

CALIFORNIA COASTAL COMMISSION

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

**F20a**



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original staff report

**ADDENDUM**

**DATE:** April 13, 2015

**TO:** Commissioners and Interested Parties

**FROM:** South Central Coast District Staff

**SUBJECT:** Agenda Item 20a, Friday, April 17, 2015, Coastal Development Permit  
Appeal No. A-4-MAL-15-0008 (Dorn)

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The purpose of this addendum is to attach correspondence received from the applicant's representative in support of the staff recommendation.

# BLOCK & BLOCK

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April 9, 2015

VIA FIRST CLASS MAIL and EMAIL

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

Re: Appeal No.: A-4-MAL-15-0008  
Applicants: Anthony and Cynthia Dorn

Project Description: Construction of a 5,381 sq. ft. one-story family home, attached 709 sq. ft. 3-car garage, detached 230 sq. ft. accessory structure, pool, fencing, retaining walls, landscaping, onsite relocation of protected walnut tree, grading, alternative onsite wastewater treatment system, and site plan review for construction over 18 feet in height.

Scheduled: April 17, 2015  
Agenda Item: 20(a)

Dear Commissioners:

This office represents the applicants, Anthony and Cynthia Dorn ("Dorn"), with regard to the pending appeal filed by a neighbor to prevent the construction of an in-fill single story, single family residence and accessory structures proposed on one of the last vacant RR-1 zoned single family lots in the Point Dume area of Malibu at 6530 Zuma View Place.

Appellants appeal is based on their erroneous contention that the subject property is located in the Paradise Cove area of Malibu, and not Point Dume. Appellants are mistaken.

Both the Commission and City of Malibu have consistently interpreted Zuma View Place as being located in the Point Dume area of Malibu, including in the approvals of the appellants single family home to the north at 6500 Zuma View Place (CDP No. 4-01-018), and the single family home to the south at 6546 Zuma View Place, in CDP No. 04-003.

California Coastal Commission

Re: Appeal No.: A-4-MAL-15-0008

April 9, 2015

Page 2

As stated on page 2 of the Appeal Staff Report, "[T]he riparian drainage to the east of the subject parcel exactly follows the boundary between the Point Dume area (suburban level single family development) and Paradise Cove (mobilehome park development)." As the Appeal Staff Report further provides on page 2, although the riparian drainage to the east of the subject parcel, as well as two other drainages on Point Dume were originally proposed as ESHA in the draft LCP, none of the three were designated as ESHA on final ESHA map that is part of the adopted LCP. The Appeal Staff Report specifically states:

"... it is clear that the subject stream canyon was one of the "Point Dume" drainages that the Commission excluded from ESHA designation and that the buffer to be provided for it was described in LUP Policy 3.35 and IP Section 4.6.1(A). Accordingly, for purposes of the LCP, properties to the east of the drainage are within Paradise Cove and those to the west are within Point Dume".

The proposed residence and accessory structures are consistent with the LCP policies and provisions specific to the Point Dume area of Malibu which only require development to be sited outside of 25% grade or steeper slopes.

The subject project will neither set adverse precedent for future development in this area and will not have an impact on significant coastal resources.

The applicant respectfully requests that the Commission follow the staff recommendation and find that the appeal raises "no substantial issue".

Thank you for your consideration, courtesy and anticipated cooperation.

Very truly yours,

**LAW OFFICES OF  
BLOCK & BLOCK**  
A Professional Corporation

  
ALAN ROBERT BLOCK

ARB/sp

cc: Commissioners

Tony Dorn

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VENTURA, CA 93001  
(805) 585-1800



# F20a

**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:	2/26/2015
49 <sup>th</sup> Day:	Waived
Staff:	N. Dreher - V
Staff Report:	3/2/2015
Hearing Date:	4/17/2015

## APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

**APPEAL NO.:** A-4-MAL-15-0008

**APPLICANT:** Anthony and Cynthia Dorn

**APPELLANT:** Richard and Sonja Kraft

**LOCAL DECISION:** Coastal Development Permit (13-052) approved by the Malibu City Council on February 9, 2015

**PROJECT LOCATION:** 6530 Zuma View Place, City of Malibu, Los Angeles County (APNs 4466-002-026)

**PROJECT DESCRIPTION:** Construction of 5,381 sq.ft. single-story-family home, attached 709 sq.ft. 3-car garage, detached 230 sq.ft. accessory structure, pool, fencing, retaining walls, landscaping, onsite relocation of protected walnut tree, grading, alternative onsite wastewater treatment system, and site plan review for construction over 18 feet in height.

**STAFF RECOMMENDATION:** No Substantial Issue Exists

**MOTION & RESOLUTION:** Page 5-6

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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 5-6**.

The City of Malibu approved a Coastal Development Permit (CDP) for the construction of a 5,381 sq.ft., one-story, single-family home, attached 709 sq.ft. 3-car garage, detached 230 sq.ft. accessory structure, pool, fencing, retaining walls, landscaping, onsite relocation of protected walnut tree, grading, alternative onsite wastewater treatment system, and site plan review for construction over 18 feet in height, located at 6530 Zuma View Place within the Point Dume area of Malibu (Los Angeles County). The project site, and adjacent sites, are zoned Rural Residential (RR-1).

The subject property is located within the most inland portion of Point Dume near the Pacific Coast Highway. The Pacific Ocean is approximately a quarter-mile south of the subject lot.

The certified Malibu LCP contains a series of general ESHA policies related to the definition of and the protection of ESHA through the use of minimum buffers. However, the LCP also contains ESHA policies and provisions specific to the Point Dume area. The more specific policy language is controlling, when compared to more general policies that are applicable to the rest of the Malibu coastal zone. The more general policies and provisions require a 100 foot minimum buffer, whereas the buffer policy and provision specific to the Point Dume area requires development to be sited outside of 25% grade or steeper slopes.

The appellants disagree with the City’s determination that the subject property is located within the Point Dume area. Accordingly, the appellants contend that the project is located within Paradise Cove and should be subject to policies that the City determined do not apply to the project. The appellants’ appeal hinges entirely on the location of the project. The City’s approval including a finding that the project site is within Point Dume and a detailed breakdown of the Point Dume specific policies that therefore apply to the project.

The subject site is located in the Point Dume area for the purpose of applying the ESHA policies and provisions. The riparian drainage to the east of the subject parcel exactly follows the boundary between the Point Dume area (suburban level single family development) and Paradise Cove (mobilehome park development). Comparing the proposed August 2002 (Draft LCP) ESHA map and the September 2002 (Adopted LCP) ESHA map indicates that the subject drainage and two other drainages on Point Dume were proposed to be designated as riparian ESHA on the draft ESHA map, but none of the three were designated as ESHA on the final ESHA map that is part of the Adopted LCP. As such, it is clear that the subject stream canyon was one of the “Point Dume Area” drainages that the Commission excluded from ESHA designation and that the buffer to be provided for it was that described in LUP Policy 3.35 and IP Section 4.6.1(A). Accordingly, for the purposes of the LCP, properties to the east of the drainage are within Paradise Cove and those to the west are within Point Dume.

Additionally, the areas are separated by different zoning districts. The properties west of the drainage are zoned Rural Residential (RR-1) and those to the east are zoned for Mobile Home

use. The subject property is zoned Rural Residential (RR-1). The subject property is west of the drainage and within Point Dume. Therefore, the City must apply the ESHA policies and provisions specific to the stream canyons in the Point Dume area.

The project approval will not be an adverse precedent for future residential development. In fact, the LCP has made this outcome clear within the Point Dume area. Further, the approved development is supported by substantial evidence in the record and will not have an adverse effect on significant coastal resources. The development is isolated to the last remaining infill lot fronting Zuma View Place and therefore 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 appellants' 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.

## TABLE OF CONTENTS

<b>I. APPEAL JURISDICTION AND PROCEDURES .....</b>	<b>5</b>
<b>A. APPEAL PROCEDURES .....</b>	<b>5</b>
1. Appeal Areas.....	5
2. Grounds for Appeal.....	5
3. Substantial Issue Determination .....	5
4. De Novo Review.....	6
<b>B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL .....</b>	<b>6</b>
<b>II. MOTION AND RESOLUTION .....</b>	<b>6</b>
<b>III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE DETERMINATION.....</b>	<b>7</b>
<b>A. PROJECT DESCRIPTION, SETTING AND BACKGROUND .....</b>	<b>7</b>
<b>B. APPELLANT’S CONTENTIONS.....</b>	<b>8</b>
<b>C. ANALYSIS OF SUBSTANTIAL ISSUE .....</b>	<b>10</b>
1. ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA) .....	11
<b>D. SUBSTANTIAL ISSUE REVIEW CONCLUSION .....</b>	<b>15</b>

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## EXHIBITS

- Exhibit 1.** Vicinity Map
  - Exhibit 2.** Site Aerial View
  - Exhibit 3.** Project Plans
  - Exhibit 4.** Appeal by Richard and Sonja Kraft
  - Exhibit 5.** Final Local Action Notice
  - Exhibit 6.** Proposed and Certified LCP Maps
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# **I. APPEAL JURISDICTION AND PROCEDURES**

## **A. APPEAL PROCEDURES**

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

### **1. Appeal Areas**

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

The project site at issue in this appeal is located on the inland portion of Point Dume, between Pacific Coast Highway (the first public road) and the ocean, in the City of Malibu (**Exhibit 1**). As such, the entire project site is within this appeal area and the City's coastal development permit for the subject project is appealable to the Commission.

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

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

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

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

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

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

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

The project that is the subject of this appeal was approved by the City of Malibu Planning Commission on October 6, 2014. The action by the Planning Commission was appealed to the Malibu City Council by Richard and Sonja Kraft within the local appeal period, on October 16, 2014. The appeal was denied and the permit for the project was approved by the Malibu City Council on February 9, 2015. The Notice of Final Action for the project was received by Commission staff on February 12, 2015 (**Exhibit 5**). Commission staff provided notice of the ten working day appeal period, which began on February 13, 2015, and ended on February 27, 2015. Richard and Sonja Kraft filed the subject appeal on February 26, 2015, during the Commission's appeal period (**Exhibit 4**). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on March 11, 2015. Pursuant to section 30621(a) of the Coastal Act, a hearing on an appeal shall be set no later than 49 days after the date on which the appeal is filed with the Commission, but according to section 30625(a), the applicant can waive that time limit. In this case, the applicants waived the 49 day time limit.

## **II. MOTION AND RESOLUTION**

#### **MOTION:**

*I move that the Commission determine that Appeal No. A-4-MAL-15-0008 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-15-0008 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 project that is the subject of this appeal was approved by the City of Malibu Planning Commission on October 6, 2014. The action by the Planning Commission was appealed to the Malibu City Council by Richard and Sonja Kraft. The Malibu City Council upheld the Planning Commission's action, thereby approving CDP (13-052) for the construction of a 5,381 sq.ft. single-story-family home, attached 709 sq.ft. 3-car garage, detached 230 sq.ft. accessory structure, pool, fencing, retaining walls, landscaping, onsite relocation of protected walnut tree, grading, alternative onsite wastewater treatment system, and site plan review for construction over 18 feet in height in the Rural Residential-1 zoning district located at 6530 Zuma View Place. (**Exhibits 1-3**). The City also approved an alternative requiring relocation of an existing California Black Walnut tree from the center of the property to the eastern portion of the property.

The subject property is a vacant lot located on the east side of Zuma View Place. The subject property previously fronted Pacific Coast Highway. On March 16, 1999, the California Coastal Commission reported Waiver De Minimis Number 4-99-007-W, which approved a lot line adjustment between the adjacent parcel at 6500 Zuma View Place and the subject property. The lot line adjustment moved the boundary between the subject property and 6500 Zuma View Place from a north to south orientation towards Pacific Coast Highway to an east to west orientation so that two parcels front Zuma View Place. In 2002, Plot Plan Review (PPR) No. 02-129 was submitted to the City for the construction of a new single-family residence on the subject site. In 2004, PPR No. 02-129 was closed due to inactivity.

There is a natural ephemeral drainage course along the property's rear easterly property line. This drainage course along the east portion of the site is described as natural coast live oak woodlands in the Biological Inventory and Tree Survey Report dated May 28, 2014, by the project consulting biologist, Greg Ainsworth. The subject property has five native, protected trees. The Biological Inventory also noted that there are no sensitive biological resources on the subject site. Surrounding land uses consist of single-family residences in the Rural Residential-1 (RR-1) zoning district.

## **B. APPELLANT'S CONTENTIONS**

The City's action was appealed by Richard and Sonja Kraft, the owners of a property north of subject property. The appeal was filed on February 26, 2015, attached as **Exhibit 4**.

The appellants make several assertions with regard to the approved project's consistency with the environmentally sensitive habitat policies of the LCP. These assertions can be grouped into two categories: 1) those assertions that support the appellants' claim that the project site is not in the Point Dume area and the City improperly applied policies and provisions that apply to stream canyons in Point Dume; and 2) those assertions that, given the inapplicability of the Point Dume area policies, claim that the City's approval violates the ESHA protection sections of the certified Malibu LUP and LIP as adopted by this Commission on September 13, 2002. Specifically, the appellants assert that the approved project is not in conformity with the following LUP policies: 1) LUP Section 3.1 protection of streams and wetlands; 2) LUP Section 3.4 Any area not designated on the LUP ESHA map that meets ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA under the LCP; 3) LUP Section 3.26 Required buffer (100') from the outer edge of canopy for oak woodland or riparian ESHA; and 4) LUP Section 3.27 Required buffer for other native habitats such that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat and thus require fuel modification that impacts ESHA.

As detailed in Exhibit 4, the appellants request the following corrections and guidelines be set forth and followed by the City of Malibu with regard to development at the subject site:

- 1) 6530 Zuma View Place is acknowledged as part of Paradise Cove and NOT Point Dume as per the City of Malibu General Plan neighborhood designations.
- 2) 6530 Zuma View Place – Paradise Cove is NOT SUBJECT to the Point Dume Exemption 3.35 eliminating ESHA's on Point Dume.
- 3) The City of Malibu protect the ESHA at 6530 Zuma View Place and re-designate the riparian/woodland ESHA area that flows on the edge of 6530 Zuma View Place property down to the Ocean.
- 4) That the City adhere to its own LUP Policies that state that the presence of ESHA not already designated on the ESHA map A) shall be determined on the basis of site-specific study prior to the approval of any development and B) shall be reviewed by the City's Environmental Review Board.
- 5) That the City review habitat present in the drainage east of Zuma View Place to determine if it meets the definition of ESHA, and if so that it be afforded all protection provided for ESHA by the LUP and protected against significant disruption of habitat values.
- 6) That only resource dependent uses may be permitted within ESHA and ESHA buffer.

- 7) That the buffer zone for ESHA, if found to be present, be extended 100 feet from the boundary of the ESHA to fully protect the canopy and drip line of the 150 year old plus mature coast live oak tree present on the property and associated habitat.
- 8) That the entire development, including all grading, the main house, and the outbuilding (“surf shack”), be relocated outside ESHA and the ESHA buffer.
- 9) That all landscaping and garden features (e.g., pathways, lighting) be relocated outside of ESHA, and, where possible, the ESHA buffer.
- 10) That a new Biological Study be developed that analyzes the habitat in the drainage adjacent to Zuma View Place, and that California Department of Fish and Wildlife approval be re-evaluated based on these new findings.
- 11) Uphold the LUP Policies establishing that the presence of ESHA not already designated on the ESHA map shall be determined on the basis of site-specific study prior to the approval of any development. Such determinations shall be reviewed by the City’s Environmental Review Board. Habitat area found to meet the definition of ESHA shall be accorded all protection provided for ESHA by the LUP. ESHA shall be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA. Concerns regarding alleged misunderstanding over: a) the fact that Point Dume can and does support ESHA; b) that habitat not mapped as ESHA can still be considered as such; c) that the boundaries of Point Dume are apparently arbitrary, and do not necessarily take in Zuma View Place/Paradise Cove.
- 12) Paradise Cove is not a part of Point Dume – The lots on Zuma View Place are described in the General Plan of Malibu as being part of Paradise Cove, rather than Point Dume. [The appeal cites the Malibu General Plan neighborhood descriptions].
- 13) Paradise Cove is not subject to the Point Dume Exemption 3.35 eliminating ESHA’s on Point Dume. At the time of LCP certification, the Zuma View Place lots were part of the Paradise Cove Mobile home park, separate and distinct from Point Dume and therefore were not subject to what has been interpreted as the “Point Dume ESHA Exemption” eliminating ESHA on Point Dume.
- 14) 28517 Pacific Coast Highway (a nearby property located north/northeast of Zuma View Place and Pacific Coast Highway) shares the drainage with 6530 Zuma View Place and a recent environmental study concluded its habitat constituted ESHA.
- 15) The City of Malibu violated the Coastal Act by not considering the stream and woodland that was already determined by the City (across the street) as a wetland stream/ESHA.
- 16) There was no ESHA study done for the development, even though the Malibu General Plan states that “The western portion of the property contains a three-quarter mile long watershed, about eight to ten acres in size....”

- 17) ESHA Habitat Study – There was no study done for the impact on the animals in the ESHA area. [The appeal quotes Malibu General Plan language about the resources in the area.]
- 18) Pre-2003 ESHA Designation – This area was designated as ESHA when we (the Kraft's) built our house in 2002 and we built at the required buffer zone established for ESHA's in 2002.
- 19) The appeal cites Coastal Act Sections 30240 and 30231.

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.

