and construct a 2-story, 2300 sq. ft., 20 ft. high single-family dwelling with attached garage. The Regional Commission denied this permit and the decision was upheld by the State Commission. As indicated on the previous page, the applicant has scaled down the project.

Issues:

1. Increased Development Intensity & Urban Sprawl
2. Beach Encroachment

Increased Development Intensity & Urban Sprawl:

The proposal consists of a change in use. Presently the structure on the property is used as a beach cabana. This conversion to a single-family dwelling involves an increase in energy usage, solid and liquid waste, increased traffic congestion on Pacific Coast Hwy. and air degradation.







ACT 1980, M. 100

The project involves the construction of 1,100 sq. ft. addition to an existing 601 sq. ft. beach house (in the previous application, the existing structure was identified as a garage; in the present proposal, the structure is called a beach house). Project also includes demolition of 101 sq. ft. of the cabana and remodeling of the remainder to create a new bedroom, 1012 sq. ft. single-family dwelling with outside deck and parking easement for 10 cars.

Beach Access Gates easement for Immediate Neighbors  
 Same owner MARLIN CARSEY 70341 1/2 27901 PCH

LOCATION: 27820 Pacific Coast Hwy., Malibu - located on beach front lot between Escondido Beach and Paradise Cove Pier.

DISTANCE FROM MEAN HIGH TIDE LINE: 250

PRESENT USE OF PROPERTY: beach house

SITE SIZE: 241,000 sq. ft. (877 x 179)

DENSITY: GROSS: N.A. NET:

UNIT MIX: N.A.

ON-SITE PARKING: dirt access road with paved parking easement just below bluff line.

BUILDING HEIGHT: 16 ft. above AFG

PROJECT COST: \$23,750

ELR: exempt

AGENCY APPROVAL: Approval in Concept - L.A. County

Homeowners Assoc. - Health Dept. - letter in file

Building Dept. - RWQCB -

APCD



**Photo Point 1.** View of the asphalt driveway looking north from near the middle of the property. A coast live oak (#1 on Figure 1) is visible adjacent to the west side of the driveway.



**Photo Point 2.** View of a Walnut #2 in the ravine.



[Reply](#) [Reply All](#) [Forward](#) [Chat](#)

## Re: Pismo Beach Hearing Feb 11-13 Re: Carsey 27852 PCH Malibu

HMH [beverlyhillsmayor@gmail.com]

To: [Dreher, Nicholas@Coastal](mailto:Nicholas.Dreher@coastal.ca.gov)

Tuesday, February 03, 2015 7:31 PM

You replied on 2/3/2015 8:34 PM.

Mr. Dreher,

Thanks for your response. Please advise if we can meet on site in person. I can make myself available and please provide me details in the process of obtaining an extension. I don't know if you're aware of the severity of this matter. These are violations and not just concerns. I am happy to speak to you at 10am. 310.877.0900

I need answers on the missing coastal documents and the procedure on obtaining an extension. please confirm receipt of my response. Why were you assigned to this matter? Why is Deanna or Jack not handling this since they have a history of the location. Please send the biologist Jonna Engel or whomever is the biologist available to attend the meeting. Who is your supervisor? Jack Ainsworth? I should have a response from him or your legal counsel Mr. Pederson or Jamee Jordan Patterson. Time is of essence. Please advise what is the daily fine for access to the ocean.? Lastly, Please provide me the appropriate emails and/or contact info to each of the commissioners.

Michael

On Feb 3, 2015, at 4:41 PM, Dreher, Nicholas@Coastal <[Nicholas.Dreher@coastal.ca.gov](mailto:Nicholas.Dreher@coastal.ca.gov)> wrote:

Hello Mr. Hakim,

Thank you for your email. I understand your concerns. I suggest we discuss this further over the phone. Do you have a time that works for you tomorrow morning? At that time, we can discuss your appeal, the local administrative record and the specifics associated with the City of Malibu's CDP Amendment for changes to the landscape plan. Going forward, please limit your emails to me, Ms. Christensen and/or Mr. Ainsworth. I will make sure anything you send reaches the appropriate persons.

Please provide me with a phone number once you decide on the best time for tomorrow's call. If tomorrow does not work, I will make sure to be available when you are.

Sincerely,

Nicholas Dreher  
Coastal Program Analyst

## 09-043 &amp;13-006: Carsey 27852 PCH Malibu

HMH [beverlyhillsmayor@gmail.com]

Sent: Wednesday, February 04, 2015 5:38 PM

To: Dreher, Nicholas@Coastal

Attachments: image1.jpeg (84 KB) ; ATT00001.txt (6 KB)

Dear Mr. Dreher,

thank you for reaching out today and making yourself available this morning to discuss the hazards & violations. I just want to summarize our discussion.

Due to some confusion in the record, You're going to look into the process of obtaining the missing files that should be of record & lack of documentation available for the upcoming hearing. Also, my unavailability to attend this upcoming hearing due to family engagements. I hate to cancel prior engagements. For this reason, I need a coastal form to fill out so we may postpone my appeal for a later coastal hearing.

Several other items were discussed: the process of the malibu landscape code enforcement and roof glare from December 12, 2012 and as it just signed off in September 9, 2014. The property was neglected Prior to purchase in 2000 for about 7 years and they did not start construction until 2009. That's appx 16 years of neglect of shrubbery and growth of invasive trees. Historically, we have had malibu fires . More trees have require more water in this drought.

During the last two years some non native planting also occurred with photos depicting 200 foot crane showing the trees which created the after the fact amendment.

At which time an over the counter permit was issued in November 2013 for the gates.

This was never on the original CDP.

The owner is very calculated and well equipped to deal with the multiple projects built along the coast.

Furthermore, there is an ambiguity with the gate and the landscaping amendment and the potential restoration of the ESHA that exists with the monarch butterfly roost that may have disappeared. The city of malibu is aware of this in the file that I obtained from the coastal records I obtained and malibu made no effort to investigate such habitat exists.

Furthermore, if you take a 2nd look at the 2008 RINCON photograph of the driveway, it shows some king palm trees at a very young age that did not exist on the property per the superintendent Johnny diaz from Fort Hill. In addition, there was never a gate on the property except on the neighboring property 27834 PCH. The photo further shows the native trees that exist and were never attended meet the CDP conditions of approval after the RINCON report mentions there is no waterway or ESHA that exists which is why we need to request a 3rd party report. I don't think Caltrans added the inlet and outlet in the ravine recently. Not to mention Old PCH is on my property which gives me easement rights to the ocean along with purchasing the property next door. It has a prescriptive right. The WINDING WAY HIKING trail has a public view corridor that is also blocked and I'm not sure if access to the ocean pertains to this notice. Your patience and understanding is appreciative.

The original CDP did not have a driveway gate and if so, it was not for two gates.

The fire hazard & flood hazard and the ravine has an inlet and outlet under PCH

coast hwy which demonstrates a waterway to the ocean. If you look at the tract map and parcel map 7543 it shows a flood hazard on the bluff and at the bottom where it meets the ocean at the horizontal beach access.

If and when you get a chance, please provide me answers to below.  
Please advise if I missed anything.  
Have a great day!

Michael Hakim



SEE AP MAP SMOKE LOCATIONS  
 for "B" for  
 PROPERTY LOCATIONS

PARCEL MAP - P.M. 135-58-39  
 TRACT NO. 12935 M.B. 248-39-40

PARCEL MAP - P.M. 241-44-40

21856 PCH

21854 PCH



21910 PCH

21852 PCH

21854 PCH

"A"

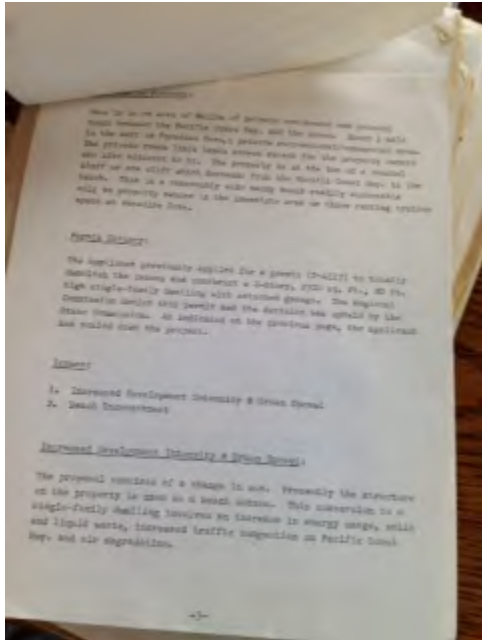
APPROVED FOR THE CITY OF LOS ANGELES  
 BY THE CITY CLERK  
 DATE: 11/11/11  
 BY: [Signature]  
 TITLE: City Clerk

## A-4-MAL-14-0046 aka 27852 PCH MALIBU coastal docs

H M H [beverlyhillsmayor@gmail.com]

Sent: Thursday, February 05, 2015 2:49 AM

To: HMH PCH [pchmayor@gmail.com]; Dreher, Nicholas@Coastal; Rodriguez, Barbara@Coastal; Ainsworth, John@Coastal; Christensen, Deanna@Coastal



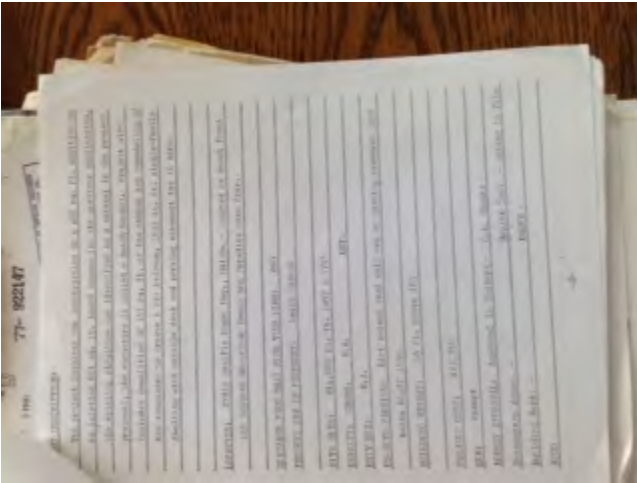
1st paragraph last line describes land use of beach for immediate neighbors



Neighbors within immediate area 27841 PCH recently purchased by Hakim



MISSING FILES ON INITIAL REVIEW IN JUNE 2012



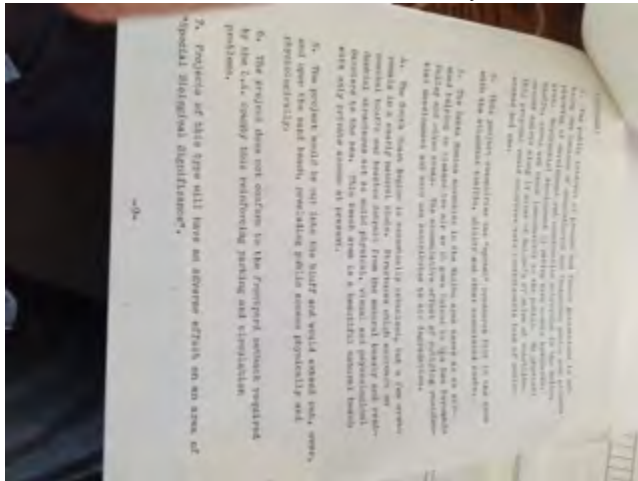
Parking easement for 10 cars



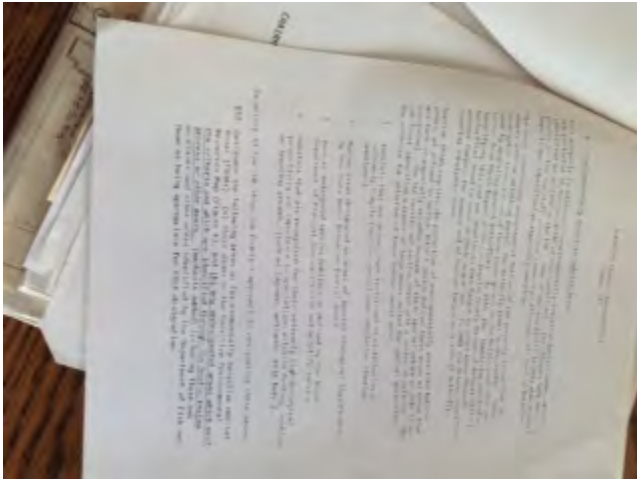




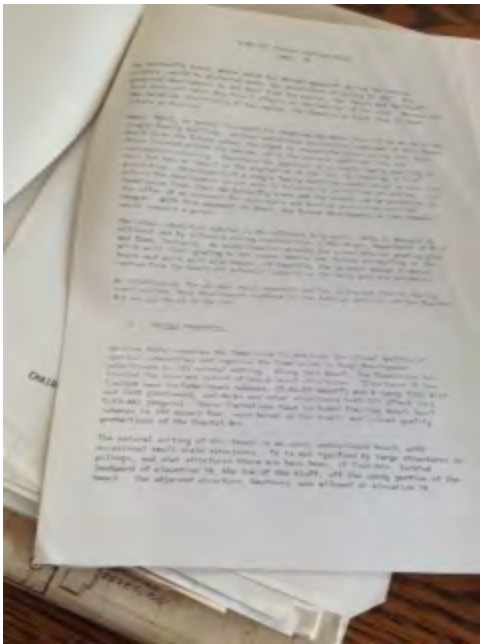
CULVERT ABOVE IDENTIFIES waterway IN RAVINE



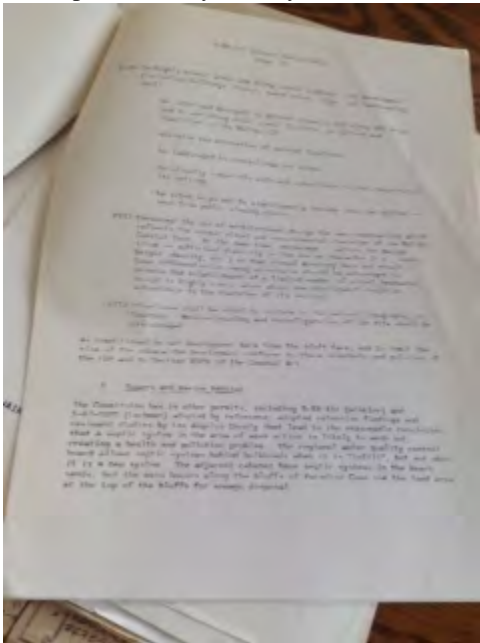
New non native tree planting Is an adverse effect on area of " special biological significance".



