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

W14a

Click here to go to original staff report

ADDENDUM

DATE: August 11, 2015

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item W14a, Appeal No. A-4-MAL-15-0042 (Keane), Wednesday, August 12, 2015

The purpose of this addendum is to attach written correspondence and ex-parte communications received since the publication of the staff report.

1. A letter was received from the applicant's representative, Nicole M. Slattery from Bremer Whyte Brown & O'Meara LLP, on August 11, 2015.

2. Attached to this addendum are ex parte communications disclosure forms received from Commissioners Groom and Kinsey.

Received
AUG 11 2015
California Coastal Commision
South Central Coast District

COASTAL COMMISSION STAFF COPY SENT TO:

Denise Venegas
Coastal Program Analyst
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001
denise.venegas@coastal.ca.gov

RELEVANT HISTORY OF PROJECT

City of Malibu residents Thomas and Susan Keane have held title to the undeveloped real property located at 31571 Sea Level Drive in Malibu, California since April 2002. After years of planning, the Keanes' architect, Kalani Jensen, submitted an application for Coastal Development Permit No. 13-041 to construct a modest 1,931 square foot, two-story, single-family residence on the lot on September 9, 2013. Significant time, effort, and consideration were given to minimize the impact of the project on the Keanes' neighbors and the surrounding natural resources, including coastal views.

The City of Malibu Planning Commission conducted a public hearing on January 20, 2015, and unanimously passed Resolution No. 15-06 approving the request for issuance of the CDP. Although the Keanes' neighbor, Carol Bird, objected on the grounds the project would negatively impact her private ocean view, the Planning Commission nonetheless unanimously voted to approve the permit, confirming that the project fully complied with all of the applicable standards outlined in Malibu's Local Coastal Program.

Ms. Bird filed Appeal No. 15-001 with the City of Malibu on January 29, 2015. Ms. Bird's appeal was heard during the City Council's regular meeting on June 8, 2015. Ms. Bird once again argued the project should not be approved because it would negatively impact her private ocean view as well as public views. After considering all of the information presented, the City Council unanimously voted to adopt Resolution No. 15-30 denying Ms. Bird's appeal and approving the permit.

Ms. Bird has now filed Appeal No. A-4-MAL-15-0042 with the California Coastal Commission, seeking reversal of the local government's prior actions. This appeal urges the Commission not to allow issuance of the permit on the grounds that, contrary to the findings of both the Planning Commission and City Council, the project will negatively impact public ocean views. Although this appeal requests a de novo review of the issue, the prior two public decisions against Ms. Bird's argument of public view obstruction are instructive and provide ample legal and factual support for Malibu's finding the project is in conformity with the LCP.

BRIEF DISCUSSION

It is the duty of the Coastal Commission to protect our shared coastal resources, including public access to ocean views. The Coastal Commission is also the watchdog of coastal development, and must strictly adhere to the legislative intent of the California Coastal Act, which clearly states carefully planned developments consistent with its policies are "essential to the economic and social well-being of the people of this state…." (Pub. Resources Code § 30001(d).)

In order to take Ms. Bird's appeal under consideration, the Coastal Commission must first find a substantial issue has been raised as to the project's conformity with Malibu's Local Coastal Program, or with the public access policies of the California Coastal Act. Both the local Planning Commission and the City Council have determined the project fully complies with the LCP. Ms. Bird's appeal does not mention a single potential non-conformance posed by the project, but instead focuses on the City's interpretation of Chapter 6 of the Local Implementation Plan (LIP) pertaining to scenic, visual, and hillside resource protection. Ms. Bird broadly claims the City approved the

permit on the erroneous assumption Chapter 6 does not apply – this is simply incorrect. Rather, both the Planning Commission and the City Council determined the project was not subject to certain written findings of fact required only for projects "located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon Scenic Areas from or along Scenic Roads and Public Viewing Areas." (LCP-LIP 6.4.) The City Council expressly noted the project was landlocked and blocked from view by existing developments, and did not have the potential to cause significant adverse impacts on public viewing areas. (Res. No. 15-30 at Section 5(D).) In other words, the City, in line with the LCP- LIP, determined that the project would not adversely impact public viewing and other scenic areas, and confirmed the project fully conforms to the development standards outlined in LIP 6.5.

Even if the Coastal Commission were to determine that the City should have made the findings of fact set forth in LIP 6.4, the outcome of any review of the CDP would be the same, because the City did make the necessary findings. As a result, Ms. Bird has suffered no prejudice. Both the Planning Commission and the City Council determined the project was the least environmentally damaging alternative. The City Council specifically noted the project was modified during the application and review process in order to put more space between the proposed residence and a nearby development, and bring it further into conformity with the character of the neighborhood. The small size of the lot, combined with the required setbacks, are significant limitations on any development of the property, and the reality is that relatively few configurations can accommodate these limitations. Ms. Bird's proposal to move the project to the east demonstrates her argument about the protection of public views has nothing to do with her real motive; i.e., protection of a private ocean view she never paid for. (See Exh. 4 to Ms. Bird's appeal.) If the project were be moved to the far eastern side of the developable lot, the new public ocean view corridor created by Ms. Bird's recently installed fence would be impacted more than if the project were placed in any other location. (See Exh. 1 attached hereto.) That proposed redesign would also impact the private ocean view from the neighboring home at 31569 Sea Level Drive. Thus, Ms. Bird's true intentions are revealed - the goal of this appeal is the protection of her own private ocean view at the expense of others. The project, as designed and approved by both the Planning Commission and the City Council, wholly complies with the Malibu LCP.

In sum, every effort has been made to ensure this project's unreserved conformance to both the Malibu LCP and the public access policies of the California Coastal Act. The Keanes and Ms. Bird, as coastal homeowners, may enjoy ocean views concomitant to their respective ownership interests. Ms. Bird chose to purchase a home located directly behind an undeveloped lot, and should have been aware the lot could one day be developed. The Keanes have demonstrated a commitment to preservation of ocean views, but they are entitled to develop their property.

The Keanes respectfully request that Ms. Bird's appeal be denied.

EXHIBIT 1

31589 Broad Beach Rd
Malibu, California

Street View - Jun 2012

Image capture: Jun 2012 © 2015 Google

31562

Item W14a

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Carole Groom

1) Name or description of project: Appeal No. A-4-MAL-15-0042 (Keane, Malibu)
2) Date and time of receipt of communication: August 4, 2015 at 2:30 PM
3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
4) Identity of person(s) initiating communication:
Sara Wan
5) Identity of person(s) on whose behalf communication was made:
Carol Bird, Sara Wan, Frank Angel
6) Identity of persons(s) receiving communication:
Carole Groom
7) Identity of all person(s) present during the communication:
Carole Groom, Sara Wan, Frank Angel, and Richard Alexander Bac

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from the representatives, including a briefing presentation which has been sent to staff (titled "Keane Guest House" and dated August 12, 2015). The representatives stated that Broad Beach Road provides access to the well-used Lecheza Beach and that the Coastal Commission has previously taken a stand for public access by means of Broad Beach Road. They stated that there are alternatives to preserve the views of the ocean. They contended that the City of Malibu has routinely ignored the LIP/LCP and that there is a wall of development along Broad Beach Road even though the LCP says that there should be a 20% view corridor with each development. According to the representatives, the City is giving precedence to the homeowners' privacy over the public's views of the ocean. They claimed that what remains of the public views would be gone with this project as proposed. The LCP provisions for "scenic area" protection and the 20% requirement are not being complied with, stated the representatives of the appellant. They proposed an alternative that would re-orient the project and save the vast majority of the view, in their estimation. They stated that the applicant has a flat enough lot with sufficient space to relocate the footprint of the project by turning the house and opening up the public's view. The project as proposed by the applicant utilizes the maximum lot development size, according to the representatives. The alternative would be only a few hundred square feet less than what is allowed. According to the representatives, the Commission should find that a substantial issue exists (based on the project not being consistent with the LCP and the CCC mandate) and that a feasible alternative exists as well. They advocated that the Commission should opt for a de novo hearing and that the applicant should work with them to fix the project. They stated that a premier Malibu architect has been commissioned to do the alternative and that health, safety, and fire concerns have been taken care of with the feasible alternative. They pointed to a provision in the LIP that states (paraphrased): "the least visible location on the site should be used if some ocean views are obstructed." Furthermore, the representatives that this is a larger policy issue and that the appellant has an easement and is willing to get a public easement or deed restriction on her property to ensure the protection of the public view. They said that a de novo hearing could leverage this offer and create protection of the views for posterity as a result. They stated that the deed restriction or public easement could be completed before the de novo hearing and that this could serve as a nice "policy" template for future cases (synergy with the voluntary actions of a homeowner).