### **C. 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 does 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. ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

LUP Policy 3.1 states:

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

LUP Policy 3.4 states:

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

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

LUP Policy 3.23 states:

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

LUP Policy 3.26 states:

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

- *The outer edge of the canopy of riparian vegetation for riparian ESHA.*

- *The outer edge of the tree canopy for oak or other native woodland ESHA.*
- *The top of bluff for coastal bluff ESHA*

LUP Policy 3.27 states:

*Buffers shall be provided from coastal sage scrub and chaparral ESHA that are of sufficient width to ensure that no required fuel modification (Zones A, B, or C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat.*

LUP Policy 3.35 states:

*Development in the Point Dume area shall be designed to avoid encroachment on slopes of 25 percent grade or steeper.*

LIP Section 4.6.1. (Buffers) states, in part:

*New development adjacent to the following habitats shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers except as provided in Section 4.6.1 (E) or (F) of the Malibu LIP. The following buffer standards shall apply:*

*A. Stream/Riparian*

*New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream. However, in the Point Dume area, new development shall be designed to avoid encroachment on slopes of 25 percent grade or steeper.[Emphasis added]*

*[...]*

The Malibu certified LCP contains policy language protective of environmentally sensitive habitat areas (ESHAs). Generally, the Malibu LUP, pursuant to Policy 3.1, designates certain habitat types as ESHA, including streams and riparian vegetation. While the LUP references an ESHA map that depicts various ESHA throughout the coastal zone, Policy 3.4 clarifies that resources not identified on that map can still be deemed ESHA if they are determined to rise to the rare and sensitive level of ESHA as defined in Policy 3.1 and 3.4. Additionally, Policies 3.26 and 3.27 establish minimum buffers for ESHA, to ensure development is setback sufficiently and to avoid adverse impacts to such resources. These policies define and protect ESHA resources generally throughout the Malibu coastal zone.

However, at the time the Commission certified the Malibu LCP in 2002, the Commission included ESHA policies specific to the Point Dume area. Moreover, the Commission found that

the canyons and associated riparian habitat in the Point Dume region were subject to such disturbance and degradation to natural resources that they can no longer be found to be rare and sensitive. The Commission found these canyons do not meet the definition of ESHA and chose to exclude the riparian canyons in the Point Dume area from any present and future ESHA designation<sup>1</sup>. Finally, the Commission found that a different buffer requirement would apply to these stream canyons.

The LCP policy analysis is dependent upon a threshold determination concerning location; specifically, whether the subject development is within the Point Dume area. If a project is adjacent to a stream canyon within Point Dume, the general ESHA policies, most notably those that concern buffers, do not apply to such a project. Instead, Policy 3.35 imposes an alternative buffer requirement, requiring development to be set outside slopes with 25% grades or steeper. This Policy aims to reduce development on stream canyon slopes that eventually lead to features such as the drainage near the subject property. The LCP's Implementation Plan (IP) includes Section 4.6.1(A), which requires that new development adjacent to stream and riparian habitat provide a buffer of 100 feet, except in the Point Dume area where new development shall be designed to avoid encroachment on slopes of 25% grade or steeper.

The City-approved project involves the construction of a 5,381 sq.ft. single-family home, attached 709 sq. ft. 3-car garage, detached 230 sq.ft. accessory structure, pool, fencing, retaining walls, landscaping, onsite relocation of protected walnut tree, grading, alternative onsite wastewater treatment system, and site plan review for construction over 18 feet in height.

As previously described, many of the appellant's assertions relate to the appellants' claim that the project site is not in the Point Dume area and the City improperly applied policies and provisions that apply to stream canyons in the Point Dume area. The appellants' other contentions regarding the project's consistency with other ESHA policies and provisions depend on the finding that the subject project is outside of Point Dume and that, therefore, the City should have imposed the analysis and requirements associated with the more general ESHA policies. If the Commission finds the project is within the Point Dume area, the other contentions raised by the appellants are irrelevant to the City's approval. The appellants' appeal is predicated on the project being outside of Point Dume and the related application of more general LUP ESHA policies.

The City determined that the subject property is within the Point Dume area. The appellants contend that the property is within the neighboring Paradise Cove area. The appeal includes several citations in support of the appellants' assertion that the project site is not in the Point Dume area. For one, the appellants cite neighborhood description language from the Land Use Element of the City of Malibu General Plan. The neighborhood description for Paradise Cove states that the western boundary of the area known as Paradise Cove is: "Zuma View Drive and the western watershed". Additionally, the appellants assert that: "At the time of the enactment of the LCP for Malibu the lots on Zuma View Place were part of the Paradise Cove Mobile home Park, separate and distinct from Point Dume..."

---

<sup>1</sup> There are two areas on Point Dume that are designated ESHA in recognition of other types of habitat that do meet the definition of ESHA. One is a canyon containing chaparral habitat on the west area of Point Dume. The other ESHA contains the coastal sage scrub, coastal bluff, and other habitats at Point Dume State Park.

Staff's review of the LCP indicates that the subject site is located in the Point Dume area for the purpose of applying the ESHA policies and provisions. The appellants' assertion that the Malibu General Plan neighborhood descriptions would include the subject parcel in the Paradise Cove neighborhood is not relevant because the General Plan is not part of the certified LCP and therefore is not a standard of review for coastal development permits. Further, there is no evidence supporting the appellant's assertion that the lots on Zuma View Place were part of the Paradise Cove Mobile home Park at the time of LCP certification. Rather, as shown on the LCP maps, the lots fronting Zuma View Place were separate from the mobile home park and were given a land use designation and zone of Rural Residential as part of the LCP certification.

The riparian drainage to the east of the subject parcel exactly follows the boundary between the Point Dume area (suburban level single family development) and Paradise Cove (mobile home park development). (See **Exhibit 6**) The **Exhibit 6** ESHA maps (the LUP map and the LIP ESHA Overlay map are identical) show the proposed August 2002 Draft LCP and the Adopted September 2002 maps. Looking at the adopted map, it is clear that the subject drainage and two other drainages were proposed to be designated as riparian ESHA on the draft ESHA map, but none of the three were designated as ESHA on the final ESHA map that is part of the Adopted LCP. As such, it is clear that the subject stream canyon was one of the "Point Dume Area" drainages that the Commission excluded from ESHA designation and that the buffer to be provided for it was that described in LUP Policy 3.35 and IP Section 4.6.1(A). Accordingly, for the purposes of the LCP, properties to the east of the drainage are within Paradise Cove and those to the west are within Point Dume.

Additionally, the areas are separated by different zoning districts. The properties west of the drainage are zoned Rural Residential (RR-1) and those to the east are zoned for Mobile Home use. The subject property is zoned Rural Residential (RR-1). The subject property is west of the drainage and within Point Dume. Therefore, the City must apply the ESHA policies and provisions specific to the stream canyons in the Point Dume area.

The remaining appeal contentions relate to the application of general ESHA policies to projects located outside of Point Dume. However, as discussed above, the subject project is within the Point Dume area. Accordingly, LUP Policy 3.35 and IP Section 4.6.1(A) require the proposed project to provide a buffer from the stream by ensuring that all structures are sited outside of 25% grade or steeper slopes. The City Council, in approving this project, found that:

In adopting the City of Malibu Local Coastal Program (LCP), the California Coastal Commission specifically determined that stream canyons on Point Dume area do not meet the definition of ESHA, because they have been substantially degraded by past development and the introduction of nonnative species. As stated in LCP Land Use Policy 3.35 and Local Implementation Plan (LIP) Section 4.6.1(A), the appropriate buffer is to be provided by requiring development to avoid encroachment on slopes of 25 percent grade or steeper. The steeper portions of the canyon slope function as a buffer to development, minimizing human intrusion, and protecting the stream and riparian habitats by providing an area for infiltration of runoff, and minimizing erosion and sedimentation. The project is located within the Point Dume area and has been designed to avoid slopes of 25 percent and steeper, and therefore, complies with Section 4.6.1 of the LIP. Thus, the City Biologist determined a riparian study was not required.

The City appropriately applied the policies specific to Point Dume. As approved, the residence and accessory structure will be located outside of slopes with a 25% grade or steeper as required by the applicable LCP policies.

As approved, the project is consistent with the Malibu certified LCP's policies and provisions, including LUP Policy 3.35 and IP Section 4.6.1(A). Therefore, the Commission finds that the appellants' contentions do not raise a substantial of the project's conformance with the certified Malibu LCP.

## **D. 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 contends that the subject parcel is not located within Point Dume and that therefore the City used the wrong policies in approving the residential development. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the City's record includes extensive factual evidence and legal support for the City's findings that the project is consistent with the applicable policies and provisions of the certified LCP. The appellant disagrees with the City's determination about the location of the subject property. However, the appellant has not provided substantial evidence to demonstrate that the approved project is not located in the Point Dume area or that the development does not conform to the applicable standards set forth in the certified LCP. As described in detail above, the subject drainage is one that is considered to be in the Point Dume area for the purpose of applying the required stream buffer standard. This development, given its location in Point Dume, is subject to and complies with the requirement to avoid 25% grade slopes or steeper, consistent with LUP Policy 3.35 and IP Section 4.6.1(A). 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 City approved residential development is isolated to the last remaining infill lot fronting Zuma View Place, located in the most inland extent of Point Dume near Pacific Coast Highway. The approved

residence will be sized consistent with the surrounding neighborhood. 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 located within the Point Dume area in Malibu. As certified, the Commission determined that the majority of the Point Dume area was disturbed and that the streams, riparian vegetation and habitat were deemed not ESHA due to this long history of human-caused disturbance throughout the area. However, to avoid impacts to remaining resources, including the riparian corridor adjacent to the subject development, the Commission certified buffer policies and provisions specific to the Point Dume area. The approved project is consistent with these policies and provisions. As such, according to the LCP's treatment of Point Dume, there are no significant coastal resources and no environmentally sensitive habitat area (ESHA) on the site that would be negatively affected by the project.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the Commission finds that the City applied its LCP policies and provisions correctly in finding that the project is located in the Point Dume area and that therefore the LUP Policies specific to Point Dume properties apply. Additionally, this is the last remaining infill lot fronting Zuma View Place. As such, the City's decision will have no adverse precedential value for future CDP decisions.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the project is located within the Point Dume area and LCP provisions specific to that area apply. These provisions differ from other more general Malibu LCP policies (these being more akin to policies used throughout the rest of the state). However, given the specific treatment of the disturbed Point Dume stream canyons, the LCP's application is tailored to this locale and can be distinguished from other regional and state issues. Therefore, the approved residence does not have any regional or statewide significance.

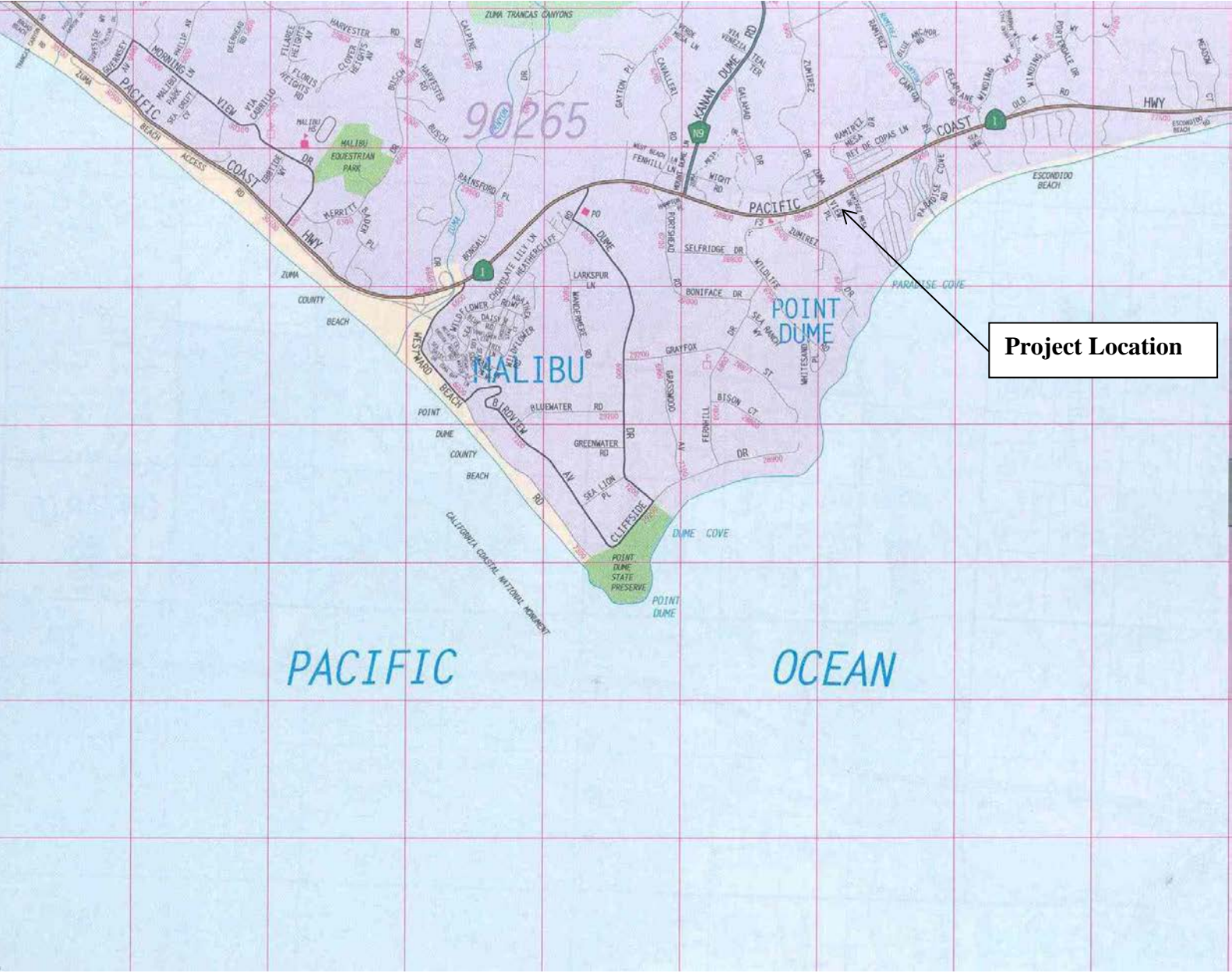
In conclusion, the Commission finds that none of the factors listed above, used to evaluate whether a substantial issue exists, favors a finding that a substantial issue exists. The permit approval will not be an adverse precedent for Point Dume area developments. Further, the approved development is supported by substantial evidence in the record and will not have an adverse effect on significant coastal resources.

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

## **APPENDIX A**

## **SUBSTANTIVE FILE DOCUMENTS**

1. Certified City of Malibu Local Coastal Plan;
2. City of Malibu City Council Appeal Agenda Report dated January 21, 2015 (Appeal No. 14-009) and attachments thereto;
3. City of Malibu City Council Resolution No. 15-14;
4. City of Malibu Planning Commission Report dated September 25, 2014 (CDP 13-052) and attachments thereto;
5. City of Malibu Planning Commission Resolutions 14-85;

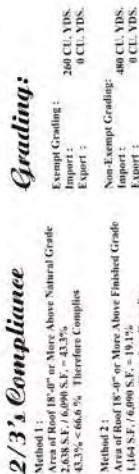


Project Location



Project Location

Exhibit 2  
Site Aerial View  
Appeal No. A-4-MAL-15-0008



## Project Data

### Area Tabulation:

Garage:	769 S.F.
Habitat:	4,523 S.F.
Covered Porch:	858 S.F.
Total Residence:	6,090 S.F.
Accessory Structure:	230 S.F.
TOTAL:	6,320 S.F.
	6,320 S.F. < 7,000 S.F.

**Setbacks:**

Front Yard : Depth of lot = 271'-1" X 20% = 54'-3"  
Proposed Front Yard: 58'-9"

Rear Yard : Depth of lot = 271'-1" X 15% = 40'-8"  
Proposed Rear Yard: 53'-6"

Side Yard : Width of Lot = 164'-3"  
Proposed North Side Yard: 28'-9" = 16%  
Proposed South Side Yard: 16'-5" = 10%

*Impermeable Area:*

Maximum Allowable: 44,531 S.F. X 30% = 13,359 S.F.  
Proposed Immeasurable Surface: 7,500 S.F.

**Grading:**

Exempt Grading :	260 CU. YDS.
Import :	0 CU. YDS.
Export :	0 CU. YDS.

Non-Exempt Grading:	480 CU. YDS.
Import :	0 CU. YDS.
Export :	0 CU. YDS.