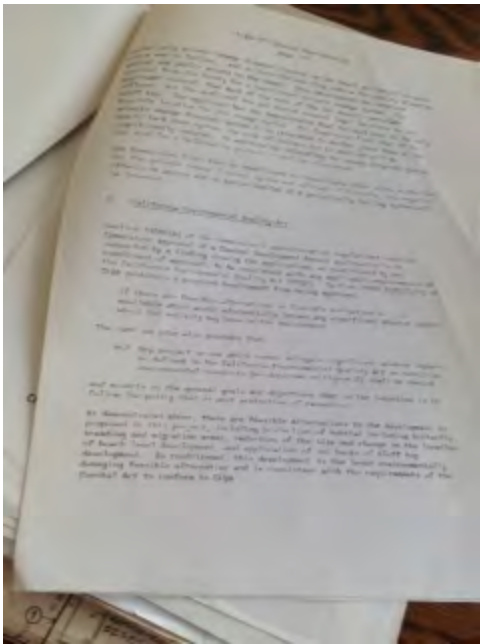
ESHA EXISTS AND MONARCH BUTTERFLIES NO LONGER SINCE RINCON FAILED TO RECOGNIZE IT IN 2008 report.



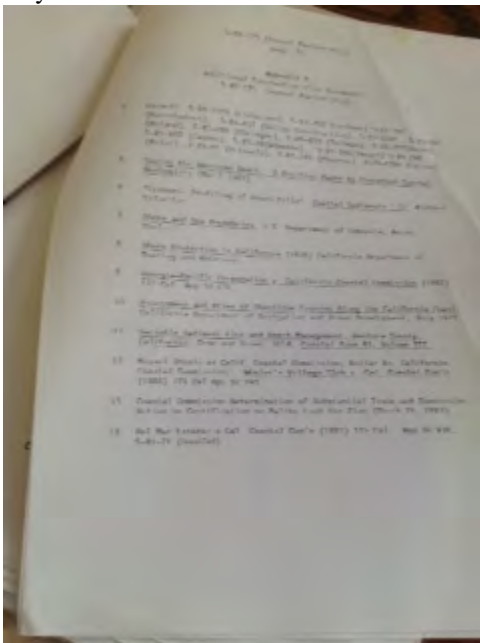
Trees planted without permit . Removal of most eucalyptus trees needed for native trees and butterfly trees to flourish. No future protection by the city of malibu were never implemented due to the flawed biology report.



Public viewing of ocean from hiking trail is affected by roof glare and invasive trees. Fire hazard exists and we need a 3rd party biology report.

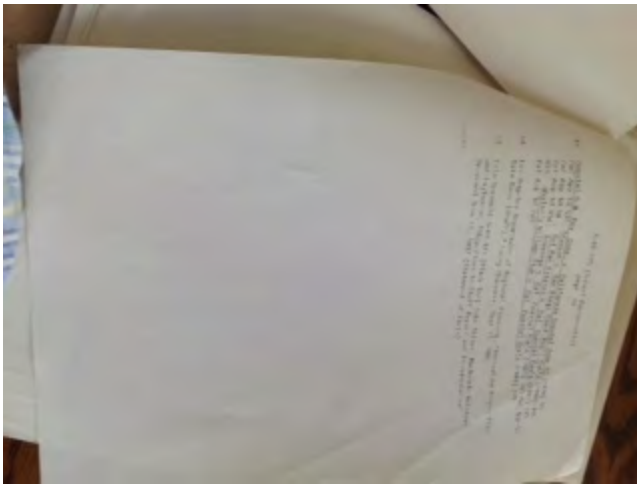


City of malibu should have denied the CDP 09-043 & 13-006 permits.

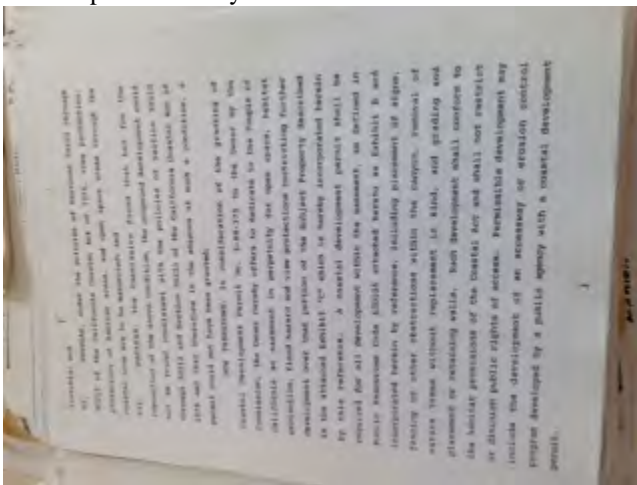


## References

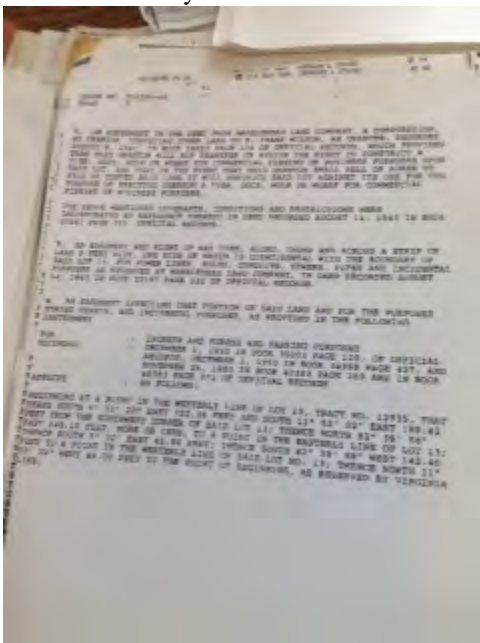




I am surprised that my documents are MISSING but here are some for your review.



Public access way dedication



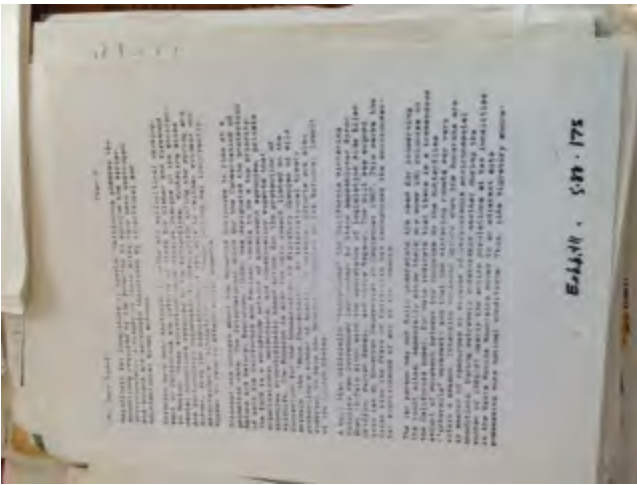
## Easements for immediate neighbors



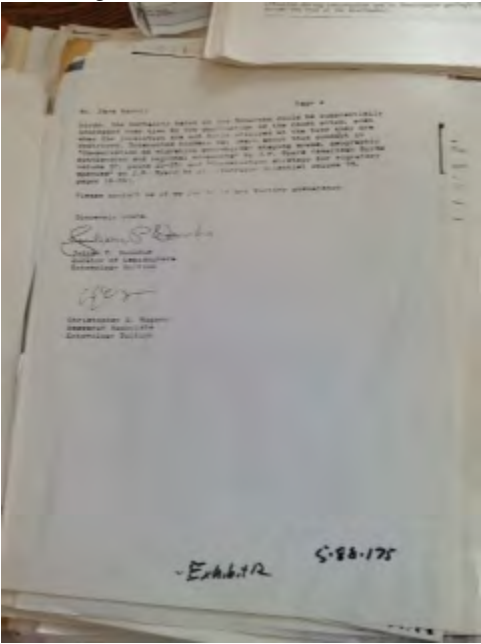
## Monarch roost in vicinity



## Clustering in the fall, city of malibu fail?



Wintering colonies



Location in canyon



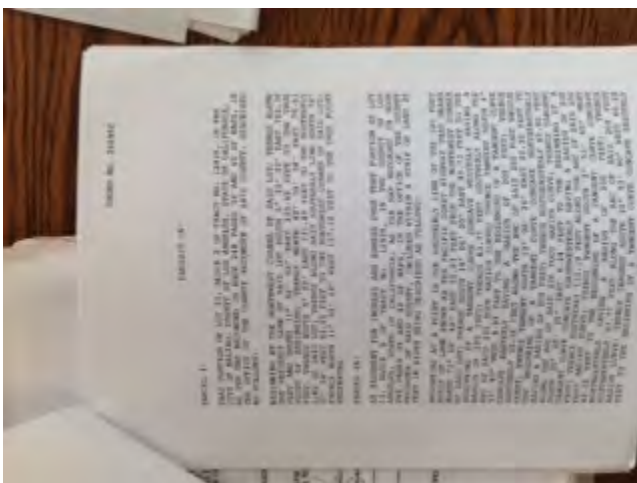
Please investigate if roost exists



Location is same canyon

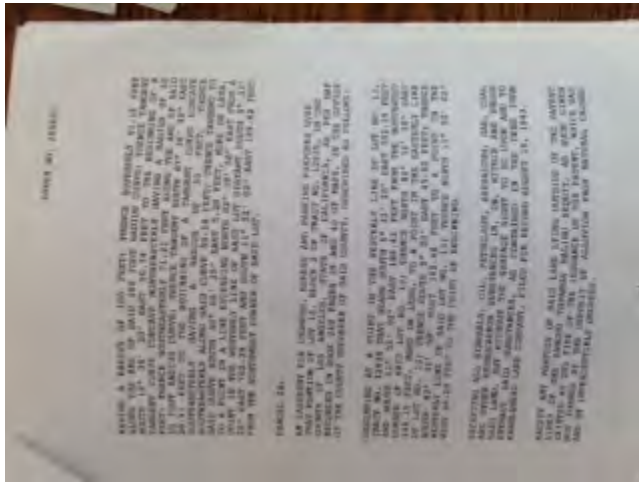


Neighboring property

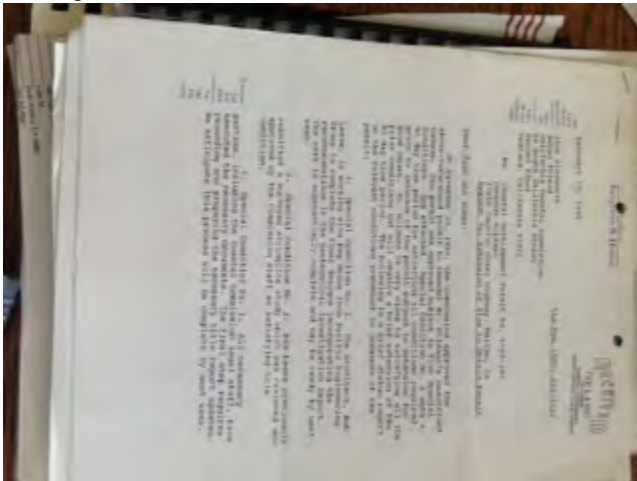


Survey easement





Parking easement



Ainsworth named above

I hope this helps you revisit some more documents and postpone the hearing til we get the facts!

Please confirm receipt of documents. Thanks!

Mike Hakim

Re: A-4-MAL-14-0046 aka 27852 PCH MALIBU coastal docs

HMH [pchmayor@gmail.com]

Sent: Thursday, February 05, 2015 2:35 PM

To: Dreher, Nicholas@Coastal

Cc: H M H [beverlyhillsmayor@gmail.com]; Rodriguez, Barbara@Coastal; Ainsworth, John@Coastal; Christensen, Deanna@Coastal; Hudson, Steve@Coastal

Thank you Mr Dreher.

Did you locate the coastal file box in storage that's missing? Also, why didn't the city of malibu stop construction between 12.12.12 and waited til November 2013 to make a decision on the landscape and immediately after planning dept approved their amendment, the applicant filed an over the counter permit for the gates? Their CDP WAS VIOLATED AND SHOULD HAVE STOPPED. Malibu did not do such thing.

Why is the access not included when the city of malibu received the complaint?

Where is this case going? It seems it's putting me and neighbors in a corner and the de novo will be missed.

I don't know if my neighbors and surf rider foundation and surfer collective will be able to attend on such short notice.

I just got the coastal letter which is incorrect based on my January public comment regarding this matter to include the gates. The hearing cannot be heard since the gates are not included in the hearing notice.

There are plenty of landscape photos not included here that were supplied I. The photo album and thumb drive. Please email all commissioners all our communication and the photos submitted for review and cc me please. Your report unfortunately is limited since the missing box files don't have anything to support it.

Best regards

HMH

310.888.0122

On Feb 5, 2015, at 11:31 AM, Dreher, Nicholas@Coastal <[Nicholas.Dreher@coastal.ca.gov](mailto:Nicholas.Dreher@coastal.ca.gov)> wrote:

Hello Mr. Hakim,

As we discussed over the phone yesterday, I am still looking into the public access issue you brought up yesterday. I will get back to you as soon as I can. However, as I stated yesterday, we do not have an extension form to delay the hearing and we currently plan to move forward with the hearing next week.

## CALIFORNIA COASTAL COMMISSION

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



# Th21a

**Important Hearing Procedure Note:**

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

Appeal Filed:	9/2/2014
49 <sup>th</sup> Day:	Waived
Staff:	N. Dreher - V
Staff Report:	1/28/2015
Hearing Date:	2/12/2015

## APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

**APPEAL NO.:** A-4-MAL-14-0046

**APPLICANT:** Marcia Carsey (PCH Trust, Successor)

**APPELLANT:** Michael Hakim

**LOCAL DECISION:** Coastal Development Permit Amendment (13-006) approved by the Malibu City Council on November 4, 2013

**PROJECT LOCATION:** 27852 Pacific Coast Highway, City of Malibu, Los Angeles County (APNs 4460-032-007)

**PROJECT DESCRIPTION:** An amendment to an existing coastal development permit (CDP 09-043) for after-the-fact approval of changes to the approved landscaping plan, including 1) tree plantings, 2) tree removal, and 3) additional shrubs and groundcover.

**STAFF RECOMMENDATION:** No Substantial Issue Exists

**MOTION & RESOLUTION:** Page 6-7

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### **SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS**

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified LCP or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Staff recommends that the Commission, after public hearing,

determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. The motion and resolution for the “no substantial issue” finding are found on **pages 6-7**.

The City of Malibu approved a Coastal Development Permit (CDP) amendment to CDP 09-043 to approve after-the-fact changes to a previously approved landscape plan at 27852 Pacific Coast Highway. CDP 09-043 was approved on April 6, 2010 for the demolition of an existing single family residence and garage, and the construction of a new single family residence and related residential development. The notice of final action on CDP 09-043 was received by the Commission on April 22, 2010 and no appeals were received during the appeal period and the CDP was therefore final as of May 6, 2010.