Aug 7 2015
Date

carole groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

if you can, would you please substitute this power point for the one you have. I have added a few slides and corrected 2 based on feedback I received

thank you

Sara Wan

31571 Sea Level Drive
Malibu
Keane Guest House
Wed. 8/12- Agenda Item 14a
Appeal No. A-4-MAL-15-0042

This appeal is about protecting the public's right to view the ocean

Staff report page 3 "the view is only from a small stretch of a road that is not widely used by the public".

There are 4 heavily used public access ways on Broad Beach Road.

One of the Public Access ways on Broad Beach Road

The State has spent millions of dollars purchasing Lechuza Beach and access to it
It is a well used beach
Access to Lechuza Beach is from Broad Beach Road

Beach Traffic and Use on Broad Beach Road and Lechuza Beach

This Commission has fought for years for the right of the public to access Broad Beach

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Free to Sit on the Sand

In white capri pants and overblouse and her long gray braid, Sara Wan looks more grandmother than rebel. But the 64-year-old Malibu resident and California Coastal commissioner is rightly fed up with the vigilante war her wealthy neighbors wage against sunbathers, boogie boarders and body surfers at Broad Beach. Wan plopped herself and her cooler on the sand Sunday to illustrate how private guards and sheriff's deputies bully beachgoers off sand that belongs to all Californians.

For years, her commission cajoled, pleaded, even sued to force homeowners to call off the private cops, pull out "No Trespassing" signs dotting the sand and unchain stairways and gates so people could pass between the mansions. But the harried commission staffers have been no match for the Malibu elite's hired lawyers and beach bouncers.

Broad Beach is an extreme example of how homeowners have run roughshod over the public. California law guarantees public use of the beach seaward of the mean high tide line. Besides this damp sand, 40% of the 108 houses on Broad Beach include a public easement; some easements are just a 25-foot-wide strip of dry sand, and others extend all the way to the homes. The result is a confusing patchwork of public and private spaces that homeowners have exploited.

As soon as Wan sat down, a hired guard raced over on his all-terrain vehicle, ordering her to move. When Wan refused, he summoned five sheriff's deputies. Instead of slinking off like most beachgoers, Wan produced documents proving that, despite the "No Trespassing" signs, she was sitting on an easement the homeowner granted the public 22 years ago in exchange for the commission's permission to remodel.

Families shouldn't have to pack a parcel map with the sunscreen and sandwiches. And they shouldn't have to answer to deputies before they spread towels on a beach.

Waterfront residents say they don't want teenagers tossing bottles on the sand or preschoolers using their lawns as a toilet. Legitimate concerns, but homeowners could set out trash cans and install signs directing beachgoers to public restrooms at nearby Zuma Beach for a fraction of the $3,000 to $5,000 they each pay yearly for ATV rent-a-cops.

The deputies who confronted Wan should recall that their job is to defend the rights of beachgoers as vigilantly as those of homeowners. If they're confused about the law, Sheriff Lee Baca should get them training. The misleading signs in the sand must come out; new markers should tell body surfers and picnickers where they *can* sit as well as where they can't. And thank goodness Wan's around to show what's right.

Wall of Development Along Broad Beach Road, a scenic area*

*Staff report page 15 "this segment of Broad Beach Road, which is considered a scenic area"

There are only 5 places where there is still a view along 1.6 miles of Broad Beach Road. With so few views left, every one becomes precious.
Existing Public View from Broad Beach Road Across Appellant's Property

View from Broad Beach Road. White house to right is pre-coastal but does not impact view.

Proposed Project’s Impact on Public View

-

The City and the Commission have allowed the views along Broad Beach to disappear even though the LCP incorporated Coastal Act chapter 3 Policy 30251 into Chapters 6 of the Malibu LUP and LCP

Land Use Plan Policy 6.4:
Places on, along, within, or visible from scenic roads, trails, beaches, parklands and statewaters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. …..
Land Use Plan Policy 6.5:
New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not
be visible, **then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas,** through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.
6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening…..
6.15 **Fences, walls, and landscaping shall not block views of scenic areas** from scenic roads, parks, beaches, and other public viewing areas.
6.18 For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, **Broad Beach Road**, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, **new development shall provide a view corridor on the project site,** that meets the following criteria: a. **Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site**. b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on beachfront lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side

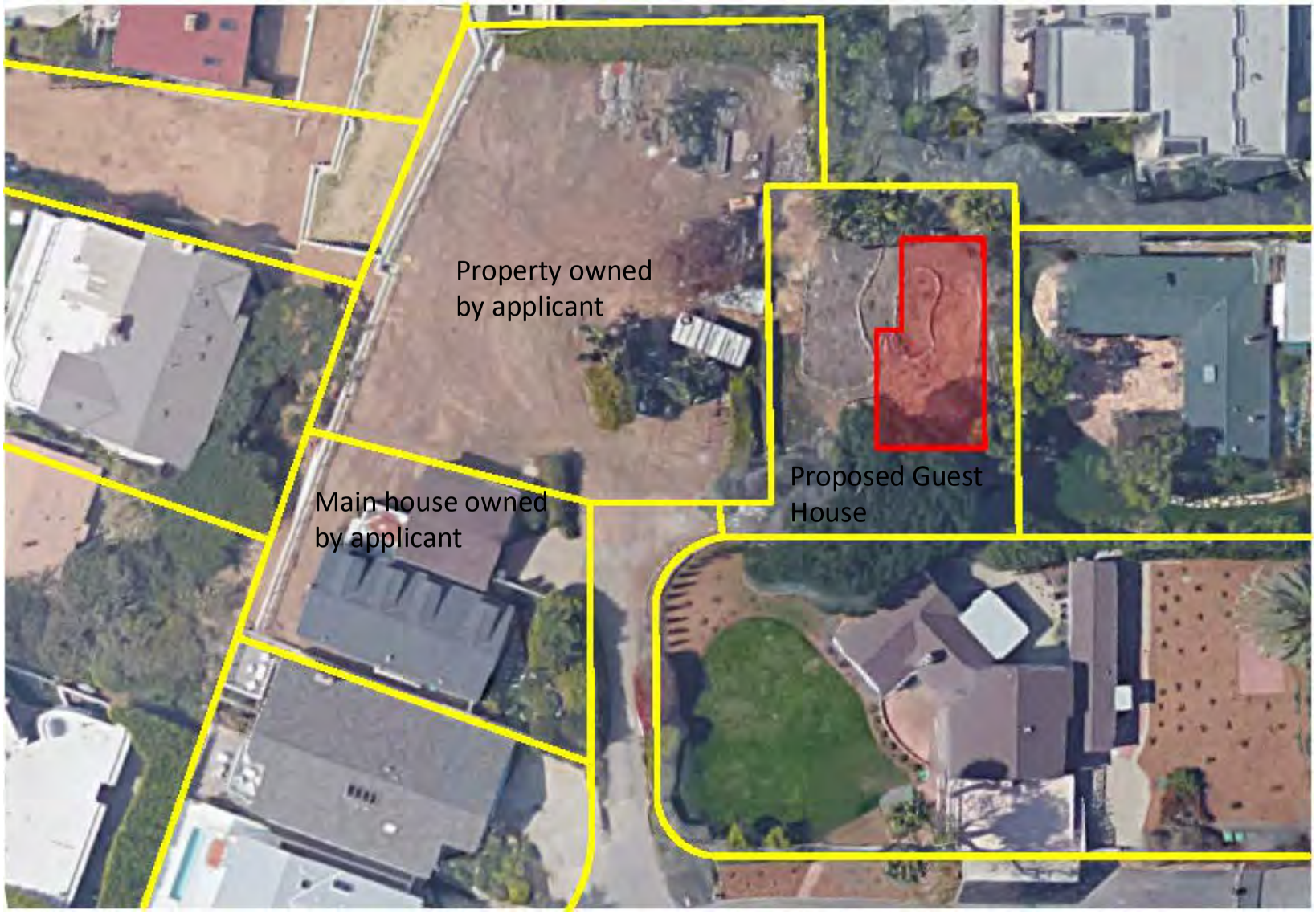
Proposed Project’s Impact on Public View