REVISION	BY

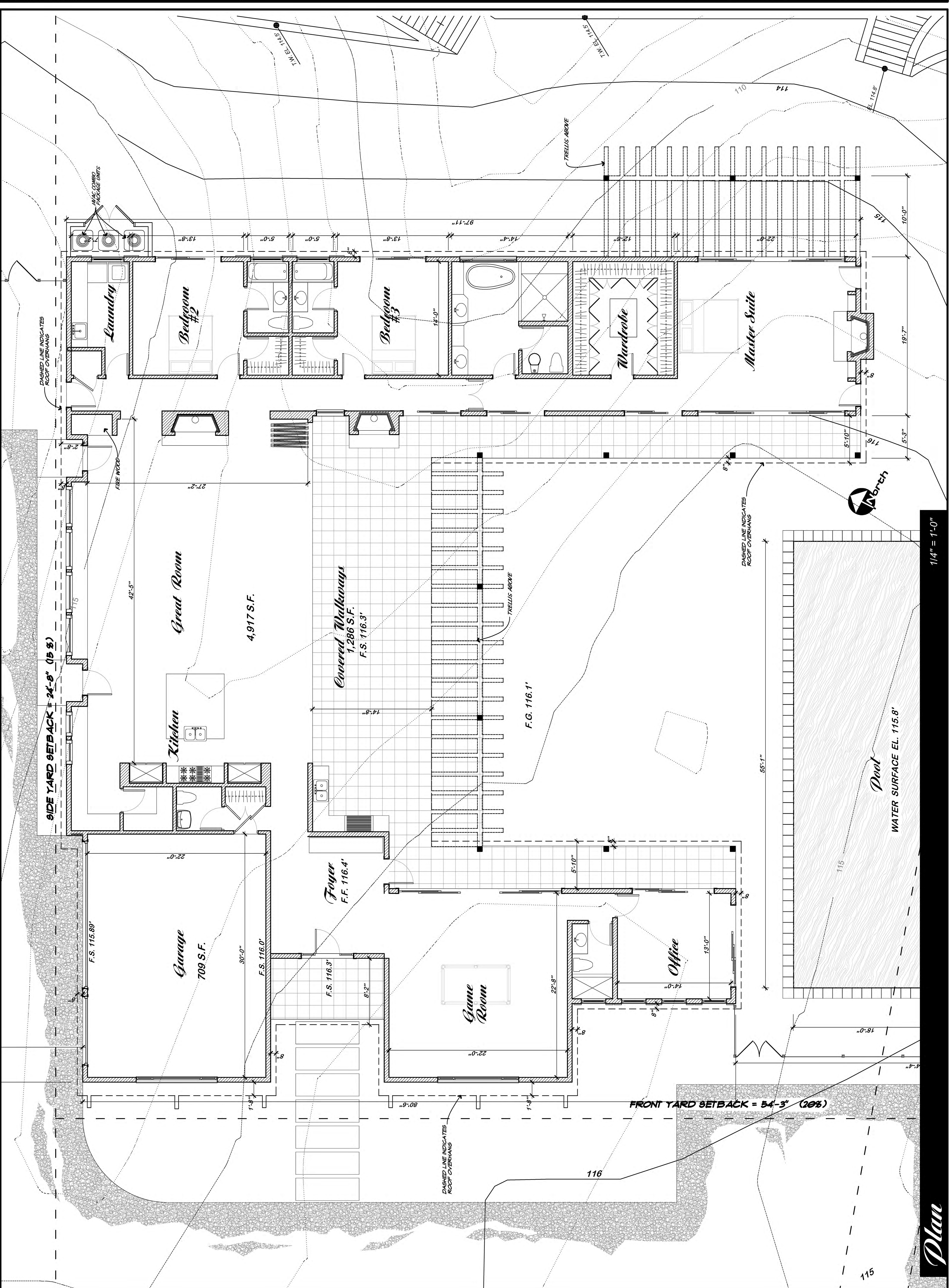
Stephen Yee  
ARCHITECT  
P.O. BOX 613  
MALIBU, CA 90265  
(310) 317 - 9766



The Dorn Residence  
6530 Zuma View Place  
Malibu, CA 90265

JOB NO.	243
DATE	2-5-14
SCALE	
DRAWN BY	SY

A-2



REVISION	BY

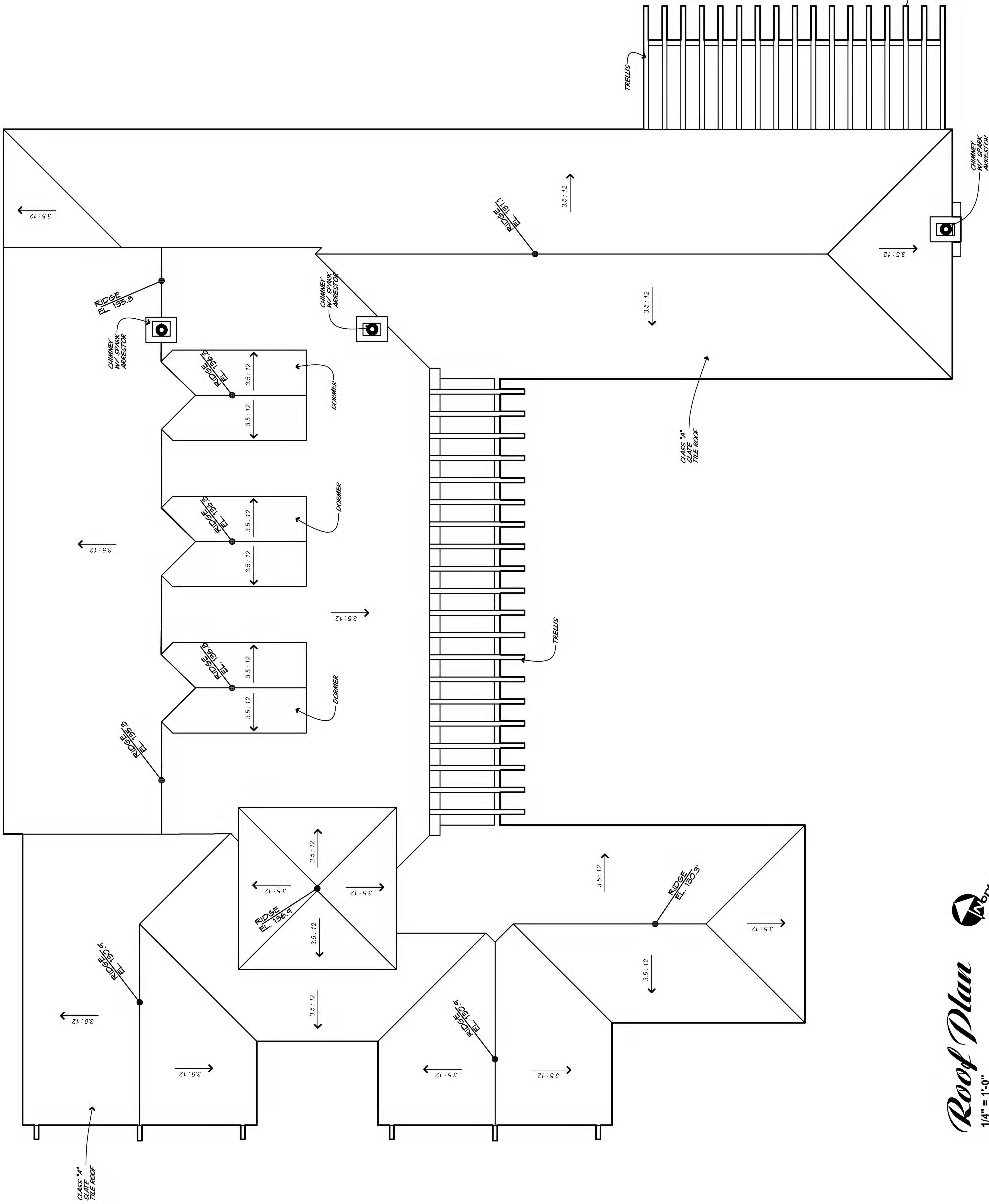
Stephen Yee  
ARCHITECT  
P.O. BOX 682  
MALIBU, CA 90265  
(310) 317 - 9766



The Dorn Residence  
6530 Zuma View Place  
Malibu, CA 90265

JOB NO.	243
DATE	2-6-14
SCALE	
DRAWN BY	SY

A-3



Roof Plan  
1/4" = 1'-0"



REVISION	BY

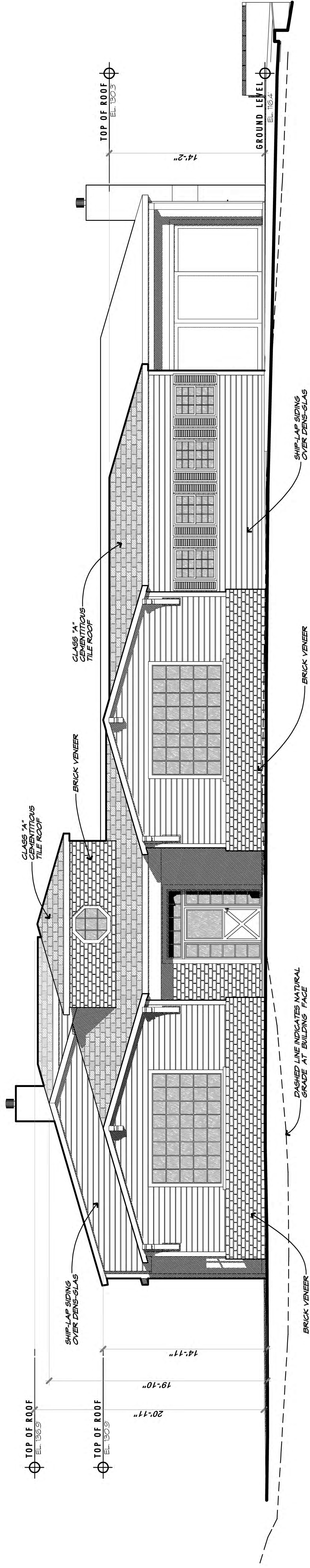
Stephen Yee  
ARCHITECT  
P.O. BOX 612  
MALIBU, CA 90265  
(310) 317-9766



The Dorn Residence  
6530 Penna View Place  
Malibu, CA 90265

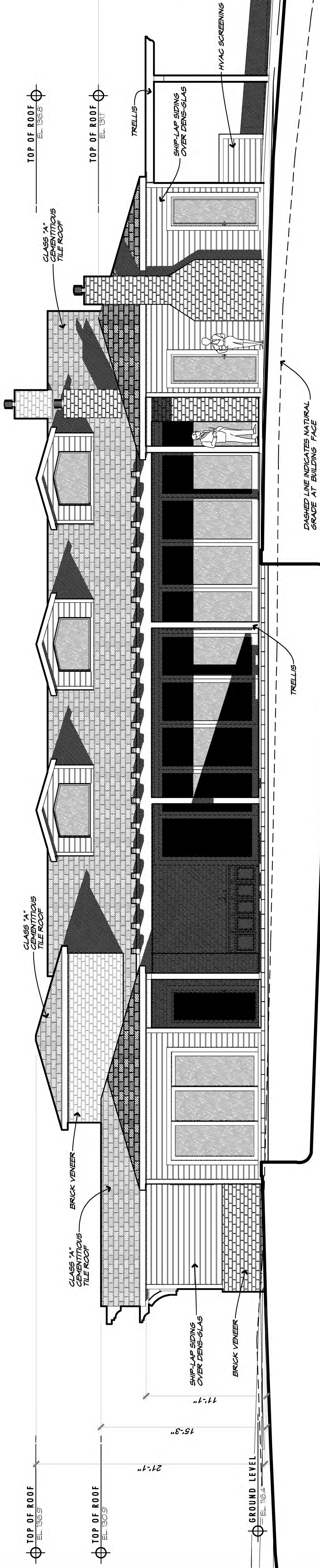
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SCALE	
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A-4



*West Elevation*

1/4" = 1'-0"



*South Elevation*

1/4" = 1'-0"

REVISION	BY

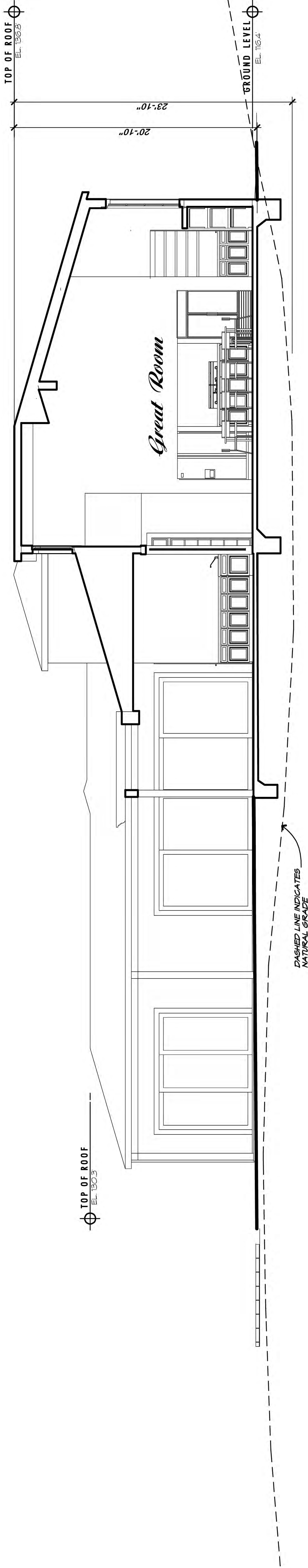
Stephen Yee  
ARCHITECT  
P.O. BOX 682  
MALIBU, CA 90265  
310.317 - 9766



The Dorn Residence  
6530 Penna View Place  
Malibu, CA 90265

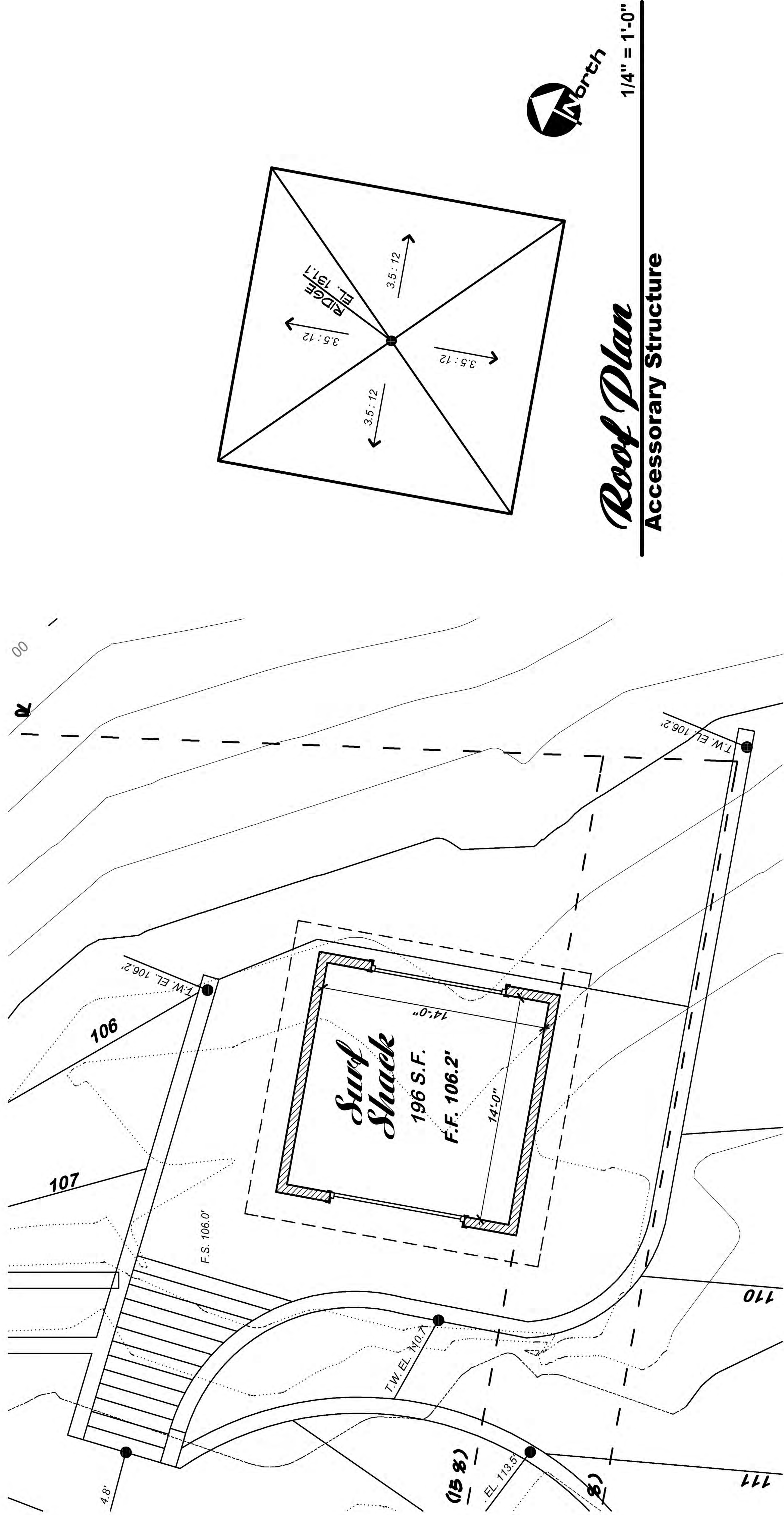
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DATE 2-5-14  
SCALE:  
DRAWN BY: SY

A-6



Section A-A

1/4" = 1'-0"

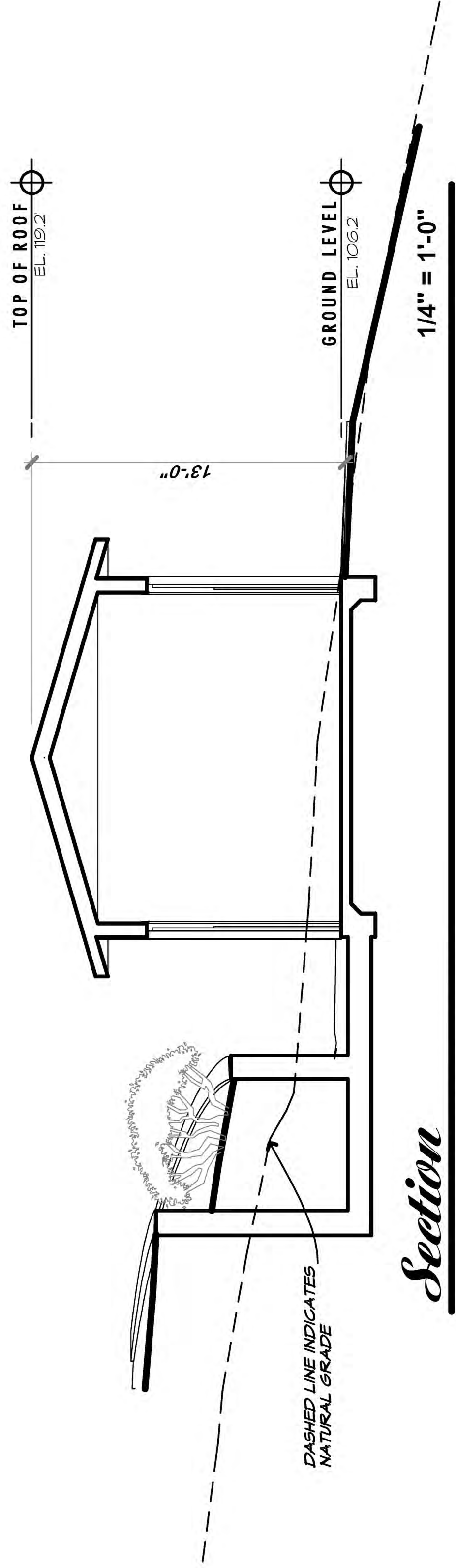


Roof Plan  
Accessory Structure

1/4" = 1'-0"