The project site, and adjacent sites, are zoned Rural Residential (RR-2). The subject property is located on a non-beachfront lot at the top of a bluff. The Pacific Ocean is to the south of the subject lot, separated by two parcels. The applicant’s property is south (and seaward) of PCH and the appellant’s property is directly north (and landward) of PCH.

The appellant submitted over 500 pages containing vague contentions and implications involving the subject property. All of the appellant’s contentions involve development undertaken pursuant to Malibu CDP No. 09-043. However, CDP 09-043 is final and not subject to appeal. The development that is the subject of the subject City action is an amendment (Amendment No. 13-006) to the original CDP No. 09-043. The Executive Director determined the appeal materials did not include any specific allegation that the development approved in CDP Amendment 13-006 was inconsistent with any specific policy or provision of the certified City of Malibu LCP or the public access policies of the Coastal Act and therefore constituted a Frivolous Appeal pursuant to Coastal Act Section 30620(d). Commission staff informed the appellant who in turn submitted the requisite filing fee in order to have the appeal evaluated via the substantial issue hearing process.

The City’s amendment approval involves after-the-fact changes to a landscaping plan. The changes involve planting of additional trees, bushes/shrubs and groundcover. As required in the original CDP, the trees will not exceed the height of the roof. The landscape plan changes are permissible within the applicable rural residential-2 zoning district. The amendment does not weaken or negate the intended effect of the original CDP No. 09-043.

The appellant’s various contentions and implications relate to perceived violations and concerns about the approval of the original CDP (09-043). When evaluated in light of the City’s thorough record and findings, the appellant’s materials do not contain any contentions that raise a substantial issue regarding the amendment’s conformance with the certified policies and provisions of the Malibu Local Coastal Plan.

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



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

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## APPENDIX A – Substantive File Documents

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### EXHIBITS

- Exhibit 1.** Vicinity Map
- Exhibit 2.** Site Aerial View
- Exhibit 3.** Landscape Plans
- Exhibit 4.** Final Local Action Notice
- Exhibit 5.** Appeal by Michael Hakim

# **I. APPEAL JURISDICTION AND PROCEDURES**

## **A. APPEAL PROCEDURES**

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

### **1. Appeal Areas**

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

The project site at issue in this appeal is located on a non-beachfront blufftop property at 27852 Pacific Coast Highway in the City of Malibu (**Exhibit 1**). The subject property is located between the first public road and the sea. As such, the entire project site is within this appeal area and the City's amendment to the coastal development permit for the subject project is appealable to the Commission.

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

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

### **3. Substantial Issue Determination**

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

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

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

#### **B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

The CDP amendment that is the subject of this appeal was approved by the City of Malibu Planning Commission on November 4, 2013. The action by the Planning Commission was appealed to the Malibu City Council by Michael Hakim on November 14, 2013. The appeal was denied and the CDP amendment for the project was approved by the Malibu City Council on August 11, 2014. The Notice of Final Action for the project was received by Commission staff on August 18, 2014 (**Exhibit 4**). Commission staff provided notice of the ten working day appeal period, which began on August 19, 2014, and ended on September 2, 2014. Michael Hakim filed the subject appeal on September 2, 2014, during the Commission's appeal period (**Exhibit 5**). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal, and requested that the City provide its administrative record for the CDP amendment. The administrative record was received on October 15, 2014. Pursuant to section 30621(a) of the Coastal Act, a hearing on an appeal shall be set no later than 49 days after the date on which the appeal is filed with the Commission, but according to section 30625(a), the applicant may waive that time limit. On September 16, 2014, prior to the 49 day deadline for Commission action, the applicant waived the right to a hearing within 49 days in order to allow Commission staff adequate time to review the City's vast administrative record, including the technical reports associated with the project.

## **II. MOTION AND RESOLUTION**

#### **MOTION:**

*I move that the Commission determine that Appeal No. A-4-MAL-14-0046 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION:**

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



## **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

*The Commission hereby finds that Appeal No. A-4-MAL-14-0046 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.*

## **III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE DETERMINATION**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION, SETTING AND BACKGROUND**

The Malibu City Council approved a CDP amendment (13-006) to an existing Malibu CDP (09-043), to allow after-the-fact changes to the approved landscaping plan in the Rural Residential-2 zoning district located at 27852 Pacific Coast Highway. (**Exhibits 1-3**)

The original Landscape Plan approved as part of CDP 09-043 contained only a few proposed plant species and trees. The amendment (13-006) incorporates after-the-fact landscaping that was much more involved. Specifically, the amendment permitted the after-the-fact planting of native trees/plants, including: Strawberry trees (not to exceed roof height), Chilean myrtle trees, Citrus trees, Fern Pine (not to exceed six feet), Privet (not to exceed six feet), Strawberry shrubs (not to exceed roof height), Japanese pittosporum, Heavenly bamboo, Dwarf mat rush, Lawn, Vegetable garden, Native bentgrass, Sand cordgrass, California lilac, and Star Jasmine.

The project site is located on the seaward site of the Pacific Coast Highway. The subject 27852 PCH property is the most landward parcel of three parcels that are located between PCH and the ocean. 27854 PCH is the property between the subject property and the beachfront property located at 27856 PCH. All three properties share a single asphalt driveway.

Surrounding land uses consist of blufftop and non-blufftop single-family residences in the Rural Residential-2 (RR-2) zoning district. The project site is not designated ESHA, as confirmed by the LCP ESHA Overlay Map, and does not contain trail segments, as confirmed by the City's 2004 trails Master Plan. The California Coastal Trail runs along the beach, but the parcel does not abut the beach.

Since the filing of the appeal, the property has experienced a change in ownership. The new owner is The PCH Trust (Lawrence Rudolph, Trustee). The grant deed for this owner has been provided to staff and a copy is in the appeal file. As a successor in interest, the new owner assumes the rights and responsibilities of the original permit, as amended by the City.

### **B. PRIOR SITE DEVELOPMENT**

On April 6, 2010, the Malibu Planning Commission held a duly noticed public hearing, reviewed and considered the staff report, public testimony, and all evidence associated with Planning

Commission Resolution No. 10-21, an application for Coastal Development Permit No. 09-043 for a new single-family residence and associated requests. This residence was constructed between 2010 and mid-2013. The specific development included the following: Demolition of a 2,256 square foot single family residence and a 528 square foot attached garage, and construction of a 2,472 square foot single family residence, 545 square foot attached garage, 590 square foot art studio located above the garage, 636 square foot covered areas, various hardscape including new driveway, garden walls and an entry gate, water features, landscaping, drainage improvements and an alternative onsite wastewater treatment system. The notice of final action on CDP 09-043 was received by the Commission on April 22, 2010 and the ten-day appeal period ran from April 23, 2010 to May 6, 2010. No appeals of CDP 09-043 were received during the appeal period and the CDP was therefore final as of May 6, 2010.

A new driveway entry gate located within the easement area (accessed by the subject 27852 PCH parcel as well as 27854 and 27856 PCH properties) was conditioned to not commence until arrangements had been made with all easement holders to ensure continued ingress and egress. On October 7, 2013, the applicant submitted a copy of recorded agreements between all easement holders regarding maintaining ingress and egress on the easement and gate maintenance. The driveway gate was finished as of mid-2014.

Landscaping on the project site consists of landscaping that existed prior to redevelopment of the site, new landscaping approved under CDP No. 09-043, and proposed landscaping under the subject CDP Amendment application for after-the-fact approval.

### **C. APPELLANT'S CONTENTIONS**

The City's action was appealed by Michael Hakim, the owner of a property north of PCH (across the street) at 27852 Pacific Coast Highway. The appeal was filed on September 2, 2014, attached as **Exhibit 5**. On the appeal form, the appellant states:

Need Independent 3<sup>rd</sup> party investigation/reports CDP 09-043 violations from 2000-present.  
Applicant did not obey conditions of approval and filed CDP Amendment No 13006. Piecemeal Landscape Plan, roof height, install of gates, Biological Inventory report flawed, beach access denied and parking easement for 10 cars. Native trees neglected, no biologist onsite, non native and invasive trees need to be removed. Restore ESHA, wildfire, drought, planting new plant + tree species ↑ water, lack of fair impartial hearing, SEE ATTACHED.

The appellant submitted two binders containing approximately 500 pages of excerpts of prior Malibu approvals, resolutions and plans. Any and all contentions by the applicant were made through sentence fragments, margin notes on the submitted pages, highlighter marks on particular provisions, and symbols/marks. The majority of statements and contentions relate to a separate CDP (09-043) and related resolutions (Planning Commission Resolution 10-21), approved by the City of Malibu. That CDP action was final in 2010, has already been vested and the subject residence was constructed. Accordingly, the appellant's statements regarding that existing permit pertain to perceived violations and the City of Malibu planning and enforcement departments are the appropriate audiences for those issues.

The contentions of the appeal are discussed and addressed in greater detail below.

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

#### **D. FRIVOLOUS APPEAL**

On September 8, 2014, Commission staff sent a letter to the appellant explaining that the Executive Director determined the appeal to be patently frivolous pursuant to Public Resources Code Section 30620(d). The appeal did not include any specific allegation of the approved development's inconsistency with any specific policy or provision of the certified Malibu LCP or the public access and recreation policies of the Coastal Act. On September 15, 2014, and within five working days of the receipt of the Executive Director's frivolous appeal determination, the appellant submitted \$300.00 for review of the frivolous appeal, as required pursuant to Public Resources Code Section 30620(d). Accordingly, the Commission is required to hold a Substantial Issue hearing to determine whether the frivolous appeal raises a substantial issue of conformance with the City of Malibu's certified Local Coastal Plan.

#### **E. ANALYSIS OF SUBSTANTIAL ISSUE**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal did not cite any policies of the LCP.

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

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

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

## **1. MALIBU AMENDMENT APPROVAL**

The City of Malibu approved CDP Amendment No. 13-006 to CDP No. 09-043 to include after-the-fact changes to the landscaping plan. This decision was appealed to the Malibu City Council, wherein the appeal was denied and the CDP Amendment was upheld. The original landscaping plan included Citrus trees, Bay laurel, Indian hawthorn, Yedda hawthorn and low lying groundcover. The approved amended landscaping plan adds Strawberry trees (not to exceed roof height), Chilean myrtle trees, Citrus trees, Fern Pine (not to exceed six feet), Privet (not to exceed six feet), Strawberry shrubs (not to exceed roof height), Japanese pittosporum, Heavenly bamboo, Dwarf mat rush, Lawn, Vegetable garden, Native bentgrass, Sand cordgrass, California lilac, and Star Jasmine. The Applicant also removed three Coastal Redwood trees consistent with the approved amendment, to satisfy the appellant's view concerns.

Landscaping is a permitted accessory use to a single-family residential use in the RR-2 zoning district. The City determined the potentially tallest trees (Strawberry trees) would not be visible from the appellant's main viewing area due to existing landscaping. The City imposed a condition requiring all proposed landscaping be limited to the roof height (26.5 feet). The Malibu City Biologist reviewed the amendment and imposed an additional condition of approval prohibiting of the landscaping from obstructing views. The City determined that as conditioned, the CDP amendment (after-the-fact landscaping changes) complies with LCP provisions applicable to non-beachfront residential development. Lastly, the City determined the amendment will not lessen or negate any of the findings or specific permit conditions contained in CDP 09-043 or Planning Commission Resolution 10-21.

In this case, the City-approved amendment for landscaping changes is a permissible use within the RR-2 zoning district. Moreover, the City restricted the heights of trees to help preserve the appellant's view of the ocean despite the fact that the LCP does not protect private views of the coast or ocean.

The appellant's contentions, however, involve trees that existed prior to the applicant's redevelopment and other aspects of the applicant's residential development addressed/approved pursuant to the original CDP 09-043. Accordingly, the Appellant failed to raise any issues associated with the subject Landscaping Plan amendment. Therefore, the Commission finds that the Appellant has not raised a substantial issue regarding the amendment's conformance to the Malibu certified Local Coastal Plan.

Notwithstanding the Commission's determination that no substantial issue has been raised, the following discussion addresses the appellant's contentions, which relate to other Malibu actions and elements of the property outside the applicant's CDP amendment approval.

## **2. OTHER CONTENTIONS**

Within the submitted appeal materials, the Appellant included numerous handwritten statements and fragmented concerns associated with perceived violations of the original Malibu CDP 09-



043. Accordingly, while these grievances are not specific to the subject City amendment approval, they are addressed below to clearly demonstrate that the City's enforcement staff is the more appropriate agency for such concerns.

### **Fuel Modification, Trees and Visual Impacts**

The appellant contends that the original CDP for the constructed residence failed to require complete removal of several existing Eucalyptus trees that obstruct the appellant's views to the ocean. Additionally, the appellant implies that four Palm trees along the applicant's property line were planted prior to construction of the house and without the benefit of a permit. These contentions do not pertain to the limited amendment addressing after-the-fact landscaping changes. Accordingly, the appellant's claims do not relate to the underlying action on appeal. However, the visual resources and landscaping components are discussed below to ensure this point is clear.

The Malibu LCP contains visual resource and tree policies designed to protect public views and trees and habitat respectively. Chapter 6 of the City of Malibu's certified LCP specifically incorporates Coastal Act Section 30251, which 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. This policy language is encapsulated in LUP Policy 6.6.

LUP Policy 2.59 requires that all new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety, as required by Policies 4.45 through 4.54.

The Malibu LCP does not require removal of existing trees, except where appropriate as part of required fuel modification. Accordingly, there is no general requirement to remove existing Eucalyptus trees in order to protect views. In this case, pursuant to the applicant's approved fuel modification plan (CDP 09-043), the Fire Department worked with the applicant to identify certain Eucalyptus trees north of the new residence that needed to be removed or thinned.

The City approved a fuel modification plan requiring that 38 trees be removed. The applicant worked with the Fire Department, which determined that 32 trees must be removed (primarily those within fuel modification zone A), including a few Eucalyptus. Accordingly, the Department allowed them to retain and merely thin Eucalyptus and Palm trees in zone B, originally marked for removal. The applicant removed 32 trees and thinned several others. Accordingly, the applicant complied with the fuel modification plan (approved pursuant to CDP 09-043) except as modified by fire department personnel (consistent with the requirements of 09-043).

These issues were not discussed in the landscaping plan amendment and are not related to the components of that plan. The palm trees raised by the appellant were in existence prior to the

applicant's ownership of the property. The existing owner is open to the possibility of removing these trees. However, any future removal of trees, including any legal requirement to do so, should be reviewed with the City's planning and enforcement staff members as the City has jurisdiction over the original permit, as amended.