-

Model Created According to Project Plans and Specs Showing View Impact

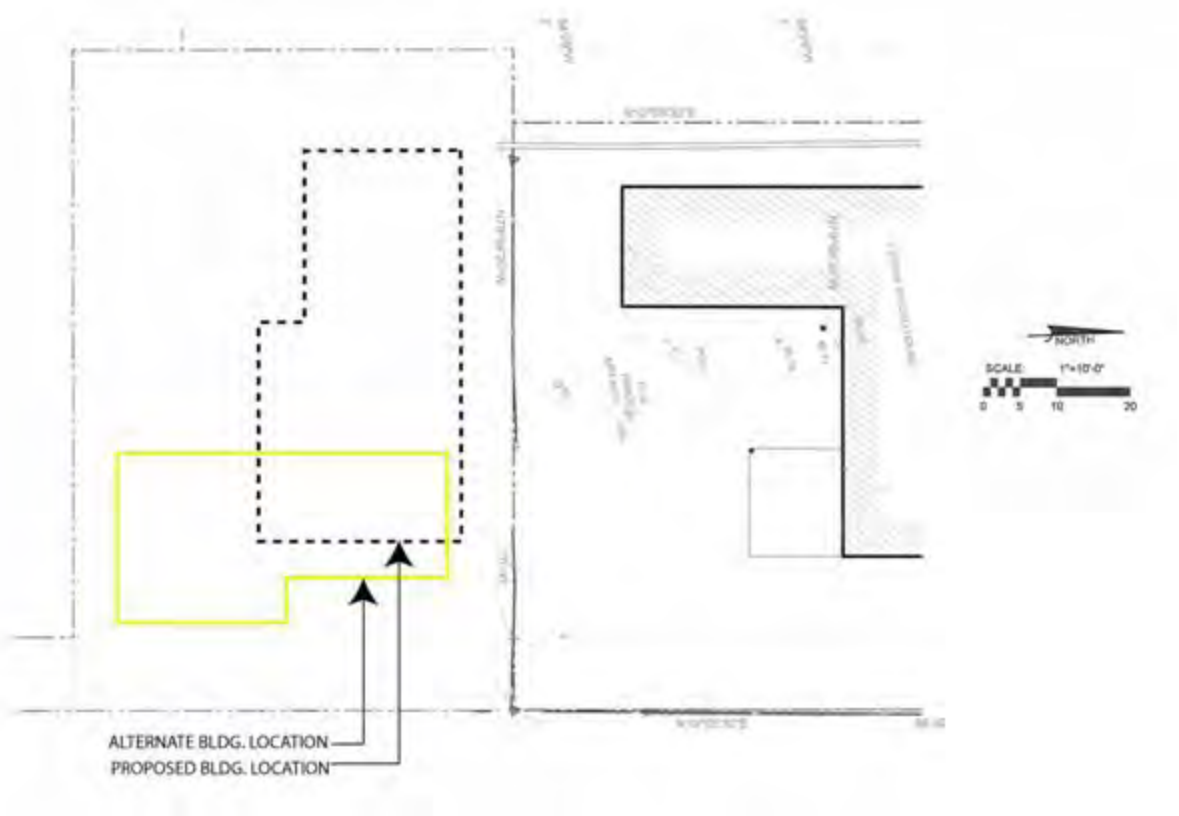
Model (middle left) showing view remaining with Appellant's alternative (applicant's story poles removed)

APPLICANT HAS A FLAT LOT WITH SUFFICIENT SPACE TO RELOCATE THE FOOTPRINT OF THE PROJECT

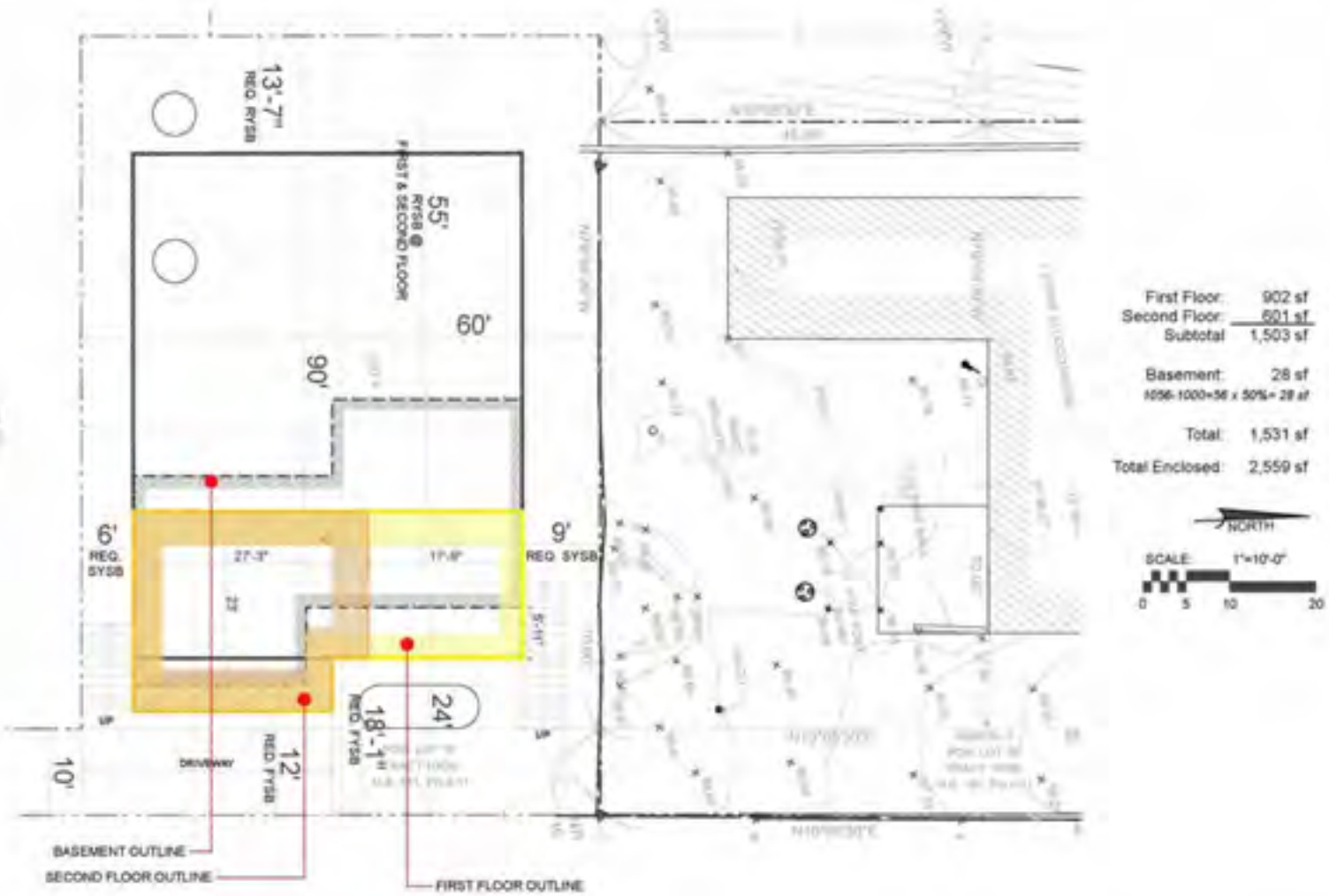


Applicant's Project

- Footprint extends up to the minimum required front yard setback on east- 18.09 ft.
- Footprint extends up to the minimum required rear yard setback on the west- 12.07 ft.
- Result- project uses entire 60.28 foot long developable lot depth.
- LIP restricts the allowable square footage to between 800sq ft and 1982 sq. ft.
- Applicant's project is 1,931 sq. ft., just 51 sq. ft. less than maximum allowed



Plan showing proposed project and one feasible alternative. By simply re-orienting the project almost all view blockage is eliminated (see slide 8)
Please note, both use the same driveway. Alternative is only 400 sq ft smaller but 731 sq ft more than the minimum.