Plan  
Accessory Structure

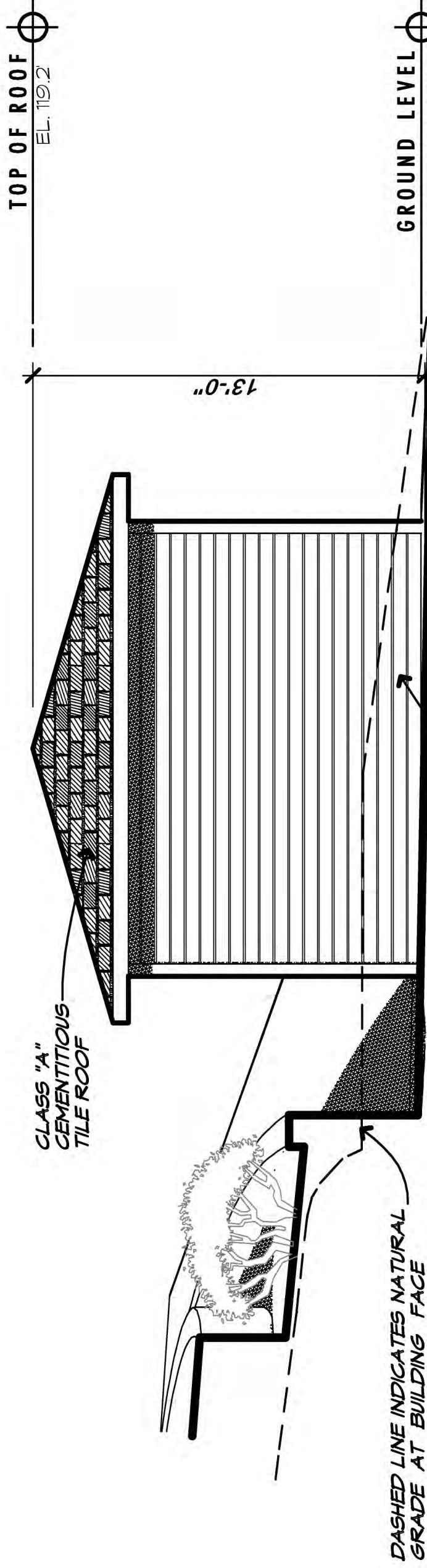
1/4" = 1'-0"



Section

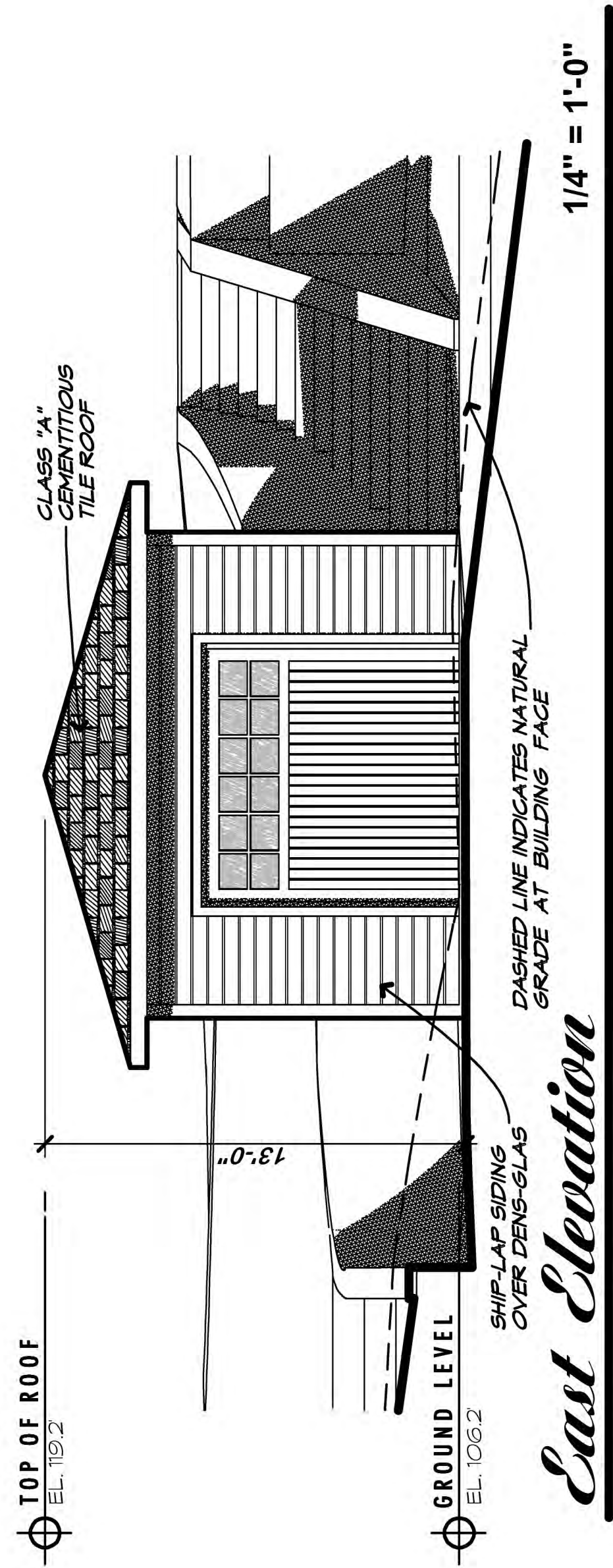
ACCESSORY STRUCTURE

1/4" = 1'-0"



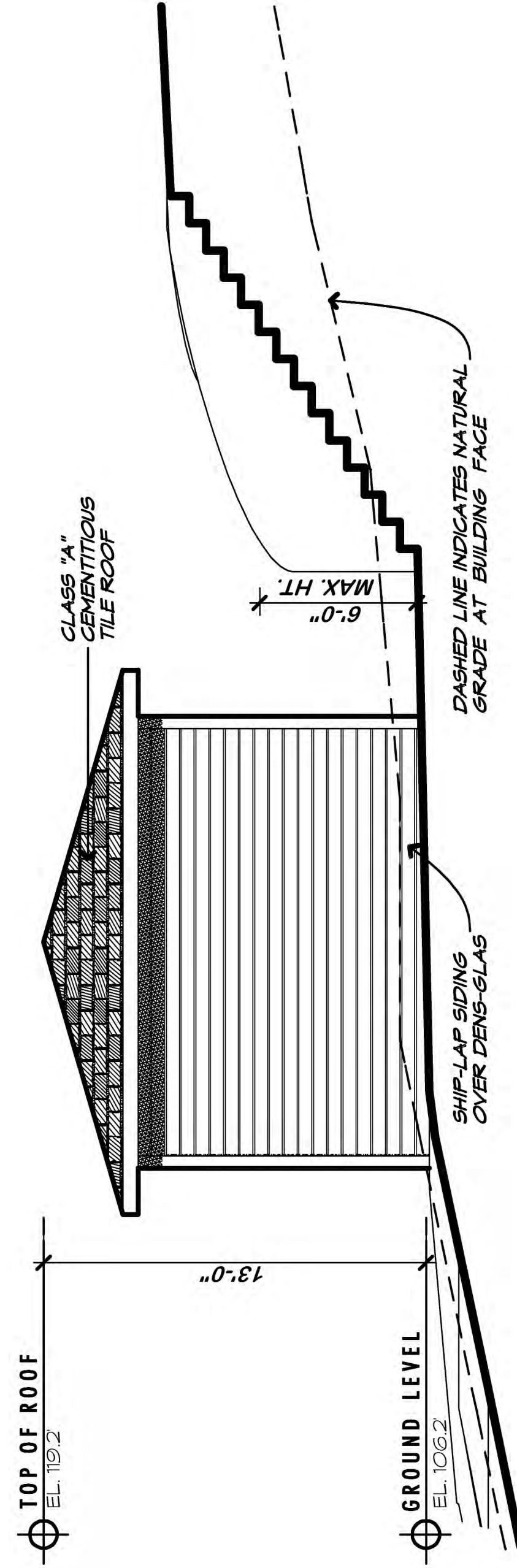
East Elevation  
ACCESSORY STRUCTURE

1/4" = 1'-0"



East Elevation  
ACCESSORY STRUCTURE

1/4" = 1'-0"



North Elevation  
ACCESSORY STRUCTURE

1/4" = 1'-0"





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

FEB 26 2015 BR

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Richard and Sonja Kraft

Mailing Address: 6500 Zuma View Place

City: Malibu

Zip Code: 90265

Phone: 310-924-1893

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Anthony and Cynthia Dorn,

Coastal Development Permit No. 13-052 and Site Plan Review No. 13-050

Construction of a new 5,381 square foot single-story, single family residence with two attached trellises, an attached 709 square foot, three-car garage, a detached 230 square foot accessory structure, swimming pool, fencing, retaining walls, landscaping, onsite relocation of a protected walnut tree, review request for construction over 18 feet in height up to a maximum height of 21 feet, 1 inch.

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

6530 Zuma View Place, Malibu 90265

Cross Street Pacific Coast Highway

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

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

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-4-MAL-15-0008

DATE FILED: 2/26/15

DISTRICT: So. Central Coast

**Exhibit 4**

**Appeal by Richard and Sonja Kraft  
Appeal No. A-4-MAL-15-0008**

**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: February 9, 2015

7. Local government's file number (if any): CDP No. 13-052 SPR No. 13-050

**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:

Steve Yett, PO Box 682, Malibu, CA 90265  
Anthony and Cynthia Dorn, 825 South Barrington Ave, Los Angeles, CA 90049

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) Daniel Cooper  
Cooper Ecological Monitoring, Inc.,  
255 Satinwood Avenue.  
Oak Park, CA 91377

(2) John Mazza  
Zumirez Drive  
Malibu, CA 90265

(3) Mikke Pierson  
Chairman Planning Commission  
23825 Stuart Ranch Road  
Malibu CA 90265

(4)

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

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

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

We are appealing 6530 Zuma View Place, Malibu CA - Coastal Development Permit No. 13-052 and Site Plan Review No. 13-050 on the grounds that the City of Malibu has violated the sections of the Malibu LUP and LIP adopted by the California Coastal Commission on September 13, 2002 that pertain to ESHA. Specially, these include (from Malibu LUP):

- A. Section 3.1 Protection of streams and wetlands.
- B. Section 3.4 Any area not designated on the LUP ESHA map that meets ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA under the LCP.
- C. Section 3.26 Required buffer (100') from outer edge of canopy for oak woodland or riparian ESHA.
- D. Section 3.27 Required buffer for other native habitats such that that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat and thus require fuel modification that impacts ESHA.

In summary, we request that the following corrections and guidelines be set forth and followed by the City of Malibu in the development of subject property 6530 Zuma View Place, Malibu CA.

1. 6530 Zuma View Place is acknowledged as part of Paradise Cove and NOT Point Dume as per the City of Malibu General Plan neighborhood designations.
2. 6530 Zuma View Place - Paradise Cove is NOT SUBJECT to the the Point Dume Exemption 3.35 eliminating ESHA's on Point Dume.
3. That City of Malibu protect the ESHA at 6530 Zuma View Place and re-designate the Riparian/Woodland ESHA area that flows on the edge of 6530 Zuma View Place property down to the Ocean.
4. That the City adhere to its own LUP policies that state that the presence of ESHA not already designated on the ESHA map A) shall be determined on the basis of site-specific study prior to the approval of any development, and B) shall be reviewed by the City's Environmental Review Board.
5. That the City review the habitat present in the drainage east of Zuma View Place to determine if it meets the definition of ESHA, and if so that it be afforded all protection provided for ESHA by the

LUP, and protected against significant disruption of habitat values

6. That only resource dependent uses may be permitted within ESHA and ESHA buffer.
7. That the buffer zone for ESHA, if found to be present, be extended 100 feet from the boundary of the ESHA to fully protect the canopy and drip line of the 150 year old plus mature coast live oak tree present on the property an associated habitat..
8. That the entire development area, including all grading, the main house, and the outbuilding ("surf shack"), be relocated outside ESHA and the ESHA buffer.
9. That all landscaping and garden features (e.g., pathways, lighting) be relocated outside ESHA, and, where possible, the ESHA buffer.
10. That a new Biological Study be developed that analyzes the habitat in the drainage adjacent to Zuma View Place, and that California Department of Fish and Wildlife approval be re-evaluated based on these new findings..
11. Uphold the LUP policies establishing that the presence of ESHA not already designated on the ESHA map shall be determined on the basis of site-specific study prior to the approval of any development. Such determinations shall be reviewed by the City's Environmental Review Board. Habitat area found to meet the definition of ESHA shall be accorded all protection provided for ESHA by the LUP. ESHA shall be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA.

With the passage of the final Malibu LCP in Sept. 2002, certain habitats on and around Point Dume were removed from ESHA designation, mainly scrub and non-riparian shrublands , and has used a standard that only steep-sided streams (25% grade or steeper) are protected. So, rather than using this standard as a guide for protecting riparian and oak woodland areas, the city has apparently been a simple slope calculation throughout Point Dume rather than affording ESHA habitat such protections. However, it was never the intention to remove protection from all Point Dume area habitat, and several drainages and headlands on Point Dume are still mapped as ESHA. Yet, in the correspondence from the City associated with 6530 Zuma View Place, and in comments by city officials at the recent City Council hearing over our appeal, it has become clear that there still exists a major misunderstanding as to a) the fact that Point Dume can and does support ESHA; b) that habitat not mapped as ESHA can still be considered as such; and c) that the boundaries of Point Dume are apparently arbitrary, and do not necessarily take in Zuma View Place/Paradise Cove.

Further, we assert that the subject property at 6530 Zuma View Place is part of Paradise Cove and is therefore not exempt from ESHA protection, including buffers, that might exist on Point Dume proper. Our argument and points stated below will prove that there exists an ESHA (oak woodland, riparian and wetland habitat) that runs on the edge and up into the property on the eastern side of 6530 Zuma View Place; that the area has been deemed an ESHA in a prior environmental (by Rincon Consultants, Inc.) upstream just north of 6530 Zuma View Place on Pacific Coast Highway, despite its having demonstrably more limited and degraded resources than that south of PCH (i.e., adjacent to 6530 Zuma View Place); that the habitat on and adjacent to 6530 Zuma View Place had been an established ESHA prior to Sept. 2002; that the area adjacent to the subject property is treated as an ESHA in the City of Malibu General Plan description of Paradise Cove ("neighborhood descriptions"); and that a recent

(2015) a report by biologist Daniel S. Cooper/Cooper Ecological Monitoring, Inc. found that the area does constitute ESHA as defined by the City of Malibu and that this habitat extends across approximately 8,320 s.f. of the subject property.

We elaborate on these assertions below.

12. Paradise Cove is not part of Point Dume - The lots on Zuma View Place are described in the General Plan of Malibu as being part of Paradise Cove, rather than Point Dume.

A. The City of Malibu General Plan designates Paradise Cove as a separate neighborhood from Point Dume. The boundaries of Paradise Cove are described thus "The boundary lines are the Pacific Ocean to the southeast, Pacific Coast Highway on the northwest, Zuma View Drive and the western watershed on the west, and a short distance east of the driveway on the east." [Refer to Document # 1, 1.6 Appendix, page 46 ("Paradise Cove" and "Point Dume" paragraphs)].

13. Paradise Cove is not subject to the the Point Dume Exemption 3.35 eliminating ESHA's on Point Dume.

A. At the time of the enactment of the LCP for Malibu the lots on Zuma View Place were part of the Paradise Cove Mobile home Park, separate and distinct from Point Dume and therefore were not subject to what has been interpreted as the "Point Dume ESHA Exemption" (Section 3.35) eliminating ESHA's on Point Dume. [Refer to Document # 2 ("3.35 Development in the Point Dume area shall be designed to avoid encroachment on slopes of 25 percent grade or steeper")]

14. 28517 Pacific Coast Highway - (A nearby property located north-northeast of Zuma View Place and Pacific Coast Highway) shares the drainage with 6530 Zuma View Place, and a recent environmental study concluded its habitat constituted ESHA. [Refer to Document #3 (Report of findings of a Preliminary Site Assessment prepared by Rincon Consultants, Inc. Study April 27, 2012 project # 10-67050, "Overview Maps and Detail" pp. 27 & 28.)]

A. 28517 PCH details a WETLAND/ STREAM north of Zuma View Place flowing on the south side of the highway and continuing to flow behind 6530 Zuma View Place. South of PCH, this stream greatly widens and includes an extensive native oak-walnut woodland, as well as wetland and riparian habitats, that continue c. 500 meters south to the Pacific Ocean.

Thus, the City of Malibu violated the Coastal Act by not considering the stream and woodland that was already determined by the City (upstream/across the street) as a WETLAND STREAM/ ESHA, as all streams must be treated as ESHA in the City of Malibu LIP/ LUP (<http://www.malibucity.org/DocumentCenter/View/4789>) unless they are located on Point Dume, which this is not (see above).