### **Environmentally Sensitive Habitat Areas**

The appellant contends the applicant should be required to restore an unknown and unidentified type and quantity of environmentally sensitive habitat area (ESHA) on the subject property.

The Malibu certified LCP defines ESHA, pursuant to Policy 3.1, as areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. Environmentally Sensitive Habitat Areas (ESHAs) are shown on the LUP ESHA Map. ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands apply to those areas.

The subject parcel contains a steep ravine along the property line to the west. However, in its original CDP No. 09-043 approval, the City determined that the subject parcel is not located in ESHA, is not located in an ESHA buffer zone, and is not adjacent to any streams as designated in the LCP. The City's Planning Commission Resolution No. 10-21 imposed condition 66, which requires the applicant to remove non-native vegetation in the ravine area on site, and further requires a qualified biologist to be present during vegetation removal to ensure no native species are impacted. The subject non-native vegetation was removed pursuant to the requirements of this condition.

The appellant's concerns associated with the presence or removal of ESHA should have been raised during the permit process for CDP No. 09-043. These concerns do not relate to the subject appeal action.

### **Access Gate**

The appellant claims that the shared access gate, which allows ingress/egress to three parcels including the applicant's, is unpermitted and should be removed. Specifically, the appellant identified a final plan set for the applicant's project that contained a red line depicting removal of the gate from the project. However, the City provided an explanation for this issue in its approval of the amendment. As described in the background section above, the new driveway entry gate located within the easement area (accessed by the subject 27852 PCH parcel as well as 27854 and 27856 PCH properties) was conditioned (Condition 74) to not commence until arrangements had been made with all easement holders to ensure continued ingress and egress. On October 7, 2013, the applicant submitted a copy of recorded agreements between all easement holders regarding maintaining ingress and egress on the easement and gate maintenance. The driveway gate was finished as of mid-2014.

Accordingly, the gate is permitted pursuant to CDP No. 09-043 Condition 74. This issue is not related to the landscape plan amendment.

### **Public Access**

The appellant implies that the applicant is preventing public access to the beach. The subject property does not front the beach. According to highlighter markings and unexplained parcel map copies included within the appellant's materials, the appellant implies that an access easement runs along the western parcel line vertically to the beach. However, the appellant has inadvertently attributed this accessway to the subject parcel, when in fact it is attached to a property located two parcels to the west of the subject property.

### **Water Use**

The appellant implies that the finished residence exceeds allowable water usage. CDP No. 09-043 imposed condition 50, requiring submission by the applicant of a will serve letter from Los Angeles County Waterworks District No. 29 prior to issuance of the building permit. The applicant submitted a January 31, 2011 will serve letter prior to issuance of the building permit.

### **Water Quality**

The appellant implies the finished residence is out of compliance with conditions of 09-043 associated with storm drainage system reconnaissance and a hydrology and hydraulic study as required by condition 43 and 49 to CDP No. 09-043, respectively. These concerns are not related to the landscaping plan amendment.

### **Visual Appearance**

The appellant implies that the exterior lighting, exterior color scheme and fencing are inconsistent with the original CDP No. 09-043. Based on a site visit Commission staff conducted in December 2014, the house and fencing appear to have been constructed consistent with the original 09-043 requirements. This contention is not related to the landscaping plan amendment.

## **F. SUBSTANTIAL ISSUE REVIEW CONCLUSION**

### **Factors Considered in Substantial Issue Analysis**

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal alleges several violations associated with the City's original approval of CDP 09-043, which was a final action in 2010 and is not subject to appeal. The appeal does not raise any issues specific to the City's action approving CDP Amendment 13-006 (which amends CDP 09-043). The term "substantial issue" is not defined in the Coastal Act or its implementing

regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the City's record includes extensive factual evidence and legal support for the City's findings that the CDP amendment is consistent with the policies and provisions of the certified LCP. The appellant and applicant pose conflicting factual accounts associated with prior unpermitted work or unmet conditions associated with the original CDP (09-043). However, the appellant has not provided substantial evidence to demonstrate that the approved CDP amendment will affect off-site properties, that it will adversely impact public coastal views, or that the development does not conform to the standards set forth in the certified LCP. The City's conclusions are grounded in and consistent with the provisions of the certified LCP.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the CDP amendment project consists of after-the-fact changes to the approved landscaping plan. The amendment approves additional plantings and will not adversely affect the intended effect of the original CDP (09-043). As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is a blufftop lot that was previously developed and is adjacent to other existing single-family residential lots. The approved amendment is consistent with the certified LCP. There are no significant coastal resources and no environmentally sensitive habitat area (ESHA) on the site that would be negatively affected by the amended landscaping plan.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the Commission finds that, the City's decision will have no adverse precedential value for future CDP decisions.

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

In conclusion, the Commission finds that none of the factors listed above apply to this amendment.

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

## **APPENDIX A**

### **SUBSTANTIVE FILE DOCUMENTS**

1. Certified City of Malibu Local Coastal Plan;
2. City of Malibu City Council Appeal Agenda Report dated July 23, 2014 (Appeal No. 13-007) and attachments thereto;
3. City of Malibu City Council Resolution No. 14-19;
4. City of Malibu Planning Commission Report dated October 24, 2013 (CDP Amendment 13-006) and attachments thereto;
5. City of Malibu Planning Commission Resolutions 13-100;
6. City of Malibu CDP 09-043 and Planning Commission Resolution 10-21, and attachments thereto.

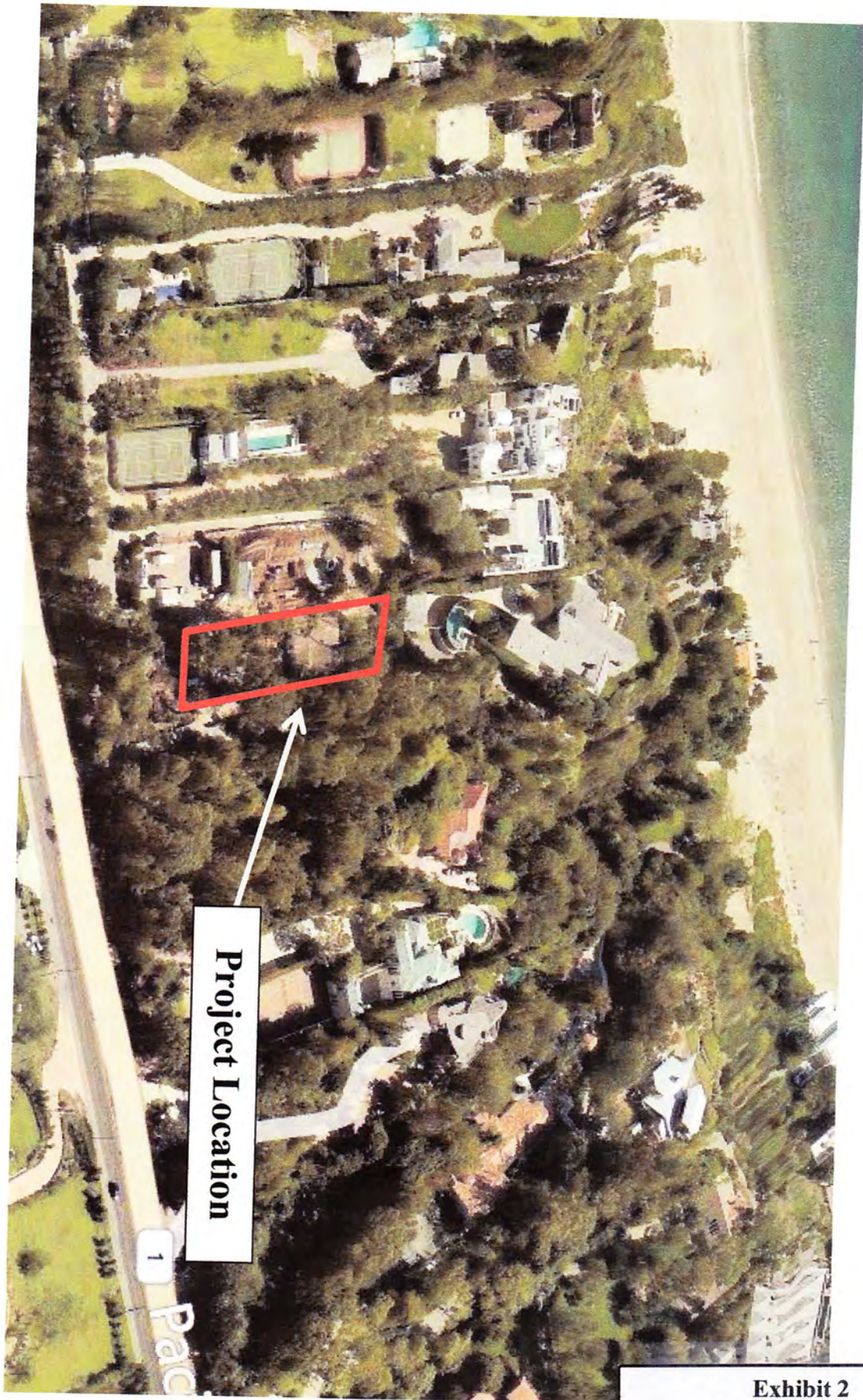




**Project Location**

**Exhibit 1**  
**Vicinity Map**  
**Appeal No. A-4-MAL-14-0046**



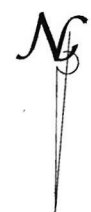


**Exhibit 2**  
**Site Aerial View**  
**Appeal No. A-4-MAL-14-0046**

**Landscaping, Hardscape  
& Fencing Plan**

Date:	10/22/2015
Scale:	1/16" = 1"
Sheet:	L-1

Carsey Cove Property  
27852 Pacific Coast Highway  
Malibu, California 90269



- Invasive plant species, as determined by the City of Maui, are prohibited.
- Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given conservation and its future growth).
- The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
- The front yard hedge along Pacific Coast highway shall be maintained at or below 42 inches in height.
- Hedges and fences constructed within the side yard and/or rear yards setbacks shall be maintained at or below six (6) feet in height.

The property owner(s) agree that all areas shall be planted and maintained as described in the final approved landscape and fuel modification plan.

[illegible]

\_\_\_\_\_  
Signature of project applicant or property owner

\_\_\_\_\_  
Date







## NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

4-MAL-14-0715

Date of Notice: August 12, 2014

AUG 18 2014

**Notice Sent to (US. Certified Priority Mail):**

California Coastal Commission  
South Central Coast District Office  
89 South California Street, Suite 200  
Ventura, CA 93001

**Contact:**

Amanda Lafond  
Assistant Planner  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265  
(310) 456-2489

*AL*

x. 301

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

**Project Information**

**Coastal Development Permit Amendment No. 13-006, Code Violation No. 13-030, Categorical Exemption No. 13-117, and Appeal No. 13-007**— An application for the for after-the-fact changes to the landscaping plan previously approved under Planning Commission Resolution No. 10-21 of Coastal Development Permit No. 09-043

Application Date: June 10, 2013  
Issue Date: November 4, 2013  
Applicant: Marny Randall, 909 Euclid Street, Suite #6, Santa Monica, CA 90403  
Owner: Marcia Carsey  
Location: 27852 Pacific Coast Hwy  
APN: 4460-032-010

**Final Action Information**

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

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: August 11, 2014 City Council agenda report	X	
Adopted Findings and Conditions: City Council Resolution No. 14-19	X	
Site Plans and Elevations	X	

**California Coastal Commission Appeal Information**

This Final Action is:

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

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

Copies of this notice have also been sent via first-class mail to:

- Property Owner/Applicant

Prepared by: Patricia Salazar, Senior Administrative Analyst

**Exhibit 4**  
**Final Local Action Notice**  
**Appeal No. A-4-MAL-14-0046**





# Council Agenda Report

To: Mayor Peak and the Honorable Members of the City Council

Prepared by: Amanda Lafond, Assistant Planner *AL*

Reviewed: Joyce Parker-Bozylinski, AICP, Planning Director *JPB*

Approved by: Jim Thorsen, City Manager *JP*

Date prepared: July 23, 2014 Meeting date: August 11, 2014

Subject: Appeal No. 13-007 - Appeal of Planning Commission Resolution No. 13-100 approving Coastal Development Permit Amendment No. 13-006 to allow for after-the-fact changes to the landscaping plan previously approved under Planning Commission Resolution No. 10-21 of Coastal Development Permit No. 09-043 located at 27852 Pacific Coast Highway (Continued from May 12, 2014)

Appellant:	Michael Hakim
Applicant:	Marny Randall
Property Owner:	Marcy Carsey
Appeal Filing Date:	November 14, 2013
Application Filing Date:	June 10, 2013
Property Address:	27852 Pacific Coast Highway, within the appealable coastal zone
Nearest APN:	4460-032-010
Zoning Designation:	Rural Residential – Two Acres (RR-2)

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**RECOMMENDED ACTION:** Adopt Resolution No. 14-19 (Attachment A) denying Appeal No. 13-007 and approving Coastal Development Permit Amendment (CDPA) No. 13-006 to allow for the after-the-fact changes to the landscaping plan for 27852 Pacific Coast Highway, previously approved under Planning Commission Resolution No. 13-100.

**DISCUSSION:** On May 12, 2014, the appeal was scheduled to be considered by the City Council; however, the Council continued the item to allow the applicant and appellant to discuss a potential agreement. To date, an agreement between the

appellant and applicant has not been reached; therefore, the subject appeal is moving forward as presented to the Council on May 12, 2014.

A full discussion of the appeal can be found in the Agenda Report prepared for the May 12, 2014 City Council Hearing (Attachment B).

**SUMMARY:** Based on staff's analysis and as indicated in the Agenda Report prepared for the May 12, 2014 City Council Hearing (Attachment B), staff has determined that the required findings can be made and that the project complies with the Local Coastal Program (LCP). Further, the Planning Commission's findings of fact are supported by substantial evidence in the record. As such, staff is recommending that the City Council adopt Resolution No. 14-19 denying the appeal and approving Coastal Development Permit Amendment No. 13-006 to allow for new landscaping located at 27852 Pacific Coast Highway.

**ATTACHMENTS:**

- A. City Council Resolution No. 14-19
- B. Agenda Report for the May 12, 2014 City Council Hearing
- C. Correspondence Received from May 12, 2014 to Present

The November 4, 2013 Planning Commission Item 6.A. can be found on file with the City of Malibu Planning Department or on the City's website at <http://www.malibucity.org/AgendaCenter/>.