Model (middle left) showing view remaining with Appellant's alternative (applicant's story poles removed)

Staff report Page 14:
"staff believes the appellant's proposed alternative does not account for all City of Malibu and Los Angeles County Fire Department building and residential driveway setbacks and therefore, the Commission cannot confirm if the appellant's alternative is feasible."
Note in Slide 13- Appellant's alternative uses the same driveway as Applicant

If staff isn't certain this is precisely why the Commission should find Substantial Issue- to work with Applicant and Appellant to find a feasible alternative.

FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS

Name or description of the project: Wed. 14a , Appeal A-4-MAL-15-0042 (Keane, Malibu)

Time/Date of communication: 1:30pm, August 5, 2015

Location of communication: phone

Person(s) initiating communication: Sara Wan, Frank Angel

Person(s) receiving communication: Steve Kinsey

Type of communication: phone call

Main issues here is the City of Malibu's failure to comply with the LCP requirements to protect the public's view of the ocean, particularly where the area is heavily used by the public to access the beach.
1- There are 4 access ways on Broad Beach Road but the City has allowed a wall of development to almost completely block any view of the ocean, contrary to LCP requirements. The City is failing to properly implement its LCP and this makes this a SI
2- There are only 5 public views remaining so this one becomes all the more important to protect and a significant resource. The message to the City needs be that as re-development takes place along this road they need protect public views and enforce their LCP
3- There is a feasible and easy alternative that will protect the existing public view and still provide applicant with a guest house. Staff should fully analyze this if this goes DeNovo. It is not right to ignore this possibility to save this view
4- Discussed the offer to deed restrict the appellant's property as a novel approach to have the Commission work with an appellant to permanently protect the property without the CCC having to file any appeals in the future.

Date: 8/10/15

Signature of Commissioner

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

W14a

ADDENDUM

DATE: August 6, 2015

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item W14a, Appeal No. A-4-MAL-15-0042 (Keane), Wednesday, August 12, 2015

The purpose of this addendum is to attach ex-parte communications received since the publication of the staff report.

Ex parte communications disclosure forms were submitted by Commissioners McClure and Cox.

FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS

Name or description of the project: Wed. 14a , Appeal A-4-MAL-15-0042 (Keane, Malibu)

Time/Date of communication: 2pm, August 3, 2015

Location of communication: phone

Person(s) initiating communication: Sara Wan, Frank Angel

Person(s) receiving communication: Martha McClure

Type of communication: phone call/power point

Main issues here is the City of Malibu's failure to comply with the LCP requirements to protect the public's view of the ocean, particularly where the area is heavily used by the public to access the beach.
1- There are 4 access ways on Broad Beach Road but the City has allowed a wall of development to almost completely block any view of the ocean
2- There are only 5 public views remaining so this one becomes all the more important to protect, both because it there are only a few remaining and because the message to the City needs be that as re-development takes place along this road they need obtain public views
3- There is a feasible and easy alternative that will protect the existing public view and still provide applicant with a home. This can be looked at if this goes DeNovo. It is not right to ignore this possibility to save this view
4- Discussed the offer to deed restrict the appellant's property as a novel approach to have the Commission work with an appellant to permanently protect the property without the CCC having to file any appeals in the future.
5- Discussed the impact of the project on the public view
6- Discussed the impact on the applicant's view of re-orienting the guest house and the relationship of the guest house view to anything he might build on the adjacent graded large property
7- Discussed the unity of ownership of the 3 parcels the applicant owns

Date:

_____
Signature of Commissioner

EX-PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: GREG COX

Name or description of the project: Wed. 14a , Appeal A-4-MAL-15-0042 (Keane, Malibu)

Time/Date of communication: 3:30pm, August 3, 2015

Location of communication: phone

Person(s) initiating communication: Sara Wan, Frank Angel

Identity of person(s) on whose behalf communication was made: Carol Byrd (appellant)

Person(s) receiving communication: Greg Cox, Greg Murphy

Type of communication: phone call

Sara Wan and Frank Angel called representing the appellant Carol Byrd who owns the home immediately inland from the subject property. Their main issue here is the City of Malibu's failure to comply with the LCP requirements to protect the public's view of the ocean, particularly where the area is heavily used by the public to access the beach.

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4- Discussed the offer to deed restrict the appellant's property as a novel approach to have the Commission work with an appellant to permanently protect the property without the CCC having to file any appeals in the future.
5- Discussed the impact of the project on the public view
Sara Wan also provided a briefing booklet, and follow-up with an additional photo of the street

view looking through the subject property, both of which are attached.

Date: 8/4/15

Greg Cox
Signature of Commissioner

31571 Sea Level Drive
Malibu
Keane Guest House
Wed. 8/12- Agenda Item 14a
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Proposed Project’s Impact on Public View

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Land Use Plan Policy 6.7:
The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.
Land Use Plan Policy 6.10:
New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.

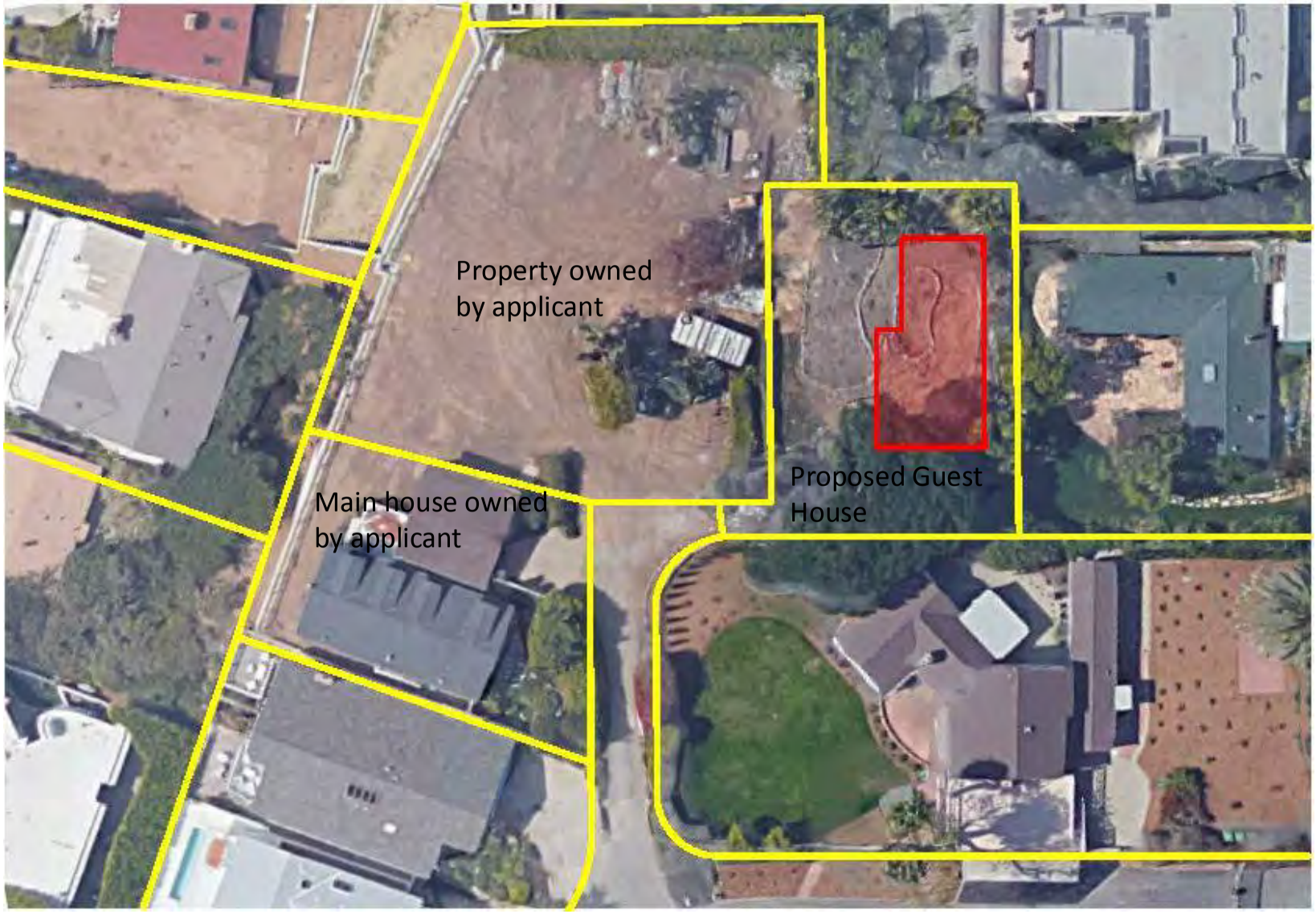
Proposed Project’s Impact on Public View