15. ESHA - There was no ESHA study done for the development, even though the Malibu General Plan states that "The western portion of the property [= Paradise Cove] contains a three-quarter mile long watershed, about eight to ten acres in size. This area is basically unspoiled and still contains riparian vegetation, including coastal sage scrub and malay willows." [Refer to Document #1- 1.6 Appendix - Neighborhood Descriptions 1.6.3 Paradise Cove (page 47, paragraph # 2)].

16. ESHA HABITAT STUDY - There was no study done for the impact on the animals in the ESHA area. From the General Plan, "Because of the abundance of vegetation in the western watershed, it supports a variety of wildlife such as raccoons, possums, bobcats, gray and red foxes, coyotes, bats, and birds, such as hawks, owls, roadrunners—including the local flock of Point Dume parrots—and many types of lizards, snakes, frogs and toads. This stream bed is basically seasonal, and during the dry months is a much-used wildlife corridor. Additionally, Paradise Cove contains hundreds of eucalyptus and pine trees that are home to many of the birds in the area." [Ibid].

17. Pre-2003 ESHA Designation - This area was designated as an ESHA when we (Krafts) built our home in 2002 and we built at the required buffer zone established for ESHA's in 2002.

#### 18. Coastal Act Policy

- Protection of ESHA (Section 30240) - requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development, with the exception of uses dependent on the resources, is allowed within any ESHA. This policy further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas.

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Chair Commissioner Mikke Pierson and Commissioner John Mazza stated that this area was a know Riparian/ Wetland with bobcats and wildlife. The City of Malibu pays the County to monitor the stream and that it is one of the main 28 streams in the Bay of Malibu and Bay of La that's being tested.

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#### DOCUMENTS

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Document #2 City of Malibu LUP wording

Document #3 Preliminary Site Assessment – Site 1 conducted April 27, 2012, for the property located at 28517 Pacific Coast Highway in Malibu, California, APNs 4467-013-022 & -023. Page 27 & 28 Maps.

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Document #5 Daniel Cooper, 2014. Biological Assessment 6530 Zuma View Place, Malibu, CA 90265.

Document #6 Daniel Cooper, ESHA Power Point Presentation, 6530 Zuma View Place, Malibu

## DOCUMENT #1

The City of Malibu General Plan description delineating Paradise Cove as the Neighborhood from Zuma View to Paradise Cove Trailer Park.

### Chapter 1.0 LAND USE ELEMENT 1.6 Appendix \_Neighborhood Descriptions 1.6.3

1.6.3 "Paradise Cove The area known as Paradise Cove is located at the mouth of the Ramirez Canyon watershed. The topography of the area ranges from sea level to approximately 200 feet. The boundary lines are the Pacific Ocean to the southeast, Pacific Coast Highway on the northwest, Zuma View Drive and the western watershed on the west, and a short distance east of the driveway on the east. It is approximately 80 acres in size, contains two watershed areas and consists of two large parcels and four smaller, single-family residential lots located on Zuma View and Pacific Coast Highway. Approximately 30 acres of the property lie in the Ramirez Canyon floodplain, which drains a watershed of 2,880 acres. The area within the floodplain includes 71 mobile homes, a restaurant, parking lot, guard house, manager's office, and the remnants of a fishing pier.".....

"Ramirez Creek is a blueline stream that generally runs year round, and is the major drainage course into Paradise Cove. Although the portion of the stream bed within the park has been converted into a cement drainage culvert, the area still contains some ancient Sycamore trees. The western portion of the property contains a three-quarter mile long watershed, about eight to ten acres in size. This area is basically unspoiled and still contains riparian vegetation, including coastal sage scrub and malay willows. Because of the abundance of vegetation in the western watershed, it supports a variety of wildlife such as raccoons, possums, bobcats, gray and red foxes, coyotes, bats, and birds, such as hawks, owls, roadrunners—including the local flock of Point Dume parrots—and many types of lizards, snakes, frogs and toads. This stream bed is basically seasonal, and during the dry months is a much-used wildlife corridor. Additionally, Paradise Cove contains hundreds of eucalyptus and pine trees that are home to many of the birds in the area.".....

### Point Dume Description 1.5.13 [NOTE: Separate from Paradise Cove.]

(Information Sources: Chumash culture at Paradise Cove - Dr. Chester King, archaeologist; historical - Malibu Lagoon Museum Library; geological -Hannan Geotechnical Report, 1992; septic -City of Malibu 1992 Wastewater Study, Peter Warshall and Associates; biological - Dr. Martha Witter, City Biologist)

## DOCUMENT #2

### Relevant wording from Malibu LUP

#### Land Use

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designated as ESHA. There are also valuable marine resource areas including kelp forests, intertidal areas, and near shore shallow fish habitats. The ESHA Map will be reviewed and updated periodically to reflect up to date information and necessary revisions shall be made as an amendment to the LUP.

The LUP policies establish that the presence of ESHA not already designated on the ESHA map shall be determined on the basis of site-specific study prior to the approval of any development. Such determinations shall be reviewed by the City's Environmental Review Board. Habitat area found to meet the definition of ESHA shall be accorded all protection provided for ESHA by the LUP. ESHA shall be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA.

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<http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf>

### ESHA Designation

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

3.4 Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The following areas shall be considered ESHA, unless there is compelling site-specific evidence to the contrary: • Any habitat area that is rare or especially valuable from a local, regional, or statewide basis. • Areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law. • Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations. • Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.

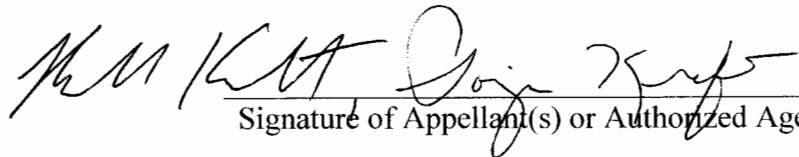
3.26 Required buffer areas shall extend from the following points: • The outer edge of the canopy of riparian vegetation for riparian ESHA. • The outer edge of the tree canopy for oak or other native woodland ESHA.

3.27 Buffers shall be provided from coastal sage scrub and chaparral ESHA that are of sufficient width to ensure that no required fuel modification (Zones A, B, or C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat.

**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: Feb. 26, 2015

**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: Feb. 26, 2015

# DETAIL MAP - 03301770.2r



Target Property

▲ Sites at elevations higher than or equal to the target property

◆ Sites at elevations lower than the target property

▲ Manufactured Gas Plants

⬮ Sensitive Receptors

■ National Priority List Sites

■ Dept. Defense Sites

0 1/16 1/8 1/4 Miles

Indian Reservations BIA

County Boundary

Oil & Gas pipelines from USGS

100-year flood zone

500-year flood zone

National Wetland Inventory

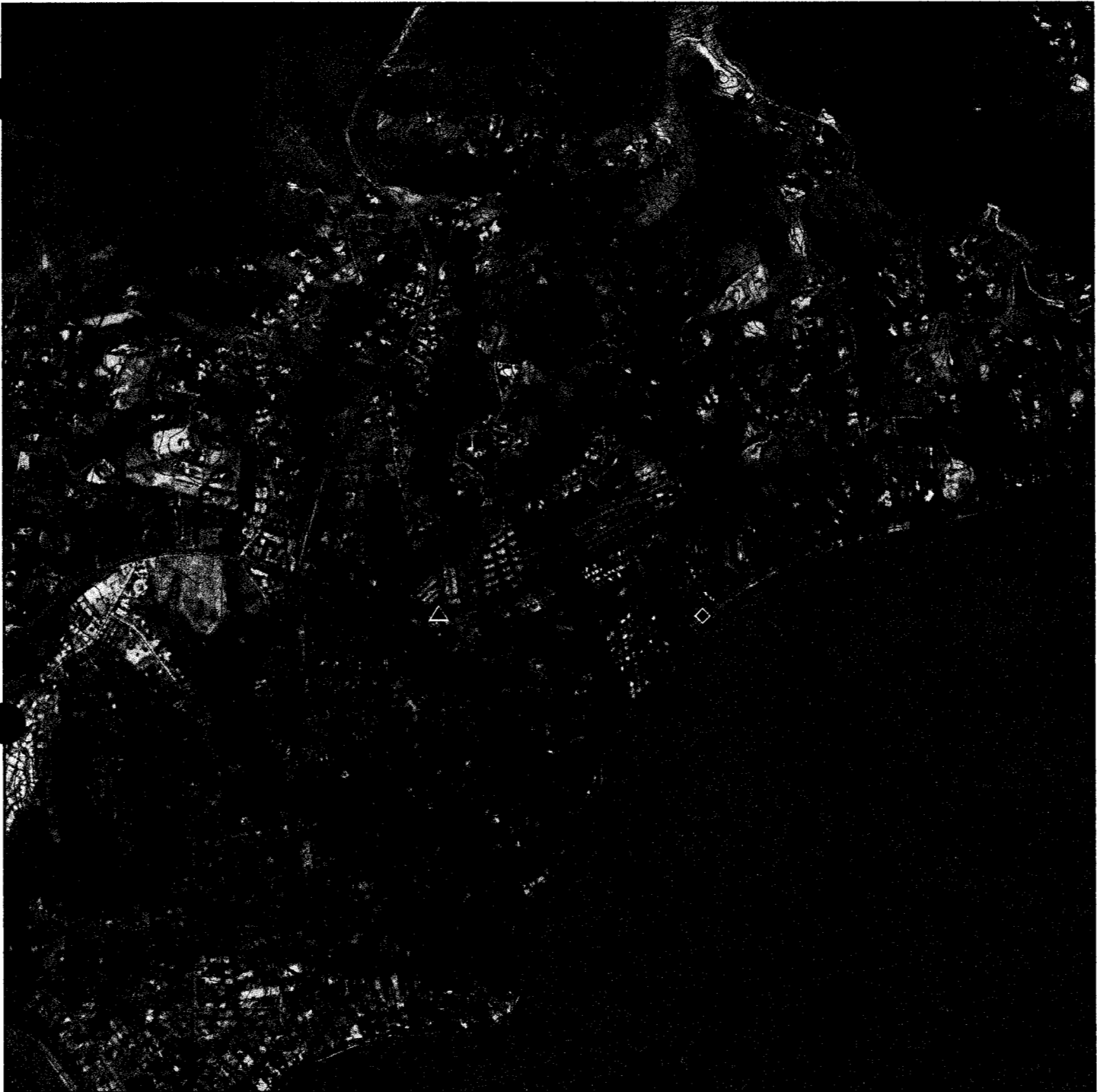
Areas of Concern

This report includes Interactive Map Layers to display and/or hide map information. The legend includes only those icons for the default map view.


SITE NAME: Sites 1 and 2  
 ADDRESS: PACIFIC COAST HWY & RAMIREZ MESA DR  
 Malibu CA 90265  
 LAT/LONG: 34.0225 / 118.793


CLIENT: Rincon  
 CONTACT: Judy Gamboa  
 INQUIRY #: 03301770.2r  
 DATE: April 12, 2012 2:05 pm

# OVERVIEW MAP - 03301770.2r



 Target Property

 Sites at elevations higher than or equal to the target property


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
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CLIENT: Rincon  
CONTACT: Judy Gamboa  
INQUIRY #: 03301770.2r  
DATE: April 12, 2012 2:04 pm

We are appealing 6530 Zuma View Place, Malibu CA - Coastal Development Permit No. 13-052 and Site Plan Review No. 13-050 on the grounds that the City of Malibu has violated the sections of the Malibu LUP and LIP adopted by the California Coastal Commission on September 13, 2002 that pertain to ESHA. Specially, these include (from Malibu LUP):

- A. **Section 3.1** Protection of streams and wetlands.
- B. **Section 3.4** Any area not designated on the LUP ESHA map that meets ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA under the LCP.
- C. **Section 3.26** Required buffer (100') from outer edge of canopy for oak woodland or riparian ESHA.
- D. **Section 3.27** Required buffer for other native habitats such that that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat and thus require fuel modification that impacts ESHA.

**In summary, we request that the following corrections and guidelines be set forth and followed by the City of Malibu in the development of subject property 6530 Zuma View Place, Malibu CA.**

1. 6530 Zuma View Place is acknowledged as part of Paradise Cove and NOT Point Dume as per the City of Malibu General Plan neighborhood designations.
2. 6530 Zuma View Place - Paradise Cove is NOT SUBJECT to the the Point Dume Exemption 3.35 eliminating ESHA's on Point Dume.
3. That City of Malibu protect the ESHA at 6530 Zuma View Place and re-designate the Riparian/ Woodland ESHA area that flows on the edge of 6530 Zuma View Place property down to the Ocean.
4. That the City adhere to its own LUP policies that state that the presence of ESHA not already designated on the ESHA map A) shall be determined on the basis of site-specific study prior to the approval of any development, and B) shall be reviewed by the City's Environmental Review Board.
5. That the City review the habitat present in the drainage east of Zuma View Place to determine if it meets the definition of ESHA, and if so that it be afforded all protection provided for ESHA by the LUP, *and* protected against significant disruption of habitat values
6. That only resource dependent uses may be permitted within ESHA *and* ESHA buffer.
7. That the buffer zone for ESHA, if found to be present, be extended 100 feet from the boundary of the ESHA to fully protect the canopy and drip line of the 150 year old plus mature coast live oak tree present on the property an associated habitat..

**FEB 27 2015**

8. That the entire development area, including all grading, the main house, and the outbuilding ("surf shack"), be relocated outside ESHA and the ESHA buffer.
9. That all landscaping and garden features (e.g., pathways, lighting) be relocated outside ESHA, and, where possible, the ESHA buffer.
10. That a new Biological Study be developed that analyzes the habitat in the drainage adjacent to Zuma View Place, and that California Department of Fish and Wildlife approval be re-evaluated based on these new findings..
11. Uphold the LUP policies establishing that the presence of ESHA not already designated on the ESHA map shall be determined on the basis of site-specific study prior to the approval of any development. Such determinations shall be reviewed by the City's Environmental Review Board. Habitat area found to meet the definition of ESHA shall be accorded all protection provided for ESHA by the LUP. ESHA shall be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA.

With the passage of the final Malibu LCP in Sept. 2002, certain habitats on and around Point Dume were removed from ESHA designation, mainly scrub and non-riparian shrublands<sup>1</sup>, and has used a standard that only steep-sided streams (25% grade or steeper) are protected. So, rather than using this standard as a guide for protecting riparian and oak woodland areas, the city has apparently been a simple slope calculation throughout Point Dume rather than affording ESHA habitat such protections. However, it was never the intention to remove protection from all Point Dume area habitat, and several drainages and headlands on Point Dume are still mapped as ESHA. Yet, in the correspondence from the City associated with 6530 Zuma View Place, and in comments by city officials at the recent City Council hearing over our appeal, it has become clear that there still exists a major misunderstanding as to a) the fact that Point Dume can and does support ESHA; b) that habitat not mapped as ESHA can still be considered as such; and c) that the boundaries of Point Dume are apparently arbitrary, and do not necessarily take in Zuma View Place/Paradise Cove.

Further, we assert that the subject property at 6530 Zuma View Place is part of Paradise Cove and is therefore not exempt from ESHA protection, including buffers, that might exist on Point Dume proper. Our argument and points stated below will prove that there exists an ESHA (oak woodland, riparian and wetland habitat) that runs on the edge and up into the property on the eastern side of 6530 Zuma View Place; that the area has been deemed an ESHA in a prior environmental (by Rincon Consultants, Inc.) upstream just north of 6530 Zuma View Place on Pacific Coast Highway, despite its having demonstrably more limited and degraded resources than that south of PCH (i.e., adjacent to 6530 Zuma View Place); that the habitat on and adjacent to 6530 Zuma View Place had been an established ESHA *prior* to Sept. 2002; that the area adjacent to the subject property is treated as an ESHA in the City of Malibu General Plan

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<sup>1</sup> From the Malibu LUP, "In undeveloped areas, entire canyon habitats have been designated, including riparian corridors, coastal sage scrub, chaparral, and woodlands. Within developed areas, riparian corridors are designated as ESHA. **On Point Dume, the streams and riparian corridors are designated ESHA. These areas are recognized as rare and functioning for wildlife, notwithstanding the disturbances resulting from adjacent residential development.**"

description of Paradise Cove (“neighborhood descriptions”); and that a recent (2015) a report by biologist Daniel S. Cooper/Cooper Ecological Monitoring, Inc. found that the area does constitute ESHA as defined by the City of Malibu and that this habitat extends across approximately 8,320 s.f. of the subject property.

We elaborate on these assertions below.

12. **Paradise Cove is not part of Point Dume** - The lots on Zuma View Place are described in the General Plan of Malibu as being part of Paradise Cove, rather than Point Dume.

A. The City of Malibu General Plan designates Paradise Cove as a separate neighborhood from Point Dume. The boundaries of Paradise Cove are described thus **“The boundary lines are the Pacific Ocean to the southeast, Pacific Coast Highway on the northwest, Zuma View Drive and the western watershed on the west, and a short distance east of the driveway on the east.”** [Refer to Document # 1, 1.6 Appendix, page 46 (“Paradise Cove” and “Point Dume” paragraphs)].