## RESOLUTION NO. 14-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 13-007 AND APPROVING COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 13-006 FOR AFTER-THE-FACT CHANGES TO THE LANDSCAPING PLAN PREVIOUSLY APPROVED UNDER PLANNING COMMISSION RESOLUTION NO. 10-21 OF COASTAL DEVELOPMENT PERMIT NO. 09-043 LOCATED AT 27852 PACIFIC COAST (CARSEY)

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

### Section 1.      Recitals.

A. On April 6, 2010, the Planning Commission held a duly noticed public hearing, reviewed and considered the staff report, public testimony and all evidence in the record adopted Planning Commission Resolution No. 10-21, an application for Coastal Development Permit (CDP) No. 09-043 for a new single-family residence and associated requests submitted by the applicant, Marny Randall, on behalf of property owner, Marcia Carsey.

B. On September 18, 2012, staff conducted a primary view determination at 27932 W. Winding Way, overlooking the project site at 27852 Pacific Coast Highway.

C. November 21, 2012, the property owner, submitted Over-the-Counter No. 12-187 for a new driveway gate which was approved by staff. The gate is located entirely on the subject property and was not located in the common access easement.

D. On December 12, 2012, Michael Hakim, filed a code enforcement complaint citing concerns regarding excess glare from roofing materials and additional trees planted.

E. On April 11, 2013, staff conducted a primary view determination at 27901 Pacific Coast Highway, overlooking the project site at 27852 Pacific Coast Highway.

F. On April 16, 2013, the City Biologist conducted a site visit to document existing planting conditions.

G. On June 10, 2013, the applicant submitted Coastal Development Permit Amendment (CDPA) No. 13-006 to include after-the-fact landscaping planted on the project site during construction.

H. August 30, 2013, a Courtesy Notice was mailed to all property owners and occupants within a 500-foot radius of the subject property.

I. On October 17, 2013, staff conducted a site visit to document existing site conditions, including the after-the-fact landscaping.

J. On October 21, 2013, a Notice of Coastal Development Permit Amendment

Application was posted on the project site.

K. On October 22, 2013, the application was deemed complete for processing.

L. On October 24, 2013, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

M. On November 4, 2013, the Planning Commission held a duly noticed public hearing on the CDPA, reviewed and considered the staff report, public testimony and all evidence in the record and adopted Planning Commission Resolution No. 13-100, an application for CDPA No. 13-006 for a revision to the landscaping plan, including after-the-fact trees, submitted by the applicant, Marny Randall, on behalf of property owner, Marcia Carsey.

N. On November 13, 2013, the property owner submitted Over-the-Counter No. 13-228 for a new fence which was approved by staff. The fence is located along the front of the property, adjacent to the Planning Commission approved gate, located on the common easement.

O. On November 14, 2013, the appellant, Michael Hakim, filed an appeal of Planning Commission Resolution No. 13-100, approving CDPA 13-006.

P. On February 27, 2014, the applicant submitted a letter in response to the appeal filed by Michael Hakim.

Q. On May 1, 2014, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

R. On May 12, 2014, the City Council continued the item to the August 11, 2014 Regular City Council meeting.

S. On August 11, 2014, City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, public testimony and all evidence in the record.

Section 2. Findings of Fact in Support of approving Coastal Development Permit Amendment No. 13-006 (on Appeal).

In the corresponding Council agenda report, Planning Department staff responded to each of appellant's contentions.

Section 3. Findings for Denial of Appeal.

Based on evidence in the record and in the Council agenda report for the subject project presented at

the May 12, 2014 City Council meeting, the City Council hereby makes the following findings of fact denying Appeal No. 13-007 and finds that substantial evidence in the record supports the required findings for approval of the proposed project, as conditioned by the conditions of approval included in Planning Commission Resolution No. 13-100. In addition, the analysis, findings of fact, and conclusions set forth by staff in the agenda report are incorporated herein.

A. The project that is the subject of the appeal is the revised landscaping plan. Specific findings or conditions are not mentioned. Staff believes the required findings can be made and that the project complies with the Local Coastal Program (LCP). Further, the City Council's findings of fact are supported by substantial evidence in the record. The proposed amendment will not lessen or negate any of the findings or specific permit conditions contained in the previously adopted Planning Commission Resolution No. 10-21, which would remain in effect.

#### Section 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposal as described above. The City Council finds that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and are therefore, is exempt from the provisions of CEQA. Accordingly, a Categorical Exemption will be prepared and issued pursuant to CEQA Guidelines Section 15304 – Minor Alterations in Land. The City Council has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

#### Section 5. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the City of Malibu LCP Local Implementation Plan (LIP), the City Council adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDPA No. 13-006, an application to include after-the-fact changes to the landscaping plan previously approved under CDP No. 09-043. With the exception of the proposed landscaping, the proposed project does not include any physical changes to the project site. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are enumerated in Planning Commission Resolution No. 13-100 and are incorporated herein.

#### Section 6. City Council Action.

Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with Appeal No. 13-007, the City Council hereby approves Coastal Development Permit Amendment No. 13-006 for the after-the-fact changes to the landscaping plan previously approved under Planning Commission Resolution No. 10-21 of Coastal Development Permit No. 09-043 located at 27852 Pacific Coast Highway, subject to the following conditions.



Section 7. Conditions of Approval.

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs arising from the City's actions in connection with this resolution, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this resolution. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this resolution.
2. The approved amendment includes changes to the landscaping plan as approved by the City Biologist on October 22, 2013 on file with the Planning Department. New landscaping includes:

Table 1: Proposed Landscaping		
Species	Maximum Height*	Conditions of Approval
Strawberry trees	~ 35 feet	Not to exceed roof height
Chilean myrtle trees	~ 16 feet	
Citrus trees	~ 20 feet	
Fern Pine	~ 60 feet	Not to exceed six feet (hedge)
Privet	~ 18 feet	Not to exceed six feet (hedge)
Strawberry shrubs	~ 30 feet	Not to exceed roof height
Japanese pittosporum	~ 12 feet	
Heavenly bamboo	~ 6 feet	
Dwarf mat rush	~ 4 feet	
Lawn	Low lying	
Vegetable garden	Low lying	
Native bentgrass	~ 4 inches	
Sand cordgrass	~ 6 feet	
California lilac	~ 4 feet	
Star jasmine	~ 2.5 feet	

\* Maximum height under ideal conditions.

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



4. Subsequent submittals for this project shall be in substantial compliance with the revised landscaping plan approved by the City Biologist on October 22, 2013, on file with the Planning Department.
5. The project shall comply with all conditions of approval stipulated in the Department Review Sheets on file with the City. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
6. Pursuant to LIP Section 13.20, development pursuant to an approved CDPA shall not commence until the CDPA is effective. The CDPA is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the CDPA approved by the City is void.
7. Extension to the permit, as amended, may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the two-year period and shall set forth the reasons for the request. This permit amendment does not modify the expiration date of CDP No. 09-043 as specified in Planning Commission Resolution No. 10-21.
8. This resolution (including signed and notarized Acceptance of Conditions Affidavit and Department Review Sheets) shall be copied in its entirety and placed directly onto a separate plan sheets behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
9. The applicant shall submit three (3) complete sets of plans, including documents referenced in Condition No. 8, to the Planning Department for consistency review and approval prior to the issuance of any building or development permit.
10. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code (M.M.C.) and the LCP. An application with all required materials and fees may be required.
12. This CDPA shall run with the land and bind all future owners of the property.

13. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
14. Vegetation shall be situated on the property so as not to obstruct the primary view from private property at any given time (given consideration of its future growth).
15. No work shall occur within the protected zone of native trees occurring on the site. The City Biologist shall inspect the condition of all native trees occurring on the site at the time of final inspection for Certificate of Occupancy. Should the City Biologist determine at that time that any of the native trees have been significant impacted, implementation of appropriate mitigation as outlined in LIP Chapter 5 shall be required.
16. Invasive plant species, as determined by the City of Malibu, are prohibited.
17. Building material treated with toxic compounds such as copper arsenate shall be prohibited.
18. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within side and rear yards shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.
19. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. Up-lighting of landscaping is prohibited.
20. The landscape plan has been conditioned to protect natural resources in accordance with the LCP. All areas shall be planted and maintained as described in the final approved landscape plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project.
21. The proposed landscaping shall be consistent with the approved landscaping plan and shall not to exceed the roof height of the approved single-family residence (26.5 feet); however, all landscaping must also comply with Condition No. 14 and cannot block an adjacent neighbor's primary view. The more restrictive condition shall apply.
22. All other conditions of Planning Commission Resolution No. 10-21 are incorporated herein by reference. No other changes to the conditions contained in Planning Commission Resolution No. 10-21 are made and all other findings, terms and / or conditions contained in Planning Commission Resolution No. 10-21 shall remain in full force and effect.

Section 8. Certification.

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 11<sup>th</sup> day of August 2014.

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SKYLAR PEAK, Mayor

ATTEST:

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LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

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CHRISTI HOGIN, City Attorney

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

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

**CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 13-100**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 13-006, TO INCLUDE AFTER-THE-FACT CHANGES TO THE LANDSCAPING PLAN PREVIOUSLY APPROVED UNDER COASTAL DEVELOPMENT PERMIT NO. 09-043 IN THE RURAL RESIDENTIAL-TWO ACRES ZONING DISTRICT AT 27852 PACIFIC COAST HIGHWAY (CARSEY)**

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

Section I. Recitals.

A. On April 6, 2010, the Planning Commission adopted Planning Commission Resolution No. 12-56, an application for Coastal Development Permit (CDP) No. 09-043 and associated requests submitted by the applicant, Marny Randall, on behalf of property owner, Marcia Carsey.

B. On September 18, 2012, Planning Department staff conducted a primary view determination 27932 W. Winding Way, overlooking the project site at 27852 PCH.

C. On April 11, 2013, Planning Department staff conducted a primary view determination at 27901 Pacific Coast Highway, overlooking the project site at 27852 PCH.

D. On April 16, 2013, the City Biologist conducted a site visit to document existing planting conditions.

E. On June 10, 2013, the applicant submitted Coastal Development Permit Amendment (CDPA) No. 13-006 to include after-the-fact landscaping on the project site.

F. On October 17, 2013, Planning Department staff conducted a site visit to document existing site conditions.

G. On October 21, 2013, a Notice of Application was posted on the project site.

H. On October 22, 2013, the application was deemed complete for processing.

A. On October 24, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

## Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal as described above. The Planning Commission finds that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and are therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Section 15304 - Minor Alterations in Land. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

## Section 3. Findings for Coastal Development Permit Amendment

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the City of Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDPA No. 13-006, an application to include after-the-fact changes to the landscaping plan previously approved under CDP No. 09-043. With the exception of the proposed landscaping, the proposed project does not include any physical changes to the project site. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

### **A. General Coastal Development Permit (LIP Chapter 13)**

The proposed CDP amendment will not lessen or negate any of the findings or specific permit conditions contained in the previously adopted Planning Commission Resolution No. 12-56; which would remain in effect. All other findings, terms and / or conditions of Planning Commission Resolution No. 08-10 shall remain in full force and effect.

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

The proposed amendment has been reviewed for conformance with the LCP by the Planning Department, as well as the City Biologist. The neighbors at 27932 Winding Way and 27901 PCH requested primary view determinations and have expressed to staff their concerns regarding existing and future landscaping on the subject property. The applicant has prepared an exhibit showing that the proposed landscaping with the potential to be the tallest (Strawberry trees) would not be visible from the two concerned neighbors' main viewing area due to existing landscaping. The applicant is in agreement with a condition of approval requiring that the proposed landscaping be limited to the roof height (26.5 feet). In addition, the City Biologist has placed a condition of approval prohibiting any of the landscaping (previously approved and proposed) to obstruct a neighbor's primary view. Both conditions of approval have been included in this resolution; the more restrictive condition will apply. The proposed amendment, as conditioned, conforms to the certified City of Malibu LCP in that it meets all the required non-beachfront residential development standards.

Planning Commission Resolution No. 13-100

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

The project site is the most landward parcel of three parcels located on the seaward side of PCH, therefore, does not offer potential for lateral access or vertical access. The location of the proposed project and related construction activities is not anticipated to interfere with the public's right to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).

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

The Planning Commission found in Resolution No. 10-21 that the proposed demolition of an existing single-family residence, construction of a new single-family residence and associated development as proposed under CDP No. 09-043 would not involve significant adverse effects on the environment, within the meaning of CEQA, and no further feasible alternatives were found that would further reduce any impacts on the environment. Revising the scope of work to include additional landscaping will not alter this finding because conditions of approval have been included to restrict landscaping to roof height (26.5 feet) and to prohibit landscaping to obstruct an adjacent neighbors' primary view; the more restriction condition shall apply. No other physical changes are proposed to the approved coastal development permit. The project, as amended, is the least environmentally damaging alternative.

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

Per the LCP Environmentally Sensitive Habitat Area (ESHA) Map, the property is not designated as an ESHA; an ESHA buffer zone or adjacent to any streams as designated by the LCP; however, an existing ravine is located on the project site. The previously approved project was submitted with a Biological Inventory that indicated removal of non-native vegetation from the ravine. The City Biologist has placed a condition of approval on the project stating that if non-native landscaping is removed within the ravine, a qualified Biologist shall be present to ensure that impacts to native species are avoided. The City Biologist has reviewed the project and determined that review by the Environmental Review Board is not applicable to this project.

#### Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit Amendment No. 13-006, subject to the following conditions.



Section 5. Conditions of Approval.

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs arising from the City's actions in connection with this resolution, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this resolution. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this resolution.
2. The approved amendment includes changes to the landscaping plan as approved by the City Biologist on October 22, 2013 in the Planning Department. New landscaping includes:
  - Strawberry trees – shall not exceed roof height
  - Chilean myrtle trees
  - Citrus trees
  - Fern Pine – shall not exceed six feet (hedge)
  - Privet – shall not exceed six feet (hedge)
  - Strawberry shrubs – shall not exceed roof height
  - Japanese pittosporum
  - Heavenly bamboo
  - Dwarf mat rush
  - Lawn
  - Vegetable garden
  - Native bentgrass
  - Sand cordgrass
  - California lilac
  - Star jasmine
3. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until all permittees or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 working days of this decision.
4. Subsequent submittals for this project shall be in substantial compliance with the revised landscaping plan approved by the City Biologist on October 22, 2013, on file in the Planning Department.
5. The project shall comply with all conditions of approval stipulated in the referral sheets on file with the City. In the event the project plans conflict with any condition of approval, the condition shall take precedence.