-

Model Created According to Project Plans and Specs Showing View Impact

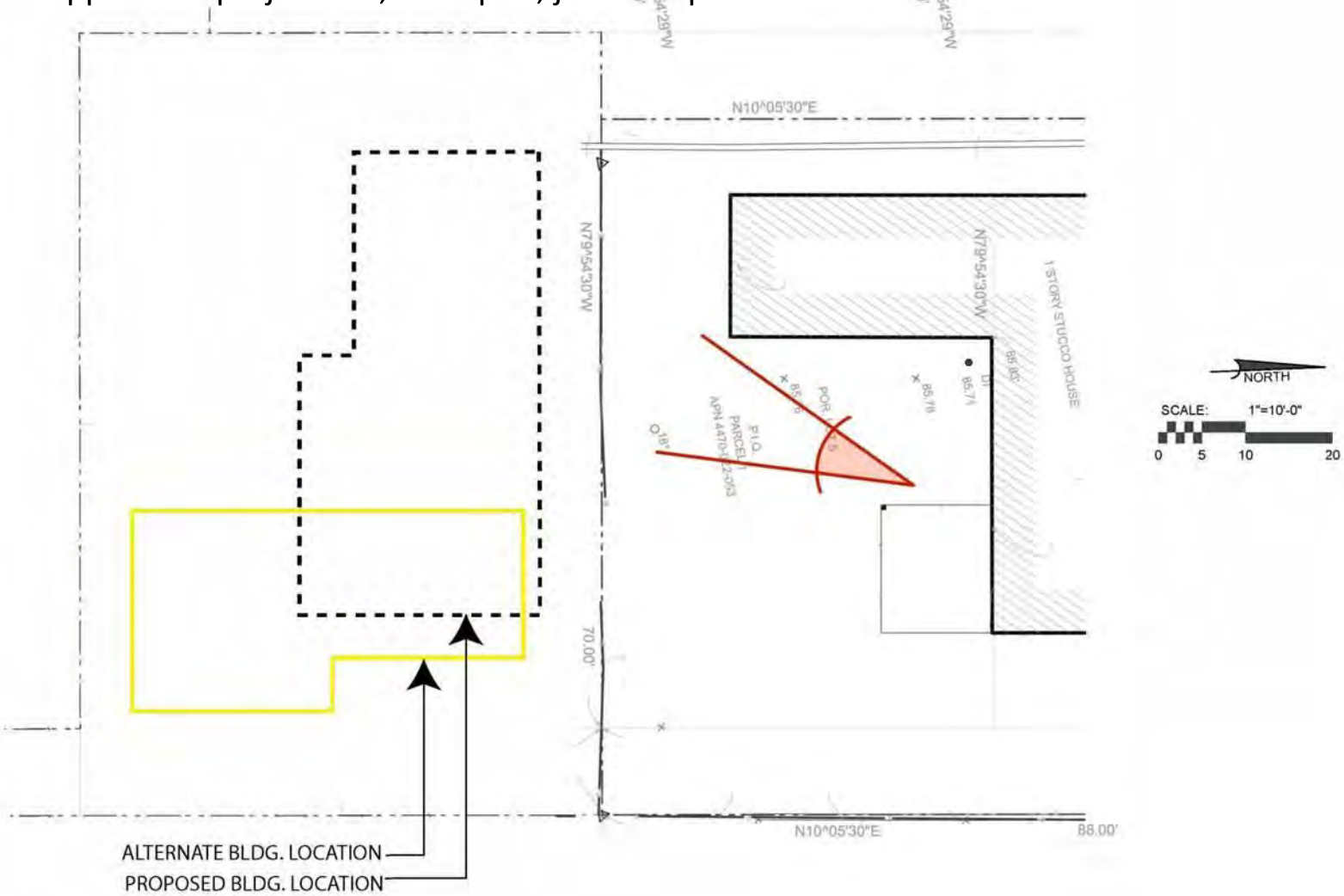
Model (middle left) showing view remaining with Appellant's alternative (applicant's story poles removed)