13. **Paradise Cove is not subject to the the Point Dume Exemption 3.35 eliminating ESHA’s on Point Dume.**

A. At the time of the enactment of the LCP for Malibu the lots on Zuma View Place were part of the Paradise Cove Mobile home Park, separate and distinct from Point Dume and therefore were not subject to what has been interpreted as the “Point Dume ESHA Exemption” (Section 3.35) eliminating ESHA’s on Point Dume. [Refer to Document # 2 (“3.35 Development in the Point Dume area shall be designed to avoid encroachment on slopes of 25 percent grade or steeper”)]

14. **28517 Pacific Coast Highway** – (A nearby property located north-northeast of Zuma View Place and Pacific Coast Highway) shares the drainage with 6530 Zuma View Place, and a recent environmental study concluded its habitat constituted ESHA. [Refer to Document #3 (Report of findings of a Preliminary Site Assessment prepared by Rincon Consultants, Inc. Study April 27, 2012 project # 10-67050, “Overview Maps and Detail” -pp. 27 & 28.)]

A. 28517 PCH details a WETLAND/ STREAM north of Zuma View Place flowing on the south side of the highway and continuing to flow behind 6530 Zuma View Place. South of PCH, this stream greatly widens and includes an extensive native oak-walnut woodland, as well as wetland and riparian habitats, that continue c. 500 meters south to the Pacific Ocean.

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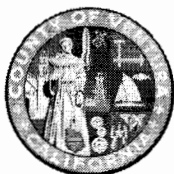
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*3.4 Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The following areas shall be considered ESHA, unless there is compelling site-specific evidence to the contrary: · Any habitat area that is rare or especially valuable from a local, regional, or statewide basis. · Areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law. · Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations. · Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.*

*3.26 Required buffer areas shall extend from the following points: · The outer edge of the canopy of riparian vegetation for riparian ESHA. · The outer edge of the tree canopy for oak or other native woodland ESHA.*

*3.27 Buffers shall be provided from coastal sage scrub and chaparral ESHA that are of sufficient width to ensure that no required fuel modification (Zones A, B, or C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat.*



# Appeal Form

County of Ventura • Resource Management Agency • Planning Division

800 South Victoria Avenue, Ventura, CA 93009 • 805 654-2488 • <http://www.ventura.org/rma/planning>

Appeal Number: \_\_\_\_\_

To: ☐ Board of Supervisors  
☒ Planning Commission

I hereby appeal the decision of the Planning Commission, which was given on Feb, 9, 2015, 2015.

The decision was as follows:

6530 Zuma View Place, Malibu CA 90265  
Coastal Development Permit No. 13-052 and Site Plan  
Review No. 13-050 was passed.

The grounds of appeal are (attach extra sheets as needed):

see attached:  
City of Malibu has violated the sections of the  
Malibu LUP and LIP adopted by the CA Coastal  
Commission on September 13, 2002 that pertain  
to ESHA.

I request that the appropriate decision making body take the following action:

See attached Appeal Page 3

Name of Appellant: Richard & Sonja Kraft

Address of Appellant: 6500 Zuma View Place, Malibu, CA 90265

Telephone Number of Appellant: 310-924-1893, 310-579-5026

Is the appellant a party in the application? no. If not, state the basis for filing the appeal as an "aggrieved person."

We are neighbors and we want to protect the ESHA.

  
Signature of Appellant

Feb. 26, 2015  
Date

Appeal and deposit fee of \$\_\_\_\_\_ (pursuant to fee schedule specified by Resolution No. 222 of the Ventura County Board of Supervisors) received by the Planning Division at \_\_\_\_\_ (time) on \_\_\_\_\_, 20\_\_\_\_\_.

Kim L. Prillhart, Director  
Ventura County Planning Division

By \_\_\_\_\_



## NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

4-MAL-15-0148

Date of Notice: February 10, 2015

**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:**

*ac*  
Amanda Chiancola  
Associate Planner  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265  
(310) 456-2489

**FEB 12 2015**

*California Coastal Commission*

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 No. 13-052 and Site Plan Review No. 13-050-** An application for the construction of a new 5,381 square foot single-story single-family residence with two attached trellises, an attached 709 square foot three-car garage, a detached 230 square foot accessory structure, swimming pool, fencing, retaining walls, landscaping, onsite relocation of a protected walnut tree, grading, an alternative onsite wastewater treatment system, including a site plan review request for construction over 18 feet in height up to a maximum height of 21 feet, 1 inch.

Application Date: October 17, 2013  
Issue Date: ~~February 9, 2015~~  
Applicant: Steve Yett, PO Box 682, Malibu, CA 90265  
Owner: Anthony and Cynthia Dorn  
Location: 6530 Zuma View Place  
APN: 4466-002-026

**Final Action Information**

Final Local Action: ☐ Approved ☒ Approved with Conditions ☐ Denied  
Final Action Body: Approved by the City Council on February 9, 2015

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: February 9, 2015 City Council Meeting	X	
Adopted Findings and Conditions: City Council Resolution No. 15-14	X	
Site Plans and Elevations		9/25/2014

**California Coastal Commission Appeal Information**

This Final Action is:

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

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

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

- Property Owner/Applicant

Prepared by: Patricia Salazar, Senior Administrative Analyst

**Exhibit 5**  
**Final Local Action Notice**  
**Appeal No. A-4-MAL-15-0008**

FEB 12 2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 14-009 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 13-052 AND SITE PLAN REVIEW NO. 13-050 FOR CONSTRUCTION OF A NEW 5,381 SQUARE FOOT, SINGLE-STORY, SINGLE-FAMILY RESIDENCE WITH TWO ATTACHED TRELLISES, AN ATTACHED 709 SQUARE FOOT THREE-CAR GARAGE, A DETACHED 230 SQUARE FOOT ACCESSORY STRUCTURE, SWIMMING POOL, FENCING, RETAINING WALLS, AND AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, INCLUDING A SITE PLAN REVIEW REQUEST FOR CONSTRUCTION OVER 18 FEET IN HEIGHT, UP TO A MAXIMUM OF 21 FEET, 1 INCH IN THE RURAL RESIDENTIAL-ONE ACRE ZONING DISTRICT LOCATED AT 6530 ZUMA VIEW PLACE (ANTHONY AND CYNTHIA DORN)

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

Section 1. Recitals.

- A. On March 16, 1999, the California Coastal Commission reported Waiver De Minimis Number 4-99-007-W, which approved a lot line adjustment between 6500 Zuma View Place and the subject property.
- B. On August 7, 2002, an application for Plot Plan Review (PPR) No. 02-129 was submitted to the Planning Department for the construction of a new single-family residence.
- C. On October 5, 2004, PPR No. 02-129 was closed due to inactivity.
- D. On October 17, 2013, an application for Coastal Development Permit (CDP) No. 13-052 was submitted to the Planning Department by the applicant, Steve Yett, on behalf of the property owners, Anthony and Cynthia Dorn. The CDP application was routed to the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and the Los Angeles County Fire Department (LACFD) for review.
- E. On June 23, 2014, a Courtesy Notice of Proposed Project was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- F. On June 24, 2014, a Notice of CDP Application was posted on the subject property.
- G. On July 9, 2014 and August 13, 2014, Planning Department staff conducted a site visit and documented the story poles and existing site conditions.
- H. On August 13, 2014, the CDP application was deemed complete for processing.
- I. On August 21, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-

foot radius of the subject property.

J. On September 15, 2014, the Planning Commission continued the item to the October 6, 2014 Regular Planning Commission meeting.

K. On October 6, 2014, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, staff presentation and written reports, public testimony, and other information in the record and adopted Planning Commission Resolution No. 14-85 to approve an application for CDP No. 13-052 and Site Plan Review (SPR) No. 13-050, for the construction of a new 5,381 square foot, single-story single-family residence with two attached trellises, an attached 709 square foot three-car garage, a detached 230 square foot accessory structure, swimming pool, fencing, retaining walls, landscaping, onsite relocation of a protected walnut tree, grading, and an alternative onsite wastewater treatment system (AOWTS), including a site plan review request for construction over 18 feet in height up to a maximum height of 21 feet, 1 inch.

L. On October 16, 2014, the appellants, Richard and Sonja Kraft, filed an appeal of Planning Commission Resolution No. 14-85, approving CDP No. 13-052 and SPR No. 13-050.

M. On December 23, 2014, the applicant submitted a letter in response to the appeal filed by Mr. and Mrs. Kraft.

N. On January 8, 2015, 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.

## Section 2. Appeal of Action.

The appeal submitted on October 16, 2014, alleges that: 1) the findings set forth in Planning Commission Resolution No. 14-85 are not supported by the evidence in the record; and 2) the decision is contrary to law.

Specifically, the appellants contend: 1) No riparian study was performed, and improper setbacks were applied from a riparian zone; 2) There are Environmental Sensitive Habitat Area (ESHA) endangered species; 3) The project encroaches upon an oak tree; and 4) There is an unreasonable moving of a protected tree.

In the Council agenda report, Planning Department staff responded to each of appellants' 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 February 9, 2015 City Council meeting, the City Council hereby makes the following findings of fact denying Appeal No. 14-009 and finds that substantial evidence in the record supports the required

findings for approval of the proposed project, as conditioned by the conditions of approval included in Section 7 of this resolution. In addition, the analysis, findings of fact, and conclusions set forth by staff in the agenda report are incorporated herein as though fully set forth.

A. In adopting the City of Malibu Local Coastal Program (LCP), the California Coastal Commission specifically determined that stream canyons on Point Dume area do not meet the definition of ESHA, because they have been substantially degraded by past development and the introduction of nonnative species. As stated in LCP Land Use Policy 3.35 and Local Implementation Plan (LIP) Section 4.6.1(A), the appropriate buffer is to be provided by requiring development to avoid encroachment on slopes of 25 percent grade or steeper. The steeper portions of the canyon slope function as a buffer to development, minimizing human intrusion, and protecting the stream and riparian habitats by providing an area for infiltration of runoff, and minimizing erosion and sedimentation. The project is located within the Point Dume area and has been designed to avoid slopes of 25 percent and steeper, and therefore, complies with Section 4.6.1 of the LIP. Thus, the City Biologist determined a riparian study was not required.

B. The site contains five protected native trees, including three coast live oaks, one toyon and one Southern California black walnut tree. Since the native trees have potential to support a wide variety of wildlife species through the provision of food, nesting, and roosting cover, and contribute to the scenic quality of the community, the City Biologist required an inventory of the plant and animal species present on the project site, or those known or expected to be present on the project site at other times of the year, prepared by a qualified biologist, or resource expert.

A Biological Inventory and Native Tree Survey was completed by the project biologist, Greg Ainsworth, dated January 5, 2014, with an addendum dated May 28, 2014. The inventory characterized all onsite and adjacent habitat conditions for supporting sensitive biological resources and provided an inventory of plant species on the property. The inventory also took into consideration whether subsequent focused botanical or wildlife surveys would need to be conducted to determine the presence or absence of any special status or sensitive species and whether wildlife may utilize the property as a movement corridor to adjacent open spaces.

Per the biological inventory, there are no special status plants or wildlife species that have the potential to occur on the property because the entire property is disturbed. The project biologist and the City Biologist determined that the proposed single-family house would not disturb the adjacent woodland habitat directly or indirectly and its construction would be consistent with the adjacent properties to the north and south and in the general area. In addition, the majority of the property lacks the vegetation cover needed for shelter and foraging opportunities, and because adjacent land uses are developed (except to the east), the property does not serve as a regional or local movement corridor for wildlife. Nevertheless, in conformance with the City's General Plan Conservation Element, the project was conditioned to require that any necessary boundary fencing of any single area exceeding half an acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), less than 40 inches in height and have a space greater than 14 inches between the ground and the bottom of the post or wire to ensure the development will not prohibit wildlife movement.

Additionally, during the project biologist's field investigation, there was no sign of raptor or passerine nests found on or adjacent to the property. However, many of the trees located in the eastern portion of the site (and further east on the adjacent property) have the potential to provide habitat to nesting birds. Therefore, the City Biologist has conditioned the project to require nesting bird surveys by a qualified biologist prior to initiation of grading activities, if grading is scheduled between February 1 and August 30. No substantial evidence has been provided to support the appellants' contention that endangered species are present at the project site.

C. The 20 foot setback from the drip line of a protected tree asserted by the appellants is not necessary. Furthermore, the project has been conditioned to require the presence of a certified arborist during all excavation, grading or trenching that would occur within 10 feet from the drip line of protected trees as required by the City Biologist to avoid damaging roots of protected trees. There is no encroachment into the protected zone of the coast live oak.

D. The Southern California black walnut tree is within the removal and recompaction area recommended by the consulting project geologist. Given the site topography and drainage pattern, the project civil engineer established the building pad towards the center of the property between an elevation of 116 feet above sea level and 113.5 feet above sea level. The protected Southern California black walnut tree is at an elevation of 108 feet above sea level. If the house were to be shifted forward outside of the drip line, the protected tree could remain in its current location; however, a six to seven foot deep protective well with surrounding retaining walls around the tree would be required. The most feasible alternative for the Southern California black walnut Tree is to relocate it away from the development area, per the project biologist, Greg Ainsworth, and City Biologist's recommendations, towards the other woodland area that accommodates four other protected trees.

The City Biologist found that it is likely for the tree to survive the relocation proposed by the applicant, and approved the project biologist's plan to relocate the tree away from the building pad. The Planning Commission added a condition to the project requiring the walnut tree to be relocated in a location that will least affect the neighbor's southerly view and the applicant has since consulted with the City Biologist to determine the best location for the relocated tree. Furthermore, the City Biologist has conditioned the project to require the property owner submit an annual monitoring report prepared by an arborist, discussing the health and vigor of the relocated tree for a period of not less than 10 years. In the event that the relocated tree dies or declines in health, the loss of the tree shall be mitigated as described in LIP Section 5.5.1. The proposed project does not include encroachment into the protected zones of the other four native trees. No substantial evidence has been provided to support the appellants' contention that it is unreasonable to relocate the protected tree. The record demonstrates that the proposed project is the least environmentally damaging alternative.

#### Section 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has exercised its independent judgment and analyzed the proposal as described above. The City Council has found that this project is listed among the classes of projects that have been determined

not to have a significant adverse effect on the environment, and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Section 15303(a) – New Single-Family Residences. The City Council has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

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

Based on substantial evidence contained within the record and pursuant to LIP Sections 13.7(B) and 13.9, the City Council adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 13-052 and SPR No. 13-050 for the construction of a new 5,381 square foot single-story single-family residence with two attached trellises, an attached 709 square foot three-car garage, a detached 230 square foot, accessory structure, swimming pool, fencing, retaining walls, landscaping, onsite relocation of a protected Southern California black walnut tree, grading, and an AOWTS, including a site plan review request for construction over 18 feet in height up to a maximum height of 21 feet, 1 inch.

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

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

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

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

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

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

The project is not located between the first public road and the sea. Regarding public recreation, the LCP Park Lands Map and the pending LCP Parkland and Trail System Map do not show any planned or mapped trails on or directly adjacent to the property. The nearest trail is an undeveloped future trail delineated on the pending LCP Parklands and Trail Systems Map, adopted by City Council, approximately 0.25 miles east of the subject property. The project will not result in significant impacts on

public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

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

As previously discussed in Section 4, the project is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the residential development requirements of the LCP and is consistent with the Rural Residential-One Acre (RR-1) zoning classification of the subject parcel.

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. The project site is zoned RR-1 which allows for single-family residential development. The no project alternative would not accomplish any of the project objectives, and therefore, is not viable.
2. Maintain the Southern California black walnut tree six inch diameter, 18 feet in its Existing Location – The proposed location of the new single-family residence encroaches into the drip line of a protected Southern California black walnut tree. The consulting geologist noted in the geotechnical report, dated October 7, 2013, prepared by GeoSystems, that the property contains approximately two to six feet of artificial fill that is unsuitable for new foundation. Therefore, the consulting geologist and City Geologist recommended removing and recompacting the site to create a suitable building pad. The Southern California black walnut tree is within the recommended removal and recompaction area. Given the site topography and drainage pattern, the project civil engineer established the building pad towards the center of the property between an elevation of 116 feet above sea level and 113.5 feet above sea level. The protected Southern California black walnut tree is at an elevation of 108 feet above sea level. If the house were to be shifted forward outside of the drip line, the protected tree could remain in its current location; however, a six to seven foot deep protective well with surrounding retaining walls around the tree would be required. The most feasible alternative for the Southern California black walnut tree is to relocate it away from the development area, per the project biologist and City Biologist's recommendations, towards the other woodland area that accommodates four other protected trees.
3. Smaller Footprint with a Second Floor above – The proposed house is designed as a single-story structure which results in a larger ground footprint than it would to build a second story. Since a protective well around the protected tree would be required to maintain the tree in its existing locations, the most feasible alternative for the Southern California black walnut tree is to relocate it away from the development area. Also, although the ground floor development pad would be smaller with a second story, the second story would have potential to impact the views of the property owners in the condominiums, which are located approximately 500-feet north of the subject property, across Pacific Coast Highway, at a higher elevation. It is not anticipated that a smaller residence would offer any environmental advantages over the proposed single-story, single-family residence.

4. Proposed Project – The proposed project consists of a new single-story single-family residence and associated development. The proposed project is below the maximum allowed total development square footage and meets all the required setbacks. The proposed SPR would allow for the tallest portion of the house, the entrance, to be up to 21 feet, 1 inch with a pitched roof. The proposed height is similar to other newer residences in the surrounding neighborhood. The Southern California black walnut tree is expected to survive the relocation, nevertheless, the City Biologist has conditioned the project to require the property owner submit an annual monitoring report prepared by an arborist, discussing the health and vigor of the relocated tree for a period of not less than 10 years. In the event that the relocated tree dies or declines in health, the loss of the tree shall be mitigated as described in LIP Section 5.5.1. The proposed AOWTS location meets all Malibu Plumbing Code and LIP development standards. The selected location meets the City's residential development policies. The project will not result in potentially significant impacts and is the least environmentally damaging feasible alternative.