6. Pursuant to LIP Section 13.20, development pursuant to an approved CDPA shall not commence until the CDPA is effective. The CDPA is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the CDPA approved by the City is void.
7. CDPA No. 09-043 shall be null and void if the project has not commenced within two (2) years after issuance of the permit or November 4, 2015. Extension to the permit, as amended, may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the two-year period and shall set forth the reasons for the request.
8. This resolution (including signed and notarized Acceptance of Conditions Affidavit and Department Review Sheets) shall be copied in its entirety and placed directly onto a separate plan sheets behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
9. The applicant shall submit three (3) complete sets of plans, which include the pages described in Condition No. 5, to the Planning Department for consistency review and approval prior to the issuance of any building or development permit.
10. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the LCP. An application with all required materials and fees may be required.
12. This CDP amendment shall run with the land and bind all future owners of the property.
13. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
14. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
15. No work shall occur within the protected zone of native trees occurring on the site. The City Biologist shall inspect the condition of all native trees occurring on the site at the time of final inspection for Certificate of Occupancy. Should the City Biologist determine at that time that any of the native trees have been significant impacted, implementation of appropriate mitigation as outlined in LIP Chapter 5 shall be required.
16. Invasive plant species, as determined by the City of Malibu, are prohibited.

17. Building material treated with toxic compounds such as copper arsenate shall be prohibited.
18. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within side and rear yards shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.
19. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. Up-lighting of landscaping is prohibited.
20. The landscape plan has been conditioned to protect natural resources in accordance with the Local Coastal Program. All areas shall be planted and maintained as described in the final approved landscape plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project.
21. The proposed landscaping shall not to exceed the roof height of the approved single-family residence (26.5 feet); however, all landscaping must also comply with Condition No. 14 and cannot block an adjacent neighbor's primary view. The more restrictive condition shall apply.
22. The applicant / property owner shall remove three Coastal redwood trees located south of the previously approved single-family residence prior to final inspection by the City Biologist and final sign-off by the Planning Department.
23. All other conditions of Planning Commission Resolution No. 10-21 are incorporated herein by reference.

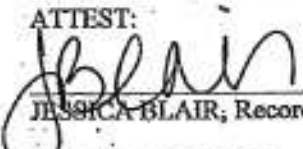
Section 7. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 4<sup>th</sup> day of November 2013.

  
JEFFREY D. JENNINGS, Planning Commission Chair

ATTEST:

  
JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed

with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms and fee schedule may be found online at [www.malibucity.org](http://www.malibucity.org), in person at City Hall, or by calling (310) 456-2489, extension 245.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 13-100 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 4th day of November 2013, by the following vote:

AYES: COMMISSIONERS: BROTMAN, MAZZA, STACK, PIERSON, AND JENNINGS  
NOES:  
ABSTAIN:  
ABSENT:

  
\_\_\_\_\_  
JESSICA BLAIR, Recording Secretary

**CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 10-21**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 09-043, SITE PLAN REVIEW NOS. 09-049 AND 10-004 AND DEMOLITION PERMIT NO. 09-015 FOR THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND DETACHED GARAGE, CONSTRUCTION OF A NEW 2,472 SQUARE FOOT, 26.5 FOOT TALL, ONE-STORY, SINGLE-FAMILY RESIDENCE WITH A 545 SQUARE FOOT ATTACHED GARAGE AND A 590 SQUARE FOOT ART STUDIO LOCATED ABOVE THE GARAGE, A NEW ENTRY GATE, RETAINING WALLS, CHANGE IN HARDSCAPE, LANDSCAPING, WATER FEATURES, AND NEW ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, LOCATED AT 27852 PACIFIC COAST HIGHWAY (CARSEY)**

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

Section 1. Recitals.

- A. On June 25, 2009, Coastal Development Permit (CDP) No. 09-043, including a variance request to place the proposed residence in the required side yard setback, was submitted to the City for review. The application was routed to appropriate City agencies for Local Coastal Program (LCP) conformance review.
- B. On July 16, 2009, a Courtesy Notice was mailed to all property owners and occupants within a 500 foot radius of the subject property.
- C. On November 9, 2009, a Notice of Coastal Development Permit Application was posted at the site.
- D. On December 3, 2009, the subject property was visited for the purpose of inspecting existing site conditions.
- E. On January 21, 2010, revised plans were submitted which reflected the current project location, eliminating the need for a variance. The project was re-routed to appropriate City agencies for review.
- F. On February 12, 2010, the subject property was visited for the purpose of photographing story poles and evaluating potential scenic and visual impacts.
- G. On March 4, 2010, the subject application was deemed complete.
- H. On March 25, 2010, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.



- I. On April 6, 2010, the Planning Commission held a duly noticed public hearing on the subject applications, reviewed and considered the staff report, reviewed and considered written reports, public testimony and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal as described above. The Planning Commission has also found that the proposed project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment, and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Sections 15301(l)(1) – Existing Facilities and 15303(a) – New Construction or Conversion of Small Structures. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B and 13.9 of the LCP Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 09-043, Site Plan Review (SPR) Nos. 09-049 and 10-005 and DP (Demolition Permit) No. 09-015 to allow for the demolition of an existing single-family residence and detached garage, construction of a new 2,472 square foot, 26.5 foot tall, single-story, single-family residence with a 545 square foot attached garage and a 590 square foot art studio located above the garage, a new entry gate, new site walls, change in hardscape, landscaping, and a new onsite wastewater treatment system, located at 27852 Pacific Coast Highway.

The proposed project has been reviewed by the City Geologist, City Environmental Health Administrator, City Biologist, and City Public Works Department, as well as the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP's zoning, grading, water quality, and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

**A. General Coastal Development Permit (LIP Chapter 13)**

As discussed, the proposed project, as conditioned, conforms to the LCP in that it meets the required beachfront residential development standards.

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

The proposed project has been reviewed for conformance with the LCP by the Planning Division, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The proposed project, as conditioned, conforms to the LCP in that it meets all residential development standards.



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

The project site is the most landward parcel of three parcels located on the seaward side of PCH, therefore, does not offer potential for lateral access or vertical access. The location of the proposed project and related construction activities is not anticipated to interfere with the public's right to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).

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

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project allows for demolition of an existing single-family residence and detached garage and construction of a new single-family residence, attached garage, art studio and other associated development, all of which are permitted uses within the rural residential zoning classification of the subject property. The project will not result in potentially significant impacts on the physical environment.

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

1. No Project – The no project alternative would avoid any change to the project site, and hence, any change to visual resources. The project site is zoned RR-2 which allows for single-family residential development. The no project alternative would not accomplish any of the project objectives; and therefore, is not viable. Furthermore, the existing single-family residence would maintain its non-conforming side yard setback and the existing OWTS would continue servicing the parcel without providing secondary and tertiary treatment.
2. Remodel of Existing Structures – Existing onsite development could be remodeled, however, it would allow the existing residence to maintain its non-conforming side yard setback. Additionally, the subject property was developed in 1949 and the structural integrity of the existing structures would need to be evaluated. A remodel and addition does not accomplish the goals of the project objective. It is not anticipated that a remodel and addition would offer any environmental advantages over the proposed project as the proposed project will not result in significant impacts on the environment.
3. Proposed Project – The project consists of the demolition of an existing single-family residence and detached garage and construction of a new single-family residence and associated development, which are all permitted uses within the RR zoning classification of the subject property. The proposed project conforms to all non-beachfront development criteria with the inclusions of the SPRs. The project includes a new AOWTS to replace the conventional OWTS, which will provide secondary and tertiary treatment. A new drainage system is also proposed, which serves to improve water quality.

The selected location has been reviewed and conditionally approved by the City Environmental Health Administrator, City Biologist, City Geologist, City Public Works Department and LACFD,

and meets the City's residential development policies. Therefore, the project, as proposed, is the least damaging alternative.

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

The subject parcel is not located in ESHA, an ESHA buffer zone or adjacent to any streams as designated in the LCP and does not require review by the ERB.

**B. Site Plan Review for Construction in Excess of 18 Feet in Height (LIP Section 13.27.5)**

A site plan review is proposed to allow the construction of a new single-family residence over 18 feet in height, up to a maximum height of 28 feet for a pitched roof (26.5 feet proposed pitched, 24 feet proposed flat). LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review. Two additional findings are required pursuant to M.M.C. Section 17.62.050. Based on the evidence contained within the record, the required findings for SPR No. 09-049 are made as follows.

*Finding B1. The project is consistent with policies and provisions of the Malibu LCP.*

The project has been reviewed for all relevant policies and provisions of the LCP by the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, and LACFD. Based on site visits, inspections and review of the visual analysis, it has been determined that the project is consistent with all LCP policies and provisions.

*Finding B2. The project does not adversely affect neighborhood character.*

Story poles were placed on the subject property to demonstrate the project's potential for aesthetic changes to the site relative to neighboring properties. On February 12, 2010, a site visit was conducted to inspect the story poles. Based on the site visit and aerial photographs, the proposed project's mass, bulk and height is similar to neighboring development. The project does not adversely affect neighborhood character.

*Finding B3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.*

The project site is fleetingly visible from PCH, a designated scenic road; however, the project is not anticipated to have any significant adverse impact on public views from PCH because the ocean is not visible from this portion of PCH due to elevation, distance, existing development and landscaping.

On February 12, 2010, a site visit was conducted to document the story poles with photographs. These photos are in the project file. Based on site visits, inspections and review of the visual analysis, it has been determined that the subject site provides the maximum feasible protection to significant public views from PCH and has no significant adverse visual impact.

*Finding B4. The proposed project complies with all applicable requirements of state and local law.*

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

*Finding B5. The project is consistent with the City's general plan and local coastal program.*

Parcels in the immediate vicinity are zoned for residential use. The project is consistent with the rural residential designation for the site as noted in the General Plan and LCP.

*Finding B6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).*

The maximum height of the proposed project is 26.5 feet with the inclusion of a site plan review. A courtesy notice was mailed to properties within a 500 foot radius and no comments regarding view obstruction caused by the proposed structure were received. One neighbor across the street has expressed concerns regarding view obstruction caused by existing mature landscaping; but his concerns did not pertain to the proposed structure's size, height, or bulk.

Based on evaluation and site inspections, it was determined that the proposed project will not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

#### **C. Site Plan Review for Construction on Slopes (LIP Section 13.27.5)**

The LCP requires that the City make four findings in the consideration and approval of a SPR for construction on slopes greater than 3 to 1 but less than 2½ to 1. The project includes a new fire department turnaround. In order to stabilize and create the fire department turnaround and a five foot wide emergency personnel circulation path as required by LACFD, an 18 inch tall, 188 linear foot long wall is required along the driveway. This wall is the only portion of the project that is located on slopes steeper than 3 to 1. Based on the evidence contained within the record, the required findings for SPR No. 10-004 are made as follows.

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

As discussed previously in Finding B1, the project is consistent with policies and provisions of the Malibu LCP.

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

The subject property is constrained by the existing asphalt driveway that bisects the property

approximately in half. The majority of the project utilizes an existing flat pad on which the existing single-family residence is located. However, in order to stabilize and create the fire department turnaround and a five foot wide emergency personnel circulation path as required by LACFD, an 18 inch tall, 188 linear foot long wall is required. This wall is the only structure proposed that is located on slopes steeper than 3 to 1. As discussed previously in Finding B2, the project size, mass, and bulk does not adversely affect neighborhood character.

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

As discussed in Finding B3, the project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

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

As discussed in Finding B4, the proposed project complies with all applicable requirements of state and local law.

#### **D. Environmentally Sensitive Habitat Area (LIP Chapter 4)**

The subject parcel is not located in ESHA or ESHA buffer as depicted on the LCP ESHA Overlay Map. However, a ravine is located near the western border of the subject property. According to a Biological Inventory Report prepared by Rincon Associates retained by the applicant, the ravine does not meet the definition of ESHA as defined in LIP Section 2.1. The City Biologist has reviewed and approved the project with conditions. Accordingly, the supplemental ESHA findings are not applicable.

#### **E. Native Tree Protection (LIP Chapter 5)**

Rincon Associates prepared a Tree Inventory dated November 4, 2008, and concluded that there are three trees onsite that fit the definition of a native tree as defined in LIP Chapter 5. The report recommends several measures to avoid potential impacts to the native trees. The report further concludes that "it is expected that only the oak tree located adjacent to the driveway will experience encroachment. However, this tree experiences encroachment on a daily basis as a result of regular residential traffic. It is likely that encroachment due to construction activities will be minimal." The City Biologist has reviewed the subject application and has conditionally approved the project.

The following measures will be included as conditions of approval in Planning Commission Resolution No. 10-21:

- All development shall be sited to reduce encroachment into the "protected zone" of each protected tree;
- Drainage shall be directed away from the root zone of the native trees;
- Protective fencing shall be installed at the immediate western edge of the driveway along the length of the property prior to initiation of construction activities. Fencing shall be maintained throughout the duration of all construction. If the protective fencing is breached, all construction activities shall cease until the fencing has been repaired;



- No persons shall enter the "protected zone" of each protected tree. No construction, grading, staging, or materials storage shall be allowed within the protected zone of the tree;
- Any approved development that encroaches into the protected zone of a native tree shall be constructed by hand-held tools only; and
- A qualified biologist shall monitor the site a minimum on once per week for the duration of construction activities to ensure that native trees are being protected.

No native trees are proposed to be removed as part of the project scope of work; therefore, the findings in LIP Chapter 5 are not applicable.

#### **F. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road or public viewing area. The subject property is fleetingly visible from a designated scenic highway (PCH) and as a result, LIP Chapter 6 applies and the five findings set forth in LIP Section 6.4 are made as follows.

*Finding F1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.*

Mature landscaping and an existing block wall are located along the front property line; therefore, the proposed development is only fleetingly visible from PCH through the landscaping and unfenced entryway. Although the proposed development is visible, it will have no significant adverse scenic or visual impacts from PCH because the ocean is not visible from this portion of PCH due to elevation, distance, existing development and landscaping; therefore, no significant adverse scenic or visual impacts are anticipated to occur.

*Finding F2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.*

As discussed in F1, the project will not result in significant adverse scenic or visual impacts and will be compatible with the character of the surrounding neighborhood.

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

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

*Finding F4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.*

As discussed in Finding F1, the proposed project will result in less than significant impacts on scenic and visual resources.

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

The proposed project will be located in the approximate general location as existing development. As discussed in Finding F1, the proposed project will result in less than significant impacts on scenic and visual resources.

**G. Transfer of Development Credits (LIP Chapter 7)**

Pursuant to LIP Section 7.2 the regulations requiring a transfer of development credit apply to any action to authorize a CDP for a land division or multi-family development. This CDP does not involve a land division or construction of multi-family development. Therefore, LIP Chapter 7 does not apply.