APPLICANT HAS A FLAT LOT WITH SUFFICIENT SPACE TO RELOCATE THE FOOTPRINT OF THE PROJECT

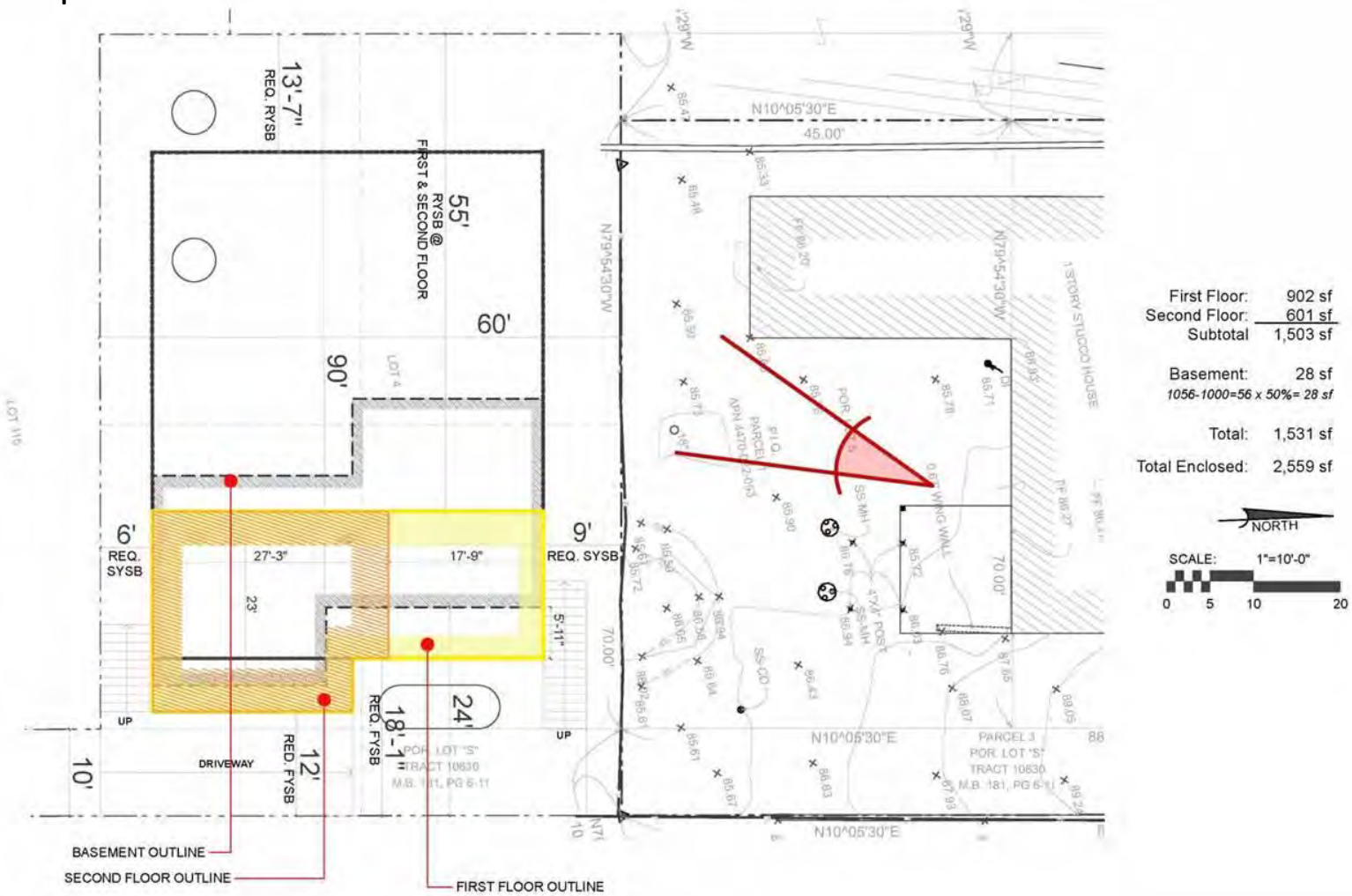


Applicant's Project

- Footprint extends up to the minimum required front yard setback on east- 18.09 ft.
- Footprint extends up to the minimum required rear yard setback on the west- 12.07 ft.
- Result- project uses entire 60.28 foot long developable lot depth.
- LIP restricts the allowable square footage to between 800sq ft and 1982 sq. ft.
- Applicant's project is 1,931 sq. ft., just 51 sq. ft. less than maximum allowed



Plan showing proposed project and one feasible alternative. By simply re-orienting the project almost all view blockage is eliminated (see slide 8)
Please note, both use the same driveway. Alternative is only 300 sq ft smaller but 731 sq ft more than the minimum.



Model (middle left) showing view remaining with Appellant’s alternative (applicant’s story poles removed)

Staff report Page 14:
"staff believes the appellant's proposed alternative does not account for all City of Malibu and Los Angeles County Fire Department building and residential driveway setbacks and therefore, the Commission cannot confirm if the appellant's alternative is feasible."
Note in Slide 13- Appellant's alternative uses the same driveway as Applicant

If staff isn't certain this is precisely why the Commission should find Substantial Issue- to work with Applicant and Appellant to find a feasible alternative.

1818

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

W14a

Important Hearing Procedure Note:
This is a substantial issue only hearing. Public testimony will be taken only on the question of 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:	7/3/15
49th Day:	8/21/15
Staff:	D. Venegas
Staff Report:	7/30/15
Hearing Date:	8/12/15

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions of CDP 13-041

APPEAL NO.: A-4-MAL-15-0042

APPLICANT: Tom Keane

APPELLANT: Carol Bird

PROJECT LOCATION: 31571 Sea Level Drive, City of Malibu, Los Angeles County (APN: 4470-022-005)

PROJECT DESCRIPTION: Construction of a 1,931 sq. ft. two-story single family residence that includes a 1,056 sq. ft. basement and subterranean garage, landscaping, alternative onsite wastewater treatment system, retaining walls, hardscaping and a deck.

STAFF RECOMMENDATION: Find that No Substantial Issue Exists

MOTION & RESOLUTION: Page **7**

SUMMARY OF STAFF RECOMMENDATION

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 Local Coastal Program (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 subject appeal has been filed. The **motion** and **resolution** for a "no substantial issue" findings are found on **page 7.**

The City of Malibu (City) approved a Coastal Development Permit (CDP) for construction of a new 1,931 sq. ft. two-story single family residence that includes a 1,056 sq. ft. basement and subterranean garage, landscaping, alternative onsite wastewater treatment system, retaining walls, hardscaping and a deck. The approved project is located on a vacant property at 31571 Sea Level Drive. The site is an infill parcel that is adjacent to existing single-family residences on three sides. The project site and adjacent sites are zoned Single Family Medium (SFM), which permits the development of single family residential structures.

The subject 0.13-acre property is located between the ocean and Pacific Coast Highway and is currently vacant. The site is accessed from a private driveway that connects to West Sea Level Drive, a private and gated road, which is itself accessed from Broad Beach Road. Although located between the first public road and the sea, the project site is not beach-fronting. The project site is an infill parcel that is adjacent to existing single-family residences on lots to the north (the appellant's property), east, and west, and a vacant undeveloped lot to the south (seaward), which is also owned by the applicant. The neighborhood is mostly build out with single-family residences, and the proposed residence is sited among existing development. Additionally, the project site does not contain any environmentally sensitive habitat areas (ESHA) and there are no mapped public trails on the property. The subject property is relatively flat and at the same elevation as the lots to the north, east and west. The surrounding lots currently have ocean views over the subject property. Due to the site's topography, any development on the lot above three to four feet above existing grade would have the potential to block ocean views. The proposed residential structure would comply with the allowable height for residential development, which is 18 feet above natural or finished grade, whichever is lower.

The appellant contends that the approved development is inconsistent with the scenic and visual resources protection policies of the LCP because public views were not sufficiently protected, and because the City found that Chapter 6 of the Local Implementation Plan (LIP), "Scenic, Visual, and Hillside Resource Protection Ordinance," was inapplicable and therefore did not apply the visual resource protection standards found in that chapter to the proposed development. Additionally, the appellant asserts that the proposed development will significantly impact views of the ocean from Broad Beach Road through the appellant's property, which fronts Broad Beach Road and is located between that road and the applicant's property, and over the undeveloped subject property. Lastly, the appellant contends the City's approval of the project is inconsistent with LIP Section 13.9 (C) and LIP Section 6.4(A), in that both LIP Sections require all decisions on coastal development permits to be accompanied by written findings that the project is the least environmentally damaging alternative.

In its action on the subject permit, the City's Planning Commission found that the project does block neighboring private bluewater views, however the project has been designed to comply with the required front, rear, and side yard setbacks and the applicant has sunk the home into the ground to lessen the overall mass and bulk of the home, consistent with the visual and scenic protection provisions of the LCP. Moreover, the City Council found that the site is visible from a

public viewing area, however the proposed residence is sited among existing development, and mostly blocked from view by neighboring single-family residential development within a mostly built-out neighborhood. The only public place from which the approved residential structure will be visible is from a short segment of Broad Beach Road, through the appellant's property; however, any development on the lot will impact views of the ocean from that location. The public view identified in the appeal is a minor view of bluewater through the appellant's developed site, seen over the roofline of her existing residential structure and over an approximately 3-4 ft. high solid wood fence with 2-3 ft. high open/permeable wrought iron at the front property line. The bluewater view is partially obscured by existing landscape on both the applicant's and appellant's properties. Additionally, there are several existing residences in the immediate vicinity that are also visible from the same vantage point along Broad Beach Road. Given that the view is only from a small stretch of a road that is not widely used by the public, and that it is partially obscured by development and landscaping, staff recommends that the Commission find that this does not represent a significant view in this instance. Therefore staff recommends that the Commission find that the proposed development will not have the potential to create significant adverse impacts on public views. Additionally, due to the constrained nature of the subject flag shaped lot, Commission staff does not believe there are building footprint alternatives that would further reduce the proposed structure's visibility from Broad Beach Road.