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

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

The subject property is located within the Point Dume area; therefore, the property is not designated as environmentally sensitive habitat area (ESHA) according to the LCP ESHA Overlay Map. Development avoids slopes of 25 percent or greater. As such, the City Biologist concluded the subject site does not meet the criteria of ESHA or ESHA buffer, and no review by the Environmental Review Board is required.

**B. Site Plan Review Structure Height in Excess of 18 feet (LIP Section 13.27.5)**

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review for construction in excess of the City's base 18 feet in height up to 24 feet for a flat roof. Two additional findings are required pursuant to Malibu Municipal Code (M.M.C.) Section 17.62.050. Based on the evidence contained within the record, the required findings for SPR No. 13-050 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. Based on site visits, inspections, and review of the visual analysis, it has been determined that the project, as conditioned, does not adversely affect neighborhood character or environmental resources, and therefore, is consistent with the land use goals, policies and objectives of the General Plan, LCP, M.M.C. and City standards.

*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 July 9, 2014 and on August 13, 2014, staff visited the site and inspected the story poles after installation. The proposed project is compatible with other development in the adjacent area in that the neighborhood is residentially developed with other residences of similar height, size, and design. Properties in this area include a mix of one-story and two-story single-family residences. As demonstrated by the story poles, the project's height, mass and setbacks are similar to the existing neighboring residences on the same cul-de-sac as shown in photographs attached as Attachment 4 to the October 6, 2014 Planning Commission agenda report. Therefore, the project, as proposed and conditioned, 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.*

Public views are discussed in Scenic, Visual and Hillside Resource Protection findings of this resolution. The site is slightly visible from Pacific Coast Highway. Story poles were placed on the site to demonstrate how the project will change the site's visual properties. The project will be subject to standard conditions of LIP Chapter 6 pertaining to lighting, colors and materials for protection of visual resources in addition to restrictions on the vegetation species that can be used at the site to prevent any future impacts and/or maintain the existing conditions as they pertain to public views. Based on review of the application, the scope of work, and surrounding development, the proposed development, as conditioned provides maximum feasible protection to significant public views.

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

The proposed project has received LCP conformance review by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, the City Public Works Department and the LACFD. Prior to issuance of building permits, the project must have final approval by the City Environmental Sustainability Department. 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 also zoned for residential use. The project is consistent with the rural residential designation for the site as noted in the General Plan and LCP and immediate vicinity.

*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 MMC Section 17.40.040(A)(17).*

Prior to the story pole installation, staff received email correspondence regarding a potential view blockage from a property owner located in the condominium complex on the north side of Pacific Coast Highway. The concerned neighbor did not request a primary view determination from staff subsequent to the installation of the story poles. Condition No. 16 in Section 7 prohibits vegetation with the potential to grow above the elevation of the roof to ensure that new landscaping will not obstruct the neighbor's visually impressive scenes of the Pacific Ocean.

On September 15, 2014, staff conducted a primary view determination for the appellants on their property at 6500 Zuma View Place. There was a hedge along the appellants' south property line of the appellants' property which blocked any potential view that may have existed. Staff determined that based on existing conditions, the proposed project does not result in a view obstruction for 6500 Zuma View Place. As such, Mr. and Mrs. Kraft decided to trim their hedge and requested for staff to evaluate the view after their hedge was trimmed. On September 24, 2014, staff conducted a second primary view determination to document the view without the hedge. Staff analyzed the photos and determined that the project does not result in a primary view obstruction. The primary view determination showed that the proposed residence will be visible from the selected primary view location; however, the portion of the proposed project in excess of 18 feet in height will not obstruct visually impressive scenes from the appellants' property. Additionally, a blue water view is not visible from the selected primary view location due to existing development and trees in the distance.

At the October 6, 2014 Regular Planning Commission meeting, the appellants expressed concern that the relocated tree could impact their primary view. The Planning Commission added Condition No. 18 to the project, which requires that the walnut tree be relocated in a location that will least affect the neighbor's southerly view and shall be approved by the City Biologist. The applicant has since consulted with the City Biologist to determine the best location for the relocated tree. Based on staff's evaluation and onsite analysis, it was determined that the new residence 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. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)**

As previously discussed in Finding A4, the subject parcel is located within the Point Dume area and is located on slopes flatter than 25 percent and does not contain ESHA or ESHA. Accordingly, the supplemental ESHA findings are not applicable.

**D. Native Tree Protection (LIP Chapter 5)**

The provisions of the Native Tree Protection chapter only apply to those areas containing one or more native Oak, California Southern California black walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, 4.5 feet from the ground. According to the Biological Inventory and Tree Survey prepared by the project biologist, Greg Ainsworth, on May 28, 2014, there are five trees located on the project site, including three coast live oaks, one Toyon and one Southern California black walnut tree. The proposed project includes relocation of the one protected Southern California black walnut tree to accommodate the new single-family residence. The required findings are made as follows.

*Finding D1. The proposed project is sited and designed to minimize removal of or encroachment in the protected zone of native trees to the maximum extent feasible.*

The Southern California black walnut tree is 18 feet in height, six inches in diameter, and was given a "B" in health, vigor, balance and aesthetics by the project biologist, which means the tree is healthy and vigorous with minor visible signs of stress, disease and/or pest infestation. Some maintenance measures may need to be implemented such as pruning of dead wood or broken branches. There is a coyote bush, fennel, and coast live oak seedlings growing around the tree. The project biologist prepared a plan to move the Southern California black walnut tree east of its existing location, away from the proposed development and towards the other protected trees. The City Biologist approved the proposed location, which was described as a suitable location by the project biologist.

The City Biologist has conditioned the project to require the property owner to submit an annual monitoring report prepared by an arborist, discussing the health and vigor of the relocated for a period of not less than 10 years. In the event the relocated tree die or declines in health, the loss of the tree shall be mitigated as described in LIP Section 5.5.1. The proposed project does not include encroachment into any of the other protected zones of native trees.

*Finding D2. The adverse impact of tree removal and/or encroachment cannot be avoided because there is no other feasible alternative.*

The applicant considered moving the single-family residence and accessory structure away from the Southern California black walnut tree. However, as previously discussed in Finding A3, this alternative does not eliminate the need to relocate the protected tree away from the structure due to the required grading for the building pad. There are no other feasible alternatives to avoid relocation of the protected tree.

*Finding D3. All feasible mitigation measures that would substantially lessen any significant impact on native trees have been incorporated into the approved project through design or conditions of approval.*

As previously discussed in Finding D1, the City Biologist has conditioned the project to require annual

monitoring and reporting of the health and vigor of the relocated protected tree for a period of not less than 10 years. The City Biologist also included a condition that requires the boxing and relocation of the protected tree to be implemented as indicated on the Biological Inventory and Native Tree Survey prepared Greg Ainsworth on May 28, 2014. In addition, the arborist shall provide a follow-up report summarizing the relocation process and include a discussion as to whether the tree was successfully boxed and relocated. As conditioned, all feasible measures that would substantially lessen any significant impact on native trees have been incorporated into the proposed project.

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

The Scenic, Visual and Hillside Resource Protection Ordinance 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. Based on site reconnaissance and review of the project plans, the subject property is slightly visible from Pacific Coast Highway and the required findings are made below.

*Finding E1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.*

Story poles were placed on the site to demonstrate the potential for aesthetic changes. The site was visited to determine if any public views could be impacted. The subject property is the second house inward on the east side of the Zuma View Place cul-de-sac off the south side of Pacific Coast Highway. There is a developed property situated directly between the subject property and Pacific Coast Highway (6500 Zuma Drive) and a developed property located on Pacific Coast Highway, on the other side of the cul-de-sac, west of the subject property (21827 Pacific Coast Highway). The site is not substantially visible from Pacific Coast Highway due to the residential structures and vegetation located at 6500 Zuma View Drive and 28127 Pacific Coast Highway. Conditions of approval include restrictions on vegetation species that can be used at the site to prevent any potential view blockage and/or maintain the existing conditions as they pertain to public views. The project as designed and conditioned will not obstruct science views from Pacific Coast Highway and will not have potentially significant adverse scenic visual impacts.

*Finding E2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.*

As previously discussed in Finding E1, the proposed project will not have significant adverse scenic or visual impacts. The project includes conditions that require colors and exterior materials be compatible with the surrounding landscape, and requires that exterior lighting shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view.

*Finding E3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

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

*Finding E4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.*

As previously discussed in Findings A3, E1 and E2, there are no feasible alternatives that would substantially lessen adverse scenic or visual impacts. The proposed project will not have significant adverse impacts on scenic or visual resources.

*Finding E5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.*

As previously discussed in Findings A3, E1 and E2, the proposed project will not have significant adverse scenic impacts and is the least environmentally damaging feasible alternative.

#### **F. Transfer of Development Credit (LIP Chapter 7)**

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

#### **G. Hazards (LIP Chapter 9)**

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area close to these hazards. The project has been reviewed by the City Geologist, City Public Works Department and the LACFD and has been determined to be consistent with all relevant policies and regulations regarding potential hazards. Due to the presence of the severe fire hazard, the findings set forth in LIP Section 9.3 are made as follows:

*Finding G1. 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.*

The proposed project is not anticipated to result in the potential to create adverse impacts on site stability or structural integrity. Uncertified fill soils will be addressed through removal and recompaction of the building pad area. The geotechnical engineering report prepared by the project consulting geotechnical engineer, GeoSystems dated October 7, 2013, indicates that the project will not result in potentially significant adverse impacts on site stability or structural integrity. However, the entire City is in a very high fire hazard severity zone, so appropriate building materials will be required. The project has received

conformance review and approval by the City Geologist, City Public Works Department and the LACFD for consistency with all relevant regulations and LIP policies pertaining to potential hazards. Pursuant to LIP Section 9.4(Y), the project has been conditioned to require the property owner to record a standard deed restriction assuming the hazard risk of fires at the site.

*Finding G2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.*

As stated in Finding G1, the proposed project, as designed, conditioned and approved, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards.

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

As previously discussed in Findings A3 and G1, the project will not result in potentially significant impacts and the proposed project is the least environmentally damaging alternative relative to hazards.

*Finding G4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.*

As previously discussed in Findings A3 and G1, no adverse impacts on site stability or structural integrity are expected and the proposed project is the preferred alternative. No alternatives would lessen impacts on site stability or structural integrity.

*Finding G5. 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 previously discussed in Finding G1, no adverse impacts pertaining to hazards are expected. As previously discussed in Sections C, E and H, the project will not conflict with LCP sensitive resource protection policies related to ESHA, scenic resources and shoreline and bluff development.

#### **H. Shoreline and Bluff Development (LIP Chapter 10)**

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not located along the shoreline or on a bluff; therefore, is not anticipated to result in such impacts. The findings in LIP Chapter 10 are not applicable.

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

LIP Chapter 12 requires public access for lateral, bluff-top, and vertical access near the ocean, as well as trail access, and recreational access when applicable. No onsite vertical, lateral, bluff-top, or trail access is currently provided on the subject parcel. The project site is located inland, away from the ocean. The proposed project will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources. The findings in LIP Chapter 12 are not applicable.

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

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

**Section 6. City Council Action.**

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves Coastal Development Permit No. 13-052 and Site Plan Review No. 13-050, 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 relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the following:
  - a. Construction of a 5,381 square foot, single-story single-family residence;
  - b. Attached 709 square foot garage;
  - c. A detached, 13 foot tall, 230 square foot accessory structure;
  - d. Swimming pool;
  - e. Fencing;
  - f. Retaining walls;
  - g. Grading;
  - h. Landscaping;
  - i. Onsite relocation of a protected Southern California black walnut tree;
  - j. Alternative Onsite Wastewater Treatment System; and
  - k. Site plan review for construction over 18 feet in height, not to exceed 21 feet, 1 inch.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with

the Planning Department, date-stamped **June 18, 2014**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision and/or prior to issuance of any development permits.
5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to plan check submittal and again prior to the issuance of any building or development permits.
6. This resolution, signed Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
7. The CDP shall be null and void if the project has not commenced within three (3) 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 prior to expiration of the three-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All structures shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Geologist, City Environmental Health Administrator, City Biologist, City Public Works Department, Los Angeles County Waterworks District No. 29 and the LACFD, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the LCP. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission (CCC), have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
12. The property owner must submit payment for all outstanding fees payable to the City prior to

issuance of any building permit, including grading or demolition.

#### Cultural Resources

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

#### Site-Specific Conditions

15. The procedures for boxing and relocation of the Southern California walnut tree shall be implemented as indicated in the Biological Inventory and Native Tree Survey dated May 28, 2014. Upon completion of the relocation, the arborist shall submit a report to the City Biologist, summarizing the relocation process and include a discussion as to whether the tree was successfully boxed and moved.
16. New vegetation with potential to grow above 136.9 feet above sea level, the maximum height of the roof elevation, is prohibited.
17. The landscaping plans shall include a prominent note that states, "species with the potential to grow above 136.9 feet above sea level (the maximum height of the roof elevation) are prohibited."
18. The walnut tree shall be relocated in a location that will least effect the neighbor's southerly view and shall be approved by the City Biologist.

#### Onsite Wastewater Treatment System

19. Prior to final Environmental Health approval, a final 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).

20. 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).
21. The final design report shall contain the following information (in addition to the items listed above).
  - a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;
  - b. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;
  - c. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak AOWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics; and
  - d. All final design drawings shall be submitted with the wet signature and typed name of the AOWTS 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 the Building Safety Division and/or the Planning Department.

- e. Provide structural protection of treatment tank and seepage pit lids in the driveway. Submit plans to Environmental Health for final approval.
- 22. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
- 23. 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 submitted to the owner and/or operator of the proposed AOWTS following installation.
- 24. 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.
- 25. 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 AOWTS serving subject property is an alternative method of onsite wastewater disposal pursuant to the City of Malibu 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 by the Los Angeles County Recorder.
- 26. The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator.
- 27. In accordance with M.M.C. Chapter 15.14, an application shall be made to the Environmental Sustainability Department for an OWTS operating permit.

#### Geology

- 28. 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 drawings 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.
- 29. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes

may require amendment of the CDP or a new CDP.

Public Works

30. The existing asphalt concrete dike within the property limits shall be replaced with a new asphalt concrete dike Type E per Caltrans Standard Plans revised standard plan A87B.
31. A new catch basin per American Public Works Association standard plan 302-2 approximately 35 feet south of the southern property line within the City's right of way along the edge of the pavement shall be installed.
32. A new 18-inch reinforced concrete pipe shall be installed from the new catch basin inlet to the existing catch basin inlet.
33. The project proposes to construct a new driveway, catch basin, and asphalt concrete dike within the City's right of way. Prior to the issuance of grading or building permits, the applicant shall obtain encroachment permits from the Public Works Department for the items described in Condition of Approval Nos. 30-32. The driveway shall be constructed of either six inches of concrete over four inches of aggregate base, or four inches of asphalt concrete over six inches of aggregate base. The driveway shall be flush with the existing grades with no curbs.
34. Exported soil from the site shall be taken to the Los Angeles 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. A note shall be placed on the project plans that address this condition.
35. A Grading and Drainage Plan containing the following information shall be reviewed and approved by 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 shall be included within the area delineated;
  - d. The grading limits shall include the temporary cuts made for buttresses, and over-excavation for fill slopes shall be shown;
  - e. Any native trees required to be protected shall be highlighted on the grading plan;
  - f. Any rare or endangered species as identified in the biological assessment shall contain a prominent note identifying the areas to be protected (to be left undisturbed). Fencing of these areas shall be delineated on the grading plan as required by the City Biologist (see Biology conditions);

- g. Private storm drains, and systems greater than 12-inch diameter shall also include a plan and profile; and
  - h. Public storm drain modifications shown on the grading plan shall require approval by the Public Works Department prior to the issuance of the grading permit.
36. A digital drawing (AutoCAD) of the project's private storm drain system, public storm drain system within 250 feet of the property limits, and post-construction Best Management Practices (BMPs) shall be submitted to the Public Works Department prior to the issuance of building permits. The digital drawing shall adequately show all storm drain lines, inlets, outlets, post-construction BMPs and other applicable facilities. The digital drawing shall also show the subject property, public or private streets, and any drainage easements.
37. The applicant shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template. A note shall be placed on the project plans that address this condition.
38. 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 storm water runoff, directly into the ASBS. The applicant shall provide a drainage system that accomplishes the following:
- a. Maintains the natural water quality within the ASBS by treating storm runoff for the pollutants in residential storm runoff that would cause a degradation of ocean water quality is the ASBS. These pollutants include trash, oil and grease, metals, bacteria, nutrients, pesticides, herbicides and sediments;
  - b. Prohibits the discharge of trash;
  - c. On discharges from storm drain outfalls are allowed. No new outfalls will be allowed. Any proposed or new storm water discharged shall be routed to existing storm drain outfalls and shall not result in any new contribution of waste to the ASBS (i.e. no additional pollutant loading); and
  - d. Retains all non-storm water runoff on the property without discharge to the ASBS.
39. 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.

40. 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.
41. 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. Dust Control Plan for the management of fugitive dust during extended periods without rain;
  - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
  - c. Designated areas for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
  - d. 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.
42. 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 BMPs;
  - b. Source Control BMPs;
  - c. Treatment Control BMPs;
  - d. Drainage improvements;
  - e. Measures to treat and infiltrate runoff from impervious areas;
  - f. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
  - g. 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
43. The WQMP shall be submitted to the Building Safety Division 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.