**H. Hazards (LIP Chapter 9)**

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

The applicant submitted a Geologic and Soils Engineering report prepared by GeoConcepts, Inc. dated April 8, 2009 and two addendum reports dated August 21, 2009 and September 24, 2009. These reports are on file at City Hall and have been reviewed by the City Geologist. In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues.

In summary, the proposed development is suitable for the intended use provided that the certified engineering geologist and / or geotechnical engineer's recommendations and governing agency's building codes are followed. The City Geologist has conditionally approved the project. Nonetheless, the findings provided by LIP Section 9.3 are made as follows.

*Finding H1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.*

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

1. The project site is not located within an earthquake fault zone;
2. The project site is not located within the landslide zone;
3. The project site is not located within the liquefaction zone;
4. Due to the topography of the sea floor and the location of the Channel island, the project site has a minimal risk of being impacted by tsunamis;



5. The project site is not located in a Federal Emergency Management Agency (FEMA) identified flood hazard area; and
6. The project site is located within an extreme fire hazard area; and

The City Geologist, City Public Works Department and LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

#### Fire Hazard

The entire city limits of Malibu are located within the fire hazard zone. The City is served by the LACFD, as well as the California Department of Forestry, if needed. In the event of major fires, the County has mutual aid agreements with cities and counties throughout the state so that additional personnel and firefighting equipment can augment the LACFD. As such, the proposed project as conditioned will not be subject to nor increase the instability of the site or structural integrity involving wild fire hazards.

Nonetheless, conditions of approval have been included in Planning Commission Resolution No. 10-10 which require that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from development on a beach and wildfire exists as an inherent risk to life and property.

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

*Finding H2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.*

As discussed previously in Finding H1, the proposed project, as designed, conditioned, and approved by City departments and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity.

*Finding H3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

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

*Finding H4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.*

As discussed previously in Finding A1, the proposed project, as conditioned and approved by City departments and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity.

*Finding H5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.*

As discussed previously in Finding H1, the proposed project, as conditioned and approved by City departments and the LACFD, will not have any significant adverse impacts on site stability or structural integrity. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the LCP.

**I. Shoreline and Bluff Development (LIP Chapter 10)**

The subject property is not located along the shoreline as defined by the LCP. Therefore, in accordance with LIP Section 10.2, the findings in LIP Chapter 10 are not applicable to the project.

**J. Public Access (LIP Chapter 12)**

LIP Chapter 12 requires public access for lateral, bluff-top, and vertical access near the ocean, as well as trail access, and recreational access when applicable. The project is not located along the shoreline; therefore, no vertical, lateral, bluff-top, is required. The Trails Master Plan maps adopted by the City Council and the LCP Park Lands Map indicate that trails do not exist on or in the vicinity of the property. Because the property does not offer opportunities for public access to the ocean, trails, or recreational areas, the findings for public access are not applicable.

**K. Land Division (LIP Chapter 15)**

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

**L. Onsite Wastewater Treatment System (LIP Chapter 18)**

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design and performance requirements. The project includes an AOWTS to replace an existing OWTS, which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. The subject system will meet all applicable requirements and operating permits will be required. The new system will utilize a 1,500 gallon, two-chambered tank with ultra-violet disinfection. The new system will provide existing onsite development with secondary and tertiary treatment.

An operation and maintenance contract and recorded covenant covering such must be in compliance with City of Malibu Environmental Health requirements. Conditions of approval have been included

in Planning Commission Resolution No. 10-21 which require continued operation, maintenance and monitoring of onsite facilities.

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

M.M.C. Section 17.70.060 requires that a demolition permit be issued for projects that result in the demolition of any building or structure. The project proposes the demolition of an existing single-family residence and detached garage. The findings for DP No. 09-015 are made as follows.

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

Conditions of approval included in Planning Commission Resolution No. 10-21 will ensure that the project will not create significant adverse environmental impacts.

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

This CDP application is being processed concurrently with DP No. 09-015. Therefore, approval of the DP is subject to the approval of CDP No. 09-043.

**Section 4. Planning Commission Action.**

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 09-043, Site Plan Review Nos. 09-049 and 10-004 and Demolition Permit No. 09-015, subject to the following conditions.

**Section 5. Conditions of Approval.**

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the project described herein. The scope of work approved includes:
  - Demolition of a
    - a. 2,256 square foot single-family residence; and
    - b. 528 square foot detached garage.
  - Construction of a
    - c. 2,472 square foot single-family residence; (2,444 square foot first floor, 28 square foot landing on upper floor leading to roof deck)

- d. 545 square foot attached garage;
- e. 590 square foot art studio located above the garage;
- f. 636 square foot covered areas exceeding six feet ;
- g. Various hardscape; including a new driveway, garden walls, and an entry gate;
- h. Water features;
- i. Landscaping;
- j. Drainage improvements; and
- k. Alternative onsite wastewater treatment system.

Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Division, dated, **January 21, 2010**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

3. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 days of this decision and prior to issuance of any development permits.
4. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permits.
5. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
6. The coastal development permit shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
7. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
8. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Water District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
9. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.



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

#### **Cultural Resources**

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

#### **Building Plan Check**

##### ***Demolition/Solid Waste***

13. Prior to demolition activities, the applicant shall receive Planning Division approval for compliance with conditions of approval.
14. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
15. Prior to the issuance of a building/demolition permit, a Waste Reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion goal.
16. Upon plan check approval of demolition plans, the applicant shall secure a demolition permit from the City. The applicant shall comply with all conditions related to demolition imposed by the Deputy Building Official.
17. No demolition permit shall be issued until building permits are approved for issuance. Demolition of the existing structure and initiation of reconstruction must take place within a six month period. Dust control measures must be in place if construction does not commence within 30 days.

18. The project developer shall utilize licensed subcontractors and ensure that all asbestos-containing materials and lead-based paints encountered during demolition activities are removed, transported, and disposed of in full compliance with all applicable federal, state and local regulations.
19. Any building or demolition permits issued for work commenced or completed without the benefit of required permits are subject to appropriate "Investigation Fees" as required in the Building Code.
20. Upon completion of demolition activities, the applicant shall request a final inspection by the Building Division.

#### ***Geology***

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

#### ***Onsite Wastewater Treatment System***

23. Prior to the issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of LIP Section 18.9 related to continued operation, maintenance and monitoring of onsite facilities.
24. Prior to final Environmental Health approval, a final alternative onsite wastewater treatment system (AOWTS) plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
25. A final design and system specifications shall be submitted as to all components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of the proposed AOWTS. For all AOWTS, final design drawings and calculations must be signed by a California registered civil engineer, a registered environmental health specialist or a professional geologist who is responsible for the design. The final AOWTS design drawings shall be submitted to the City Environmental Health Administrator with the designer's wet signature, professional registration number and stamp



(if applicable).

26. The final design report shall contain the following information (in addition to the items listed above).
- Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;
  - Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;
  - Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak OWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics; and
  - All final design drawings shall be submitted with the wet signature and typed name of the OWTS designer. If the scale of the plan is such that more space is needed to clearly show construction details, larger sheets may also be provided (up to a maximum size of 18 inch by 22 inch, for review by Environmental Health). Note: For AOWTS final designs, full-size plans are required for review by Building Safety and/or Planning.
  - H2O Traffic Rated Slab: Submit plans and structural calculations for review and approval by the Building and Safety Division prior to Environmental Health final approval.
27. Any proposed reduction in setbacks from the OWTS to buildings or structures (i.e. setbacks less than those shown in MPC Table K-1) must be supported by a letter from a Structural Engineer and a letter from a Soils Engineer (i.e. a Geotechnical Engineer or Civil Engineer practicing in the area of soils engineering). Both engineers must certify unequivocally that the proposed reduction in setbacks from the treatment tank and effluent disposal area will not adversely affect the structural integrity of the OWTS, and will not adversely affect the structural integrity of the buildings or structures for which the MPC Table K-1 setback is

reduced. Construction drawings submitted for plan check must show OWTS components in relation to those structures from which the setback is reduced.

28. The following note shall be added to the plan drawings included with the OWTS final design: "Prior to commencing work to abandon, remove, or replace the existing Onsite Wastewater Treatment System (OWTS) components, an 'OWTS Abandonment Permit' shall be obtained from the City of Malibu. All work performed in the OWTS abandonment, removal or replacement area shall be performed in strict accordance with all applicable federal, state, and local environmental and occupational safety and health regulatory requirements. The obtainment of any such required permits or approvals for this scope of work shall be the responsibility of the applicant and their agents."
29. Final plans shall clearly show the locations of all existing OWTS components (serving pre-existing development) to be abandoned and provide procedures for the OWTS' proper abandonment in conformance with the MPC.
30. A covenant running with the land shall be executed by the property owner and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive notice to any successors in interest that: 1) the private sewage disposal system serving the development on the property does not have a 100 percent expansion effluent dispersal area (i.e., replacement-disposal field(s) or seepage pit(s)), and 2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures including, but not limited to, limitations on water use enforced through operating permit and/or repairs, upgrades or modifications to the private sewage disposal system. The recorded covenant shall state and acknowledge that future maintenance and/or repair of the private sewage disposal system may necessitate interruption in the use of the private sewage disposal system and, therefore, any building(s) served by the private sewage disposal system may become non-habitable during any required future maintenance and/or repair. Said covenant shall be in a form acceptable to the City Attorney and approved by the Environmental and Building Safety Division.
31. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
32. An operations and maintenance manual specified by the AOWTS designer shall be submitted to the City Environmental Health Administrator. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed AOWTS.
33. Prior to final Environmental Health approval, a maintenance contract executed between the owner of the subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed AOWTS after construction shall be submitted. Only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.

34. Prior to final Environmental Health approval, a covenant which runs with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive notice to any future purchaser for value that the OWTS serving subject property is an alternative method of onsite wastewater disposal pursuant to the City of Malibu Uniform Plumbing Code, Appendix K, Section 10). Said covenant shall be provided by the City of Malibu Environmental Health Administrator and shall be submitted to the City of Malibu with proof of recordation with the Los Angeles County Recorder.
35. The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator.
36. The City Biologist's final approval shall be submitted to the City Environmental Health Administrator. The City Biologist shall review the AOWTS design to determine any impact on Environmentally Sensitive Habitat Area, if applicable.

#### **Grading/Drainage/Hydrology**

37. The non-exempt grading for the project shall not exceed a total of 1,000 cubic yards, cumulative of cut and fill.
38. The Total Grading Yardage Verification Certificate shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitute may be accepted.
39. The ocean between Latigo Point and the west City limits has been established by the State Water Resources Control Board as an Area of Special Biological Significance (ASBS) as part of the California Ocean Plan. This designation prohibits the discharge of any waste, including stormwater runoff, directly into the ASBS. The applicant shall provide a drainage system that does not discharge waste into the ASBS. The system should not be subject to inundation by wave up-rush or tidal actions.
40. A Grading and Drainage Plan containing the following information shall be approved, and submitted to the Public Works Department, prior to the issuance of grading permits for the project:
- a. Public Works Department general notes;
  - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
  - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
  - d. Private storm drain systems shall be shown on the Grading Plan.
41. A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the Public Works Department prior to the issuance of grading permits if grading or construction

activity is anticipated to occur during the rainy season. The following elements shall be included in this plan:

- a. Locations where concentrated runoff will occur;
  - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
  - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
  - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked offsite.
42. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review and approval by the Public Works Department prior to issuance of building permits. This plan shall include:
- a. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
  - b. Designated areas for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
  - c. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
43. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2(B)(2). Submit a drainage system reconnaissance to confirm that 25-year facilities exist along the drainage path.
44. Earthmoving during the rainy season (extending from November 1 to March 31) shall be prohibited for development that includes grading on slopes greater than 4 to 1. Approved grading operations shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the Planning Manager or Deputy Building Official determines that completion of grading would be more protective of resources.
45. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
46. Exported soil from a site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
47. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
48. A Storm Water Management Plan (SWMP) shall be submitted for review and approval of the Public Works Director. The SWMP shall be prepared in accordance with the LIP Section 17.3.2 and all other applicable ordinances and regulations.
49. A Water Quality Management Plan (WQMP) shall be submitted for review and approval of the Public Works Director. The WQMP shall be prepared in accordance with the LIP Section



17.3.3 and all other applicable ordinances and regulations. The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage on the site. The following elements shall be included within the WQMP:

- a. Site Design Best Management Practices (BMPs);
- b. Source Control BMPs;
- c. Treatment Control BMPs;
- d. Drainage improvements;
- e. Methods for onsite percolation, site re-vegetation and an analysis for off-site project impacts;
- f. Measures to treat and infiltrate runoff from impervious areas;
- g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
- h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
- i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at the time of submittal for review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted prior to the Public Works Department approval of building plans for the project.

#### **Water Service**

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

#### **Construction / Framing**

51. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.
52. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.
53. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in LIP Chapter 17, including:
  - a. Construction shall be phased to the extent feasible and practical to limit the amount of



- disturbed areas present at a given time.
- b. Grading activities shall be planned during the southern California dry season (April through October).
  - c. During construction, contractors shall be required to utilize sandbags and berms to control runoff during on-site watering and periods of rain in order to minimize surface water contamination.
  - d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within the project site.
54. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning Division for review and sign off on framing.

#### *Colors and Materials*

55. The project is visible from a designated scenic area and shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
- a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
  - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
  - c. All windows shall be comprised of non-glare glass.
56. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
57. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.

#### *Lighting*

58. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
- a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
  - b. Security lighting controlled by motion detectors may be attached to the residence

- c. provided it is directed downward and is limited to 60 watts or the equivalent;
  - d. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
  - e. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
  - f. Site perimeter lighting shall be prohibited;
  - g. Outdoor decorative lighting for aesthetic purposes is prohibited;
  - h. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
  - i. Prior to issuance of the coastal development permit, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.
59. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property(ies) shall not produce an illumination level greater than one foot candle.
60. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. High intensity lighting of the shore is prohibited.

#### **Biology/Landscaping**

61. No work shall occur within the protected zone of native trees occurring on site. The City Biologist will inspect the condition of all native trees occurring on site at the time of final inspection for Certificate of Occupation. Should the City Biologist determine at that time that any of the native trees have been significantly impacted, implementation of appropriate mitigation, as outlined in LIP Chapter 5, will be required.
62. Invasive plant species, as determined by the City of Malibu, are prohibited.
63. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
64. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. Up-lighting of landscaping is prohibited.
65. The landscape plan has been conditioned to protect natural resources in accordance with the Local Coastal Program. All areas shall be planted and maintained as described in the final approved landscape plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project.
66. The biological inventory indicates the property owners intend to remove non-native vegetation from the ravine on site. Should this occur, a qualified biologist shall be present during any vegetation removal of trees within the ravine to ensure that impacts to native

species are avoided.