Regarding the appellant's contention that the City's approval of the project is inconsistent with LIP Section 13.9 (C) and LIP Section 6.4(A), both of which require all decisions on coastal development permits to be accompanied by written findings that the project is the least environmentally damaging alternative, Commission staff notes that both the City's Planning Commission and City Council resolutions <u>did</u> include written findings that the project under consideration was the least environmentally damaging alternative. Furthermore, the City found that the proposed project would not result in significant adverse effects on the environment and that there are no further feasible alternatives that would further reduce any impacts that the project will have on the environment. The project complies with the specific residential development standards of the LCP and is consistent with the Single Family Medium Density zoning classification of the subject parcel. The City also evaluated four alternatives to determine which was the least environmentally damaging. For all these reasons, staff recommends that the Commission find the City-approved residence to be consistent with the visual and scenic protection policies and provisions of the certified LCP.

Moreover, the development is relatively minor in scope, does not have a significant adverse effect on significant coastal resources, has little precedential value and does not raise issues of regional or statewide significance. Therefore, staff recommends that the Commission find that the appellant's contentions raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the City of Malibu's certified LCP.

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EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Aerial Photo
Exhibit 3.	Project Plans
Exhibit 4.	Appeal by Carol Bird
Exhibit 5.	Final Local Action Notice
Exhibit 6.	Correspondence from Appellant's Representative, dated July 15, 2015 [Note, this Exhibit is available as part of the digital version of this staff report on the California Coastal Commission website at www.coastal.ca.gov on the August 12, 2015 hearing agenda, Item W14a]
Exhibit 7.	Proposed Residence Staking Photo #1
Exhibit 8.	Proposed Residence Staking Photo #2

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's 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

Approval of CDPs by cities or counties may be appealed if the development authorized is to 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 development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603(a)(4)). Finally, developments that constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603(a)(5)).

In this case, the project site is located on Sea Level Drive in the City of Malibu (Exhibits 1-2). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for the area extends 300 feet inland from the most landward extent of the beach and that the entire project site is within this appeal area. As such, the City's coastal development permit for the subject project is appealable to the Commission.

2. Grounds for Appeal

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act. (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 Permit Hearing

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 proposed development is in conformity with the certified Local Coastal Program and, if the development is between the sea and the first public road paralleling the sea, the public access and recreation policies 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 January 20, 2015. The action by the Planning Commission was appealed to the Malibu City Council by Carol Bird within the local appeal period, on January 29, 2015. The appeal was denied and the permit for the project was approved by the Malibu City Council on June 8, 2015. The City's Notice of Final Action for the project was received by Commission staff on June 19, 2015 (Exhibit 5). Commission staff provided notice of the ten working day appeal period, which began on June 19, 2015, and ended on July 3, 2015. Carol Bird filed the subject appeal on July 3, 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 July 13, 2015. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 days after the date on which the appeal was filed with the Commission, which would be August 21, but according to Section 30625(a), the applicant can waive that time limit.

II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

The staff recommends that the Commission adopt the following resolution:

MOTION: ***I move that the Commission determine that Appeal No. A-4-MAL-15-0042 raises NO substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.***

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in 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 finds that Appeal No. A-MAL-15-0042 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares[1]:

A. PROJECT DESCRIPTION AND SETTING

The project was approved by the City of Malibu Planning Commission on January 20, 2015. The action by the Planning Commission was appealed to the Malibu City Council by Carol Bird. The Malibu City Council upheld the Planning Commission's action, thereby approving CDP No. 13-041 for the construction of a 1,931 sq. ft. two-story single-family residence that includes a 1,056 sq. ft. basement and subterranean garage, landscaping, alternative onsite wastewater treatment system, retaining walls, hardscaping, and a deck located at 31571 Sea Level Drive (APN:4470-022-005) (Exhibits 1-3).

The approved project is located on a 0.13-acre (5,550 sq. ft.) vacant parcel located between the ocean and Pacific Coast Highway. The site is accessed from a private driveway that connects to West Sea Level Drive, a private and gated road, which is itself accessed from Broad Beach Road. Although located between the first public road and the sea, the project site is not beach-fronting. The subject lot lies seaward and below the grade of Broad Beach Road, a public road used by the public for access to Broad Beach and the Lechuza Beach Accessway. The project site is an infill parcel that is adjacent to existing single-family residences on lots to the north (the appellant's property), east, and west, and a vacant undeveloped lot to the south, which is also owned by the applicant. The project site, and adjacent sites, are zoned Single Family-Medium Density in the Malibu LCP, which permits the development of single family residential

[1] The suggested findings and conclusions from the Summary of Staff Recommendation are also hereby incorporated by reference.

structures (one unit per 0.25 acre). The neighborhood is mostly built out with single-family residences, and the proposed residence is sited among existing development. Additionally, the project site does not contain any environmentally sensitive habitat areas (ESHAs) and there are no mapped public trails on the property.

The subject property is relatively flat and at the same elevation as the lots to the north, east and west. The surrounding lots currently have ocean views over the subject vacant property. Due to the site's topography, any development on the lot that is higher than three to four feet above existing grade would have the potential to block ocean views. The proposed residential structure would comply with the allowable height for residential development, which is 18 feet above natural or finished grade, whichever is lower. In its action on the subject permit, the City's Planning Commission found that the project site blocked neighboring bluewater views, however the project has been designed to comply with the required front, rear, and side yard setbacks and the applicant has sunk the home into the ground to lessen the overall mass and bulk of the home, consistent with the visual and scenic protection provisions of the LCP. The City's Planning Commission found that the project area is not located along or within any scenic area, scenic road, or public viewing area. It further found that the project area does not provide views to, and is not visible from, any scenic area, scenic road, or public viewing area. Therefore, the City determined that the required findings of LIP Chapter 6 "Scenic, Visual, and Hillside Resource Protection Ordinance" were not applicable. However, in the City Council's action upholding the Planning Commission approval, the Council found that the site is visible from scenic areas such as the beach or along Broad Beach Road, but the proposed residence is sited among existing development, and blocked from view by neighboring development.

B. APPELLANT'S CONTENTIONS

The City's action was appealed to this Commission by Carol Bird, the owner of a property north of the subject property and located at 31562 Broad Beach Road. The appeal was filed on July 3, 2015, attached as Exhibit 4. The appellant contends that the approved development is inconsistent with the scenic and visual resources protection policies of the LCP because public views were not sufficiently protected and the City found that Chapter 6 of the LIP ("Scenic, Visual, and Hillside Resource Protection Ordinance") was inapplicable and therefore did not apply the visual resource protection standards found in that chapter to the proposed development. Additionally, the appellant asserts that the proposed development will significantly impact views of the ocean from Broad Beach Road through the appellant's property, which fronts Broad Beach Road, and over the undeveloped subject property. Lastly, the appellant contends that the City's approval of the project is inconsistent with LIP Section 13.9 (C) and LIP Section 6.4(A), which both require all decisions on coastal development permits to be accompanied by written findings that the project is the least environmentally damaging alternative.

See Exhibit 4 for the full text of the appeal.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally-approved project's conformity to the policies contained in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. In this case, the

appellants only cited the scenic and visual policies and the coastal development permit process policies and provisions of the certified LCP and did not raise any issues with the public access policies of the Coastal Act as grounds for appeal.

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 evaluating the issue of whether the appeal raises a substantial issue, the Commission considers 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;
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 significant.

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

1. Visual Resources

The appellant contends that the project, as approved by the City, does not conform to the policies of the LCP with regard to protecting public views to and along the ocean from Broad Beach Road. The appeal asserts that the proposed project fails to conform to the LCP policies (outlined below) because the City failed to site the development footprint in a manner that is most protective of public views to and along the ocean.

Land Use Plan Policy 6.2:

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

Land Use Plan Policy 6.3:

> Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the

ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:

a. Pacific Coast Highway
b. Decker Canyon Road
c. Encinal Canyon Road
d. Kanan Dume Road
e. Latigo Canyon Road
f. Corral Canyon Road
g. Malibu Canyon Road
h. Tuna Canyon Road

Land Use Plan Policy 6.4:

Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.

Land Use Plan Policy 6.5:

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

Land Use Plan Policy 6.7:

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

Land Use Plan Policy 6.10:

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

Local Implementation Plan Section 6.4(A):

Written findings of fact, analysis and conclusions addressing scenic or visual resources must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon Scenic Areas from or along Scenic Roads and Public Viewing Areas. Such findings shall address the specific project impacts relative to the applicable development standards identified in Section 6.5 of the Malibu LIP. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. Findings for approval or conditional approval shall concluded that the project as proposed, or as conditioned, conforms to the certified Local Coastal Program. A Coastal Development Permit for the proposed development shall only be granted if the City's decision-making body is able to find that:

1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.
2. The project, as conditioned, will not have significant adverse or visual impacts due to required project modifications, landscaping or other conditions.
3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.
4. There are no feasible alternatives to the development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.
5. 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.

Local Implementation Plan Section 6.5, in relevant part:

A. Development Siting
   1. New development shall be sited and designed to minimize adverse impacts on scenic areas from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.
   2. Where there is no feasible alternative that is not visible from scenic highways or public viewing areas, the development area shall be restricted to minimize adverse impacts on views from scenic highways or public viewing areas.
   3. Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscaping screening. Landscaping screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

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

B. Development Design

1. The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, or where found appropriate through Site Plan Review, pursuant to Section 13.27 of the Malibu LIP the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.
2. The length of on-site roads or driveways shall be minimized, except where a longer road or driveway would allow for an alternative building site location that would be more protective of visual resources or ESHA. Driveway slopes shall be designed to follow the natural topography. Driveways that are visible from a scenic highway, a beach, a public viewing area, or public hiking trail shall be a neutral color that blends with the surrounding landform and vegetation.
3. Retaining wall visible from scenic highways, public viewing areas, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.
4. Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.
5. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
   a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown, and gray with no white or light shades and no bright tones.
   b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
   c. All windows shall be comprised of non-glare glass.
6. New water tanks in scenic areas visible from scenic roads or public viewing areas shall be designed to be partially below grade. Water tanks shall incorporate colors that are compatible with the surrounding landscape and landscape screening to minimize visual impacts.

…

Discussion

The appellant asserts that the proposed project is inconsistent with the City's certified LCP because there is a scenic ocean vista through the appellant's property (fronting Broad Beach Road) and the vacant subject parcel, and therefore this segment of Broad Beach Road is to be considered a public viewing area, and the City did not sufficiently protect the public views from this public viewing area. Specifically, the appellant asserts that the proposed development is inconsistent with LIP Section 6.5(A) (stated above) of the certified LCP because the City did not approve the residential structure "in the least visible portion of the site" when no such building location would prevent the entire project from being not visible. Furthermore, the appellant states that no such alternative was described by the applicant or City planning staff, and she contends

that there is a feasible alternative that would include concentrating the development footprint in the subject lot's easterly and southeasterly portion and would result in a "least visible" development footprint and would open up ocean views through the westerly portion of the lot.

In addition, the appellant contends that the City found that "views of the lot were not visible from Broad Beach Road," and the City determined that the findings of LIP Chapter 6 were "not applicable" and therefore the City failed to review the project under the provisions of LIP Chapter 6 and failed to minimize adverse project impacts on public ocean views to the maximum feasible extent, as required by Chapter 6 of the LIP. Lastly, the appellant states that "because the segment of Broad Beach Road facing the subject lot currently offers members of the public a scenic vista of the ocean, under the LUP, this place on the road qualifies as a public viewing area." The appellant's representatives have indicated that the appellant is willing to offer to dedicate a view preservation easement or other enforceable restriction on the appellant's property to preserve the public ocean view from Broad Beach Road to the subject property and thereby preserve the relevance of the view across the subject property. However, this offer to dedicate a view preservation easement was not proposed at the time of the City's action on the coastal development permit and therefore was not considered by City planning staff, Planning Commission, or City Council.

The first question this Commission must address is the degree of factual and legal support for the City's conclusion that the development is consistent with the LCP. The Malibu certified Land Use Plan requires protection of scenic areas and coastal views from public viewpoints. LUP Policy 6.2 defines "public viewing areas," in part, as public roads and trails that offer scenic vistas, and states that existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. LUP Policy 6.5 and LIP Section 6.5 require new development to be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. LUP Policy 6.7 limits the height of structures to minimize impacts to visual resources, and LUP Policy 6.10 requires development to be sited on the flattest portion of the site.

The City-approved residence is located on a 0.13-acre (5,550 sq. ft.) vacant parcel located in a residential neighborhood seaward of Pacific Coast Highway (PCH), immediately south west of the intersection of Broad Beach Road and Sea Level Drive. Although located between the first public road and the sea, the project site is not beach-fronting. The site is accessed from Sea Level Drive, a private and gated road, which is itself accessed from Broad Beach Road. The subject lot lies seaward and below the grade of Broad Beach Road, a public road used by the public for access to Broad Beach and the Lechuza Beach Accessway. The project site is an infill parcel within a mostly built-out neighborhood with single-family residences. The subject property is relatively flat and at the same elevation as the lots to the north, east and west. According to the City's staff report for Appeal No. 15-001 (dated May 21, 2015), the surrounding lots currently have bluewater ocean views over the subject vacant property however, due to the site's topography, any development on the lot that is higher than three to four feet above existing grade would have the potential to block those private ocean views. The proposed residential structure complies with LUP Policy 6.7, which limits the height of residential development to 18 feet above natural or finished grade, whichever is lower.

Regarding the contention that the City did not approve the residential structure "in the least visible portion of the site" as required by LIP Section 6.5(A), Commission staff notes that

although the approved residential structure will be visible from a short segment of Broad Beach Road through the appellant's property, any development on the lot will impact views of the ocean. When viewing the subject site from Broad Beach Road, views of the site and ocean are partially obscured by an existing detached two-story guest unit and one-story residence located on the appellant's property at 31562 Broad Beach Road, and existing surrounding residential development and landscaping. The public view identified in the appeal is a minor view of bluewater through the appellant's developed site, seen over the roofline of her existing residential structure and over an approximately 3-4 ft. high solid wood fence with 2-3 ft. high open/permeable wrought iron at the front property line. Additionally, the view is partially obscured by existing landscape on both the applicant and appellant's property. From a viewpoint along the northern side of Broad Beach Road looking directly at the subject site through the appellant's property, as seen in exhibit 8, you obtain a broader and more expanded view of the bluewater due to the slight higher elevation and distant outlook. Additionally, there are several existing residences in the immediate vicinity that are also visible from this vantage point.

Furthermore, from viewing points directly adjacent to the appellant's property line, as seen in exhibit 7, the bluewater view is greatly diminished, due in part to the 6-ft. high fence and existing residence located on the appellants property. Given that the view is partially obscured by development and landscaping, it does not represent a significant view in this instance. Therefore the City determined, and the Commission agrees, that the proposed development will not have the potential to create adverse significant impacts on this public viewing area.

Additionally, the Commission notes that due to the constrained nature of the subject flag shaped lot, there are no building footprint alternatives that would further reduce the proposed structure visibility from Broad Beach Road. The appellant submitted a potential building footprint alternative in her appeal (see exhibit 4 for the full text of the appeal) prepared by an architecture firm retained by the appellant. The appellant claims the design alternative would mostly eliminate the project's adverse impact on the public views and meets City of Malibu's building requirements. However, staff believes the appellant's proposed alternative does not account for all City of Malibu and Los Angeles County Fire Department building and residential driveway setbacks and therefore, the Commission cannot confirm if the appellant's alternative is feasible. The