44. The developers consulting engineer shall sign the final plans prior to the issuance of permits.

#### Swimming Pool

45. On-site noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in M.M.C. Chapter 8.24 (Noise).
46. Pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall comply with LIP Section 3.5.3.
47. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool / spa / water feature is prohibited. Provide information on the plans regarding the type of sanitation proposed for pool.
  - a. Ozonization systems are an acceptable alternative to chlorine. The discharge of clear water from ozonization systems is not permitted to the street;
  - b. Salt water sanitation is an acceptable alternative to chlorine. The discharge of salt water is not permitted to the street; and
  - c. Chlorinated water from pools or spas shall be trucked to a publicly-owned treatment works (POTW) facility for discharge.
48. The discharge of chlorinated and non-chlorinated pool / spa / water feature water into streets, storm drains, creeks, canyons, drainage channels, or other locations where it could enter receiving waters is prohibited.
49. A sign stating "It is illegal to discharge pool, spa, or water feature waters to a street, drainage course, or storm drain per M.M.C. Section 13.04.060(D)(5)" shall be posted in the filtration and/or pumping equipment area for the property.
50. Pursuant to M.M.C. Section 9.20.040(B), all ponds, decorative fountains shall require a water recirculating/recycling system.

#### Fuel Modification

51. The project shall receive LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.

#### Biology

52. The Maximum Applied Water Allowance (MAWA) for this project totals 456,819 gallons per year. The Estimated Applied Water Use (EAWU) total 348,545 gpy, thus meeting the Landscape Conservation Ordinance requirements.

53. No development shall occur on slopes of 25 percent or steeper.
54. No development shall occur within the protected zone of any native protected tree onsite, except as approved herein for the tree to be relocated.
55. Prior to final plan check, provide the City Biologist the landscape water use approval from the Los Angeles County Waterworks District No. 29.
56. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within the side or rear yard setback shall be maintained at or below six 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.
57. Invasive plant species as determined by the City of Malibu are prohibited.
58. Vegetation shall be situated on the property so as not to obstruct the primary view from private property at any given time (given consideration for future growth).
59. No non-native plant species shall be approved greater than 50 feet from the residential structure.
60. Grading scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Surveys shall be completed no more than 5 days from proposed initiation of site preparation activities. Should active nests be identified, a buffer area no less than 150 feet (300 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active.
61. Construction fencing shall be placed around the existing coast live oak trees and the Toyon tree and 65 feet west of the eastern property line in order to prevent any construction, equipment, or material storage beneath the protected trees near the riparian habitat. Construction fencing shall be installed prior to the beginning of any construction and shall be maintained throughout the construction period to protect the sites sensitive habitat areas.
62. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
63. 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.
64. Necessary boundary fencing of any single area exceeding half an acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches in height and have a space greater than 14 inches between the ground and the bottom of the post or wire. A split rail design that blends with the natural environment is preferred.

65. The relocated California black walnut tree shall be monitored annually from the time of relocation for a period of ten years. Annual monitoring shall be conducted by a qualified arborist or biologist familiar with native tree health shall be submitted for review by the City for each of the ten years. Should any tree be lost or suffer worsened health or vigor as a result of the proposed development, the applicant shall mitigate the impacts as required in Section 5.5 of the Malibu LIP. If replacement plantings are required as mitigation, monitoring of the replacement trees shall be provided as required by Section 5.6.2 of the Malibu LIP.

#### Lighting

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

#### Colors and Materials

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

indicated on the building plans.

- b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
- c. All windows shall be comprised of non-glare glass.

70. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color of driveways and retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

#### Construction / Framing

71. 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.
72. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires rinsed prior to leaving the property.
73. 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 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.
74. When framing of the new roof 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 Department for review and sign off on

framing.

75. 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.
76. Prior to the issuance of a building/demolition permit, an Affidavit and Certification to implement a Waste Reduction and Recycling Plan (WRRP) shall be signed by the Owner or Contractor and submitted to the Environmental Sustainability Department. The WRRP shall indicate the agreement of the applicant to divert at least 50 percent of all construction waste generated by the project.

#### Deed Restrictions

77. As a condition of approval of new development within or adjacent to an area subject to high wildfire hazard, prior to issuance of the coastal development permit, the property owner shall be required to submit a signed document which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.
78. Prior to final planning approval, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition of Approval Nos. 66-68. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval for permit issuance.

#### Prior to Occupancy

79. 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.
80. Prior to final building inspection, the applicant shall provide the Environmental Sustainability Department with a Final Waste Reduction and Recycling Summary Report (Summary Report). The Final Summary Report shall designate all materials that were land filled or recycled, broken down by material types. The Environmental Sustainability Department shall approve the final Summary Report.
81. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Department 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 Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

82. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval, and if applicable, the issuance of the certificate of occupancy.

Fixed Conditions

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

Section 8. Certification.

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

PASSED, APPROVED AND ADOPTED this 9<sup>th</sup> day of February 2015.

\_\_\_\_\_  
JOHN SIBERT, Mayor

ATTEST:

\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
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

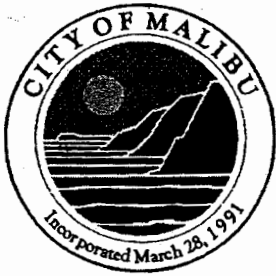
delivered to the City of Malibu at or prior to the public hearing.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 15-14 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 9<sup>th</sup> day of February 2015 by the following vote:

AYES:	5	Councilmembers:	House, La Monte, Peak, Rosenthal, Sibert
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		

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LISA POPE, City Clerk  
(seal)



City Council Meeting  
02-09-15

**Item  
4.A.**

## Council Agenda Report

To: Mayor Sibert and Honorable Members of the City Council

Prepared by: Amanda Chiancola, Associate Planner *AC*

Reviewed by: Bonnie Blue, AICP, Interim Planning Director *BB*

Approved by: Jim Thorsen, City Manager *JP*

Date prepared: January 21, 2015 Meeting Date: February 9, 2015

Subject: Appeal No. 14-009 - Appeal of Planning Commission Resolution No. 14-85

*RECEIVED*  
**FEB 12 2015**  
California  
Coastal Commission

Appellants:	Richard and Sonja Kraft
Applicant:	Steve Yett
Property Owner:	Anthony and Cynthia Dorn
Appeal Filed:	October 16, 2014
Application Filed:	October 17, 2013
Location:	6530 Zuma View Place, within the appealable coastal zone
APN:	4466-002-026
Zoning:	Rural Residential - One Acre (RR-1)

**RECOMMENDED ACTION:** Adopt Resolution No. 15-14 (Exhibit A) denying Appeal No. 14-009, approving Coastal Development Permit (CDP) No. 13-052 and Site Plan Review (SPR) No. 13-050 to allow for the construction of a new 5,381 square foot, single-story, single-family residence with two attached trellises, an attached 709 square foot three-car garage, a detached 230 square foot accessory structure, swimming pool, fencing, retaining walls, landscaping, onsite relocation of a protected walnut tree, grading, and an alternative onsite wastewater treatment system (AOWTS), including a site plan review request for construction over 18 feet in height, up to a maximum height of 21 feet, 1 inch.

**FISCAL IMPACT:** The project is being undertaken by a private party and will have no fiscal impact on the City.

**DISCUSSION:** The matter is an appeal (Exhibit B) of a CDP approved by the Planning Commission on October 6, 2014. Planning Commission Resolution No. 14-85 and the related Planning Commission agenda report are included in this report as Exhibits C and D, respectively.

The project includes the construction of a new single-family residence with associated development, and a site plan review for construction over 18 feet in height.

The appellants contend that the Planning Commission's coastal development permit findings in Local Implementation Plan (LIP) Chapters 4 and 5 were not supported by substantial evidence in the record. The applicant submitted a written response to the appeal dated January 5, 2014, which is included as Exhibit F.

Staff has carefully re-examined all evidence in the record and determined that the record supports the Planning Commission's action approving the application.

### ***Project Overview***

The subject property is a vacant lot located on the east side of Zuma View Place in the Point Dume neighborhood. As such, it is not designated Environmentally Sensitive Habitat Area (ESHA), and is not adjacent to ESHA or ESHA buffer as shown on the Local Coastal Program (LCP) ESHA Overlay Map (Exhibit G). There is a natural ephemeral drainage course along the property's rear (easterly) property line. The drainage course along the east portion of the site is described as natural coast live oak woodlands by the project biologist, Greg Ainsworth, in the Biological Inventory and Tree Survey report dated January 5, 2014, and an addendum dated May 28, 2014. There are five native, protected trees on the subject property along the east property line.

The application is for the construction of a single-story, single-family residence and associated development, including a swimming pool and a 13 foot tall, 230 square foot accessory structure. The project includes the onsite relocation of one six-inch diameter protected Southern California black walnut tree to accommodate the building pad for the new single-family residence. The remaining four protected trees will not be impacted by the project. The project is limited to a single-story to ensure the views from the adjacent properties are maintained. A site plan review is requested for construction over 18 feet in height, to a maximum of 21'-1" to allow for a pitched roof with three dormers; however, the portion of the roof above 18 feet in height does not block primary ocean views. The project, as proposed with the site plan review, complies with the LCP.

## ITEM ON APPEAL TO THE CITY COUNCIL

The appellants state the Planning Commission's action is not supported by the findings. In the appeal, submitted on October 16, 2014, the appellants outline the specific findings and the grounds for the appeal, each of which is stated below in *italics*. Followed by each point of the appeal are staff's responses in straight type. The full text of the appeal document can be found in Exhibit B.

1. *The City did not do a riparian zone study to research the stream and a study has not been provided that established the boundaries of the riparian and [environmentally sensitive habitat area] ESHA zone. The findings are incorrect and non-researched. The study was not performed prior to the approval for the new project at 6530 Zuma View Place. The stream is documented as a studied stream in Malibu.*

### Staff Response

As previously discussed, the subject property is located within the Point Dume area, and as such it is not designated ESHA. In adopting the City of Malibu LCP, the Coastal Commission specifically determined that stream canyons on Point Dume do not meet the definition of ESHA, because they have been substantially degraded by past development and the introduction of nonnative species. As stated in LCP Land Use Policy 3.35 and LIP Section 4.6.1(A), the appropriate buffer is to be provided by requiring development to avoid encroachment on slopes of 25 percent grade or steeper. The steeper portions of the canyon slope function as a buffer to development, minimizing human intrusion, and protecting the stream and riparian habitats by providing an area for infiltration of runoff, and minimizing erosion and sedimentation.

The project has been designed to avoid slopes of 25 percent and steeper, and therefore, complies with Section 4.6.1 of the LIP. Thus, the City Biologist determined a riparian study was not required.

2. *There is a stream that runs at the property line as a riparian zone that the City pays to have studied. It is considered one of the 28 streams in Malibu. It is a riparian zone and the proper setbacks from the riparian zone have not been applied in the project plan.*

### Staff Response

As previously discussed in response to Appeal Item No. 1, the required buffer around the stream canyons on Point Dume is provided by avoiding development on slopes greater than 25 percent grade or steeper.

3. *ESHA endangered species; the area is a habitat ESHA for endangered species such as coyote, bobcat, raccoon, skunk, possum and frogs. There have been multiple bobcat, and coyote sightings in this ESHA.*

### Staff Response

As previously discussed, the subject property is not designated ESHA; however, the site contains five protected native trees, including three coast live oaks, one toyon and one Southern California black walnut tree. Since the native trees have potential to support a wide variety of wildlife species through the provision of food, nesting, and roosting cover, and contribute to the scenic quality of the community, the City Biologist required an inventory of the plant and animal species present on the project site, or those known or expected to be present on the project site at other times of the year, prepared by a qualified biologist, or resource expert.

A Biological Inventory and Native Tree Survey was completed by the project biologist, Greg Ainsworth, dated January 5, 2014, with an addendum dated May 28, 2014. The inventory characterized all onsite and adjacent habitat conditions for supporting sensitive biological resources and provided an inventory of plant species on the property. The inventory also took into consideration whether subsequent focused botanical or wildlife surveys would need to be conducted to determine the presence or absence of any special status<sup>1</sup> or sensitive species and whether wildlife may utilize the property as a movement corridor to adjacent open spaces.

Per the biological inventory, there are no special status plants or wildlife species that have the potential to occur on the property because the entire property is disturbed. The project biologist and the City Biologist determined that the proposed single-family house would not disturb the adjacent woodland habitat directly or indirectly and its construction would be consistent with the adjacent properties to the north and south and in the general area. In addition, the majority of the property lacks the vegetation cover needed for shelter and foraging opportunities, and because adjacent land uses are developed (except to the east), the property does not serve as a regional or local movement corridor for wildlife. Nevertheless, in conformance with the City's General Plan Conservation Element, the project was conditioned to require that any necessary boundary fencing of any single area exceeding half an acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), less than 40 inches in height and have a space greater than 14 inches between the ground and the bottom of the post or wire to ensure the development will not prohibit wildlife movement.

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<sup>1</sup> Special status species are defined as listed plant and animal species that receive specific protection defined in federal or state legislation (Endangered Species Act), and are formally designated as endangered, threatened or rare under state or federal legislation. Also included in this definition are species that have no formal listing status as threatened or endangered, but are regarded as locally "rare," "sensitive," or "species of concern" on the basis of adopted policies and expertise of federal, state or local resource agencies; or local organizations with acknowledged expertise, such as the California Native Plant Society.

Additionally, during the project biologist's field investigation, there was no sign of raptor or passerine nests found on or adjacent to the property. However, many of the trees located in the eastern portion of the site (and further east on the adjacent property) have the potential to provide habitat to nesting birds. Therefore, the City Biologist has conditioned the project to require nesting bird surveys by a qualified biologist prior to initiation of grading activities, if grading is scheduled between February 1 and August 30.

4. *Encroachment upon massive oak trees drip line, the proposed building at 6530 is setback at an improper distance of 8 feet, 8 inches from the drip line of massive oak trees. This setback from the drip line is to be properly placed at 20 feet.*

Staff Response

A 20 foot setback from the drip line of a protected tree is not necessary. Furthermore, the project has been conditioned to require the presence of a certified arborist during all excavation, grading or trenching that would occur within 10 feet from the drip line of protected trees to avoid damaging roots of protected trees.

5. *Unreasonable moving of a protected tree, the project is moving a protected black walnut tree that is unnecessary and does not impede reasonable development of the property. The tree is well within the legal setback for a Riparian Zone and ESHA and should not be moved. The project should protect the tree and let it live where it stands. Providing reasonable development of the property beyond the drip line of the tree and reasonable setback from the riparian zone and ESHA.*

Staff Response

The proposed location of the new single-family residence encroaches into the drip line of an 18-foot tall, six inch diameter protected Southern California black walnut tree. The consulting geologist noted in the geotechnical report, dated October 7, 2013, prepared by GeoSystems, that the property contains approximately two to six feet of artificial fill that is unsuitable for new foundation. Therefore, the consulting geologist and City Geologist recommended removing and recompacting the site to create a suitable building pad. The Southern California black walnut tree is within the recommended removal and recompaction area. Given the site topography and drainage pattern, the project civil engineer established the building pad towards the center of the property between an elevation of 116 feet above sea level and 113.5 feet above sea level. The protected Southern California black walnut tree is at an elevation of 108 feet above sea level. If the house were to be shifted forward outside of the drip line, the protected tree could remain in its current location; however, a six to seven foot deep protective well with surrounding retaining walls around the tree would be required. The most feasible alternative for the Southern California black walnut Tree is to relocate it away from the development area, per the project

biologist, Greg Ainsworth, and City Biologist's recommendations, towards the other woodland area that accommodates four other protected trees.

The City Biologist found that it is likely for the tree to survive the relocation proposed by the applicant, and approved the project biologist's plan to relocate the tree away from the building pad. At the Planning Commission meeting, the appellants expressed concern that the relocated tree could impact their primary view. The Planning Commission added a condition to the project requiring the walnut tree to be relocated in a location that will least affect the neighbor's southerly view and shall be approved by the City Biologist. The applicant has since consulted with the City Biologist to determine the best location for the relocated tree. Furthermore, the City Biologist has conditioned the project to require the property owner submit an annual monitoring report prepared by an arborist, discussing the health and vigor of the relocated tree for a period of not less than 10 years. In the event that the relocated tree dies or declines in health, the loss of the tree shall be mitigated as described in LIP Section 5.5.1. The proposed project does not include encroachment into the protected zones of the other four native trees.

**PUBLIC CORRESPONDENCE:** Two pieces of correspondence have been submitted for the project. The appellants submitted correspondence for the Planning Commission's consideration and on December 23, 2014, the applicant provided a response to the appeal. Staff has not received any public comments regarding the project.

**PUBLIC NOTICE:** On January 8, 2015, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City and a public notice was mailed to the owners and occupants of all properties within a radius of 500 feet of the subject property (Exhibit H).

**SUMMARY:** Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, staff recommends that the City Council adopt Resolution No. 15-14 denying Appeal No. 14-009 and approving CDP No. 13-052 and Site Plan Review No. 13-050, subject to the conditions of approval in Section 7 of the resolution.

**EXHIBITS:**

- A. City Council Resolution No. 15-14
- B. Appeal No. 14-009
- C. Planning Commission Resolution No. 14-85
- D. October 6, 2014 Planning Commission Agenda Report Item 5.C.
- E. Correspondence Received for the October 6, 2014 Planning Commission Meeting
- F. Response from the Applicant dated October 23, 2014
- G. Local Coastal Program (LCP) ESHA Overlay Map
- H. Public Hearing Notice

# ESHA and Marine Resources Map 2: Zuma Beach to Escondido Beach

PROPOSED 2002

Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.



# ESHA and Marine Resources Map 2: Zuma Beach to Escondido Beach



\*Boundaries of ESHAs may change location over time due to varying circumstances. This map is not intended to depict fixed boundaries of ESHAs or marine resources and may not include all areas that are ESHA. This map does not establish any final boundary lines or constraints on the Commission's ability to identify, map and regulate ESHAs and Marine Resources in the City of Malibu.