67. Demolition and/or any other site preparation activities scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of any site preparation activities. Should active nests be identified, a buffer area no less than 50 feet (150 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site.
68. Prior to initiation of any demolition or site preparation activities, construction fencing shall be installed at the limits of the work area. Construction fencing shall be maintained throughout the construction period to protect the site's sensitive habitat areas.

#### **Fuel Modification**

69. The project shall receive Los Angeles County Fire Department approval of a Final Fuel Modification Plan prior to the issuance of final building permits.

#### **Water Feature**

70. Pursuant to Malibu Municipal Code (M.M.C.) Section 9.20.040(B), all ponds, decorative fountains shall require a water recirculating/recycling system.
71. The discharge of water contained in a decorative water feature is an illegal discharge unless it is discharged to a sanitary sewer system. Provide information on the plans regarding the type of sanitation that you propose to use for this installation:
  - a. Ozonization systems are an acceptable alternative to chlorine. The release of clear water from ozonization system is permitted to the street or sewer;
  - b. Salt water sanitation is an acceptable alternative, but the discharge of salt water is prohibited to the street and sewer;
  - c. Highly chlorinated water from pools or spa shall be discharged to a public sewer or may be trucked to a publicly owned treatment works (POTW) for discharge.

#### **Fencing and Walls**

72. The applicant shall include an elevation of the proposed entry gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.
73. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed six feet in height or 12 feet in height for a combination of two or more walls.

#### **Site Specific Conditions**

74. Construction of the proposed entry gate shall not commence until arrangements have been made with all easement holders to ensure continued ingress and egress.

#### *Native Trees*

75. All development shall be sited to reduce encroachment into the "protected zone" of each protected tree.
76. Drainage shall be directed away from the root zone of the native trees.
77. Protective fencing shall be installed at the immediate western edge of the driveway along the length of the property prior to initiation of construction activities. Fencing shall be maintained throughout the duration of all construction. If the protective fencing is breached, all construction activities shall cease until the fencing has been repaired.
78. No persons shall enter the "protected zone" of each protected tree. No construction, grading, staging, or materials storage shall be allowed within the protected zone of the tree.
79. Any approved development that encroaches into the protected zone of a native tree shall be constructed by hand-held tools only.
80. A qualified biologist shall monitor the site a minimum on once per week for the duration of construction activities to ensure that native trees are being protected.

#### *Prior to Occupancy*

81. Prior to issuing a Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
82. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
83. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this coastal development permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

#### *Deed Restrictions*

84. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document

to Planning Division staff prior to final planning approval.

85. Prior to final planning approval, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition No. 59. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.

**Fixed Conditions**

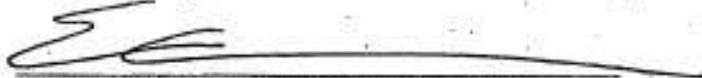
86. This coastal development permit shall run with the land and bind all future owners of the property.
87. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.



Section 6.      Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 6th day of April 2010.

  
ED GILLESPIE, Planning Commission Chair

ATTEST:

  
JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at [www.ci.malibu.ca.us](http://www.ci.malibu.ca.us), in person at City Hall, or by calling (310) 456-2489, ext. 245.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 10-21 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 6th day of April 2010, by the following vote:

AYES: COMMISSIONERS: JENNINGS, STACK, MAZZA AND GILLESPIE

NOES:

ABSTAIN:

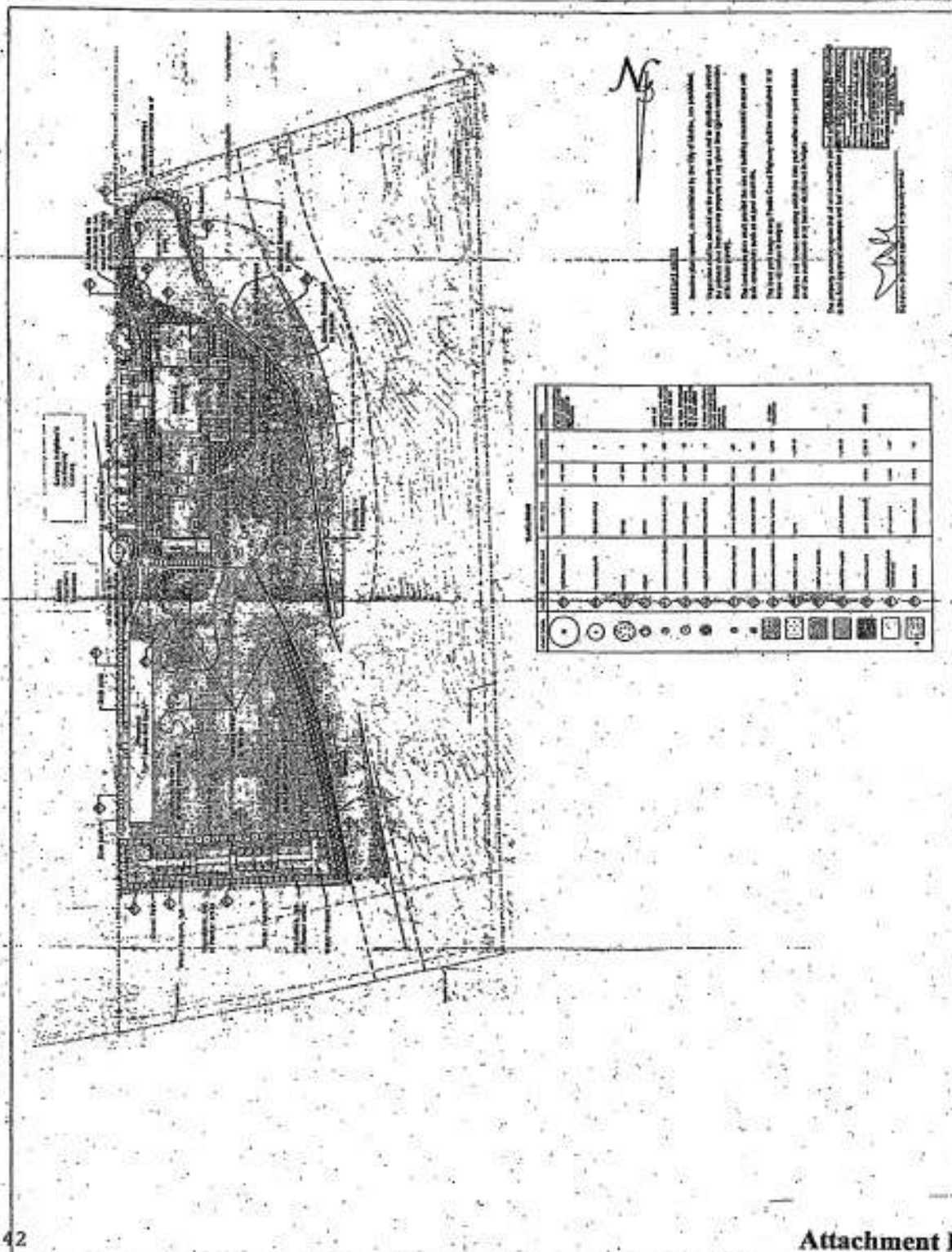
ABSENT: COMMISSIONERS: HOUSE

  
\_\_\_\_\_

JESSICA BLAIR, Recording Secretary



Robert N. Decker, Inc. 10000 1st Avenue, Suite 100 San Diego, CA 92123 (619) 594-1111	Lantieri Construction Company 10000 1st Avenue, Suite 100 San Diego, CA 92123 (619) 594-1111	Landscape, Hardscape & Parking Plan	Project No. 10000 Date: 10/1/00 Scale: 1" = 10'
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SEP 02 2014

STATE OF CALIFORNIA - THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

**CALIFORNIA COASTAL COMMISSION**

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



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: MICHAEL HAKIM, TRUSTEE OF MICHAEL HAKIM TRUST / SAUD AND YAFAR HAKIM / WINNING WAY HOLDINGS  
Mailing Address: 140 SOUTH BEVERLY DRIVE #200  
City: Beverly Hills Zip Code: 90212 Phone: 1-800-525-6989

**SECTION II. Decision Being Appealed**

- Name of local/port government: CITY OF MALIBU
- Brief description of development being appealed: CDP 09-043 VIOLATIONS FROM 2005 - PRESENT. APPLICANT DID NOT SAY CONDITIONS OF APPROVAL AND FILED CDP AMENDMENT NO. 13006. PIERCEMENT LANDSCAPE PLAN, ROOF HEIGHT, INSTALL OF FENCES, BIOLOGICAL INVENTORY REPORT FLAWED, BEACH ACCESS DENIED AND PARKING EASEMENT FOR LOCAL N VETRAKS NEGLECTED, NO BIOLOGICAL ON SITE, ALONG NATIVE AND INVASIVE TREES NEED TO BE REMOVED, RESTORE ESHA WILDFIRE, DROUGHT PLANTING NEW PLANT TREES SPECIES & WATER, LACK OF FAN (MOUNTAIN) HEARING, SEE ATTACHED
- Development's location (street address, assessor's parcel no., cross street, etc.): 27852 PACIFIC COAST HIGHWAY MALIBU 90265 4460-032-010 KANAN ROAD AND LATIGO CANYON
- Description of decision being appealed (check one): 4460-032-007 27834 PCH
  - ☐ Approval; no special conditions
  - ☒ Approval with special conditions:
  - ☐ Denial

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-4-MAL-14-0046  
DATE FILED: 9/2/14  
DISTRICT: So. Central Coast

**Exhibit 5**  
Appeal by Michael Hakim  
Appeal No. A-4-MAL-14-0046



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

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

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

6. Date of local government's decision:

AUGUST 11, 2014

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

COP 13-006 AND COP 09-043

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

MARIA CARSEY 27852 PACIFIC COAST HIGHWAY MALIBU 90265

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

(1) SAID AND YARA HAKIM

27841 Pacific Coast Hwy 8005256489  
MALIBU CA 90265

(2) ARAM HAKIM

27901 Pacific Coast Hwy  
MALIBU CA 90265

8) MARNEY RANDALL

909 EUCLID ST. #6  
SANTA MONICA, CA 90403  
310) 395-2615

9) RICHARD SEFT

(3) Rene and JOEL Siegel  
27932 WINDING WAY  
MALIBU CA 90265

(4) ADDITIONAL NAMES SEE ATTACHED

5) RICHARD CRAFT

6) JONATHAN KAYO

7) CHRIS CARRADINE

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

**SECTION IV. Reasons Supporting This Appeal**

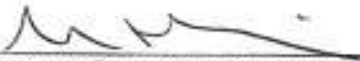
**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

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

**SECTION V. Certification**

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

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

Date: September 1, 2014

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

**Section VI. Agent Authorization**

I/We hereby  
authorize \_\_\_\_\_

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

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

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

Background: Here to raise my family, love Malibu

27901 PCH Bought new construction - w/ views and access to Ocean  
SAME WITH MANY NEIGHBORS IN WINDING WAY AREA

27852 PCH Doesn't meet conditions of approval - resolution no.10-21 and  
VIOLATED CDP and LIP

INTERFERED WITH BUSINESS, PREPARATION AND HIRING OF  
LOCAL ENGINEERS, SURVEYORS, ATTORNEYS, EXPEDITORS, ETC  
COASTAL COMMISSION DOCUMENTS ARE MISSING AND  
UNAVAILABLE. PHOTOS OF DOCUMENTS ARE AVAILABLE

**Conditions of approval:**

Non-native trees      87. Revocation of Permit requesting

Invasive plant species      81. Occupancy. No Certificate OF Occupancy.

FIRE HAZARD.      80. Weekly biologist never on site.

78. Protected zone compromised

77. No fencing in the Protective Zone, drainage and encroachment issues

74. Construction of Entry Gate (Not Two)

73. Height and Fences and Walls and Hedges exceed 6ft (Lip Section  
3.5.3(A))

69. Fuel Modification Plan Fire Department Approval

67. No nesting bird surveys in the file by a qualified biologist

66. Biological inventory indicates owner intent to remove non-native  
vegetation to allow natives to grow <-> Drought...More tree=more water

65. Landscape plan conditioned to protect natural resources in failure to  
comply with landscape conditions is a violation of the conditions of approval

64. Night lighting tennis courts not to code

62. Invasive plant species are prohibited?

58. Lighting sports courts are prohibited (tennis court has incorrect bulbs)

55. 3rd party surveyor to measure height† ask staff about roof deck

49. Water quality mgmt plan obligation to maintain water quality measure by planting new trees, need more water -> during a drought! Comparative water bills -> it's increased

43. Storm drainage in 6ft outlet in ravine to the ocean, due to drought no water now. ESHA existed in ravine. Rincon was influenced and it may have been ignored or overlooked. Need a 3rd party investigation.

39. This is an area of special biological significance. Planning manager. Rules don't apply to Carsey?

Resubmit all plans, revoke any new permits, reapply. 3rd party investigation to review all plans and permits. Restore ESHA. Ravine access, remove one of the two gates.

#### FIRE HAZARD

EUCALYPTUS ARE INVASIVE TREES

NON NATIVE TREES ARE PLANTED

NATIVE TREES NOT PROTECTED AND ARE HARBORED BY

EUCALYPTUS PROVIDE LIMITED SUNLIGHT

RAVINE IS A POTENTIAL ESHA SEND A 3RD PARTY TO INVESTIGATE

MALIBU CITY BIOLOGIST WAS NOT MADE AWARE OF RAVINE UNTIL

AFTER CODE ENFORCEMENT WAS NOTIFIED IN 12.12.12

PROPERTY WAS NEGLECTED FOR APPX. 10 YEARS

NEW OWNER PLANTED FOUR KING PALMS PRIOR TO SUBMITTING

RINCON ENV. REPORT AND OBTAINING APPROVAL FOR

CONSTRUCTION IN 2010

FORT HILL BUILDER AND SUPERINDENDENT AT 27852 PCH AWARE

OF ISSUES HOWEVER INSTRUCTED BY OWNER MARCY CARSEY

AND OWNER REP MARNEY RANDALL AND RICHARD SCOTT

OTHERWISE INFLUENCE CITY OFFICIALS AND PLANNERS AND FIRE DEPT.

FOR MORE INFORMATION PLEASE CONTACT

PCHMAYOR@GMAIL.COM OR CALL 1-800-525-6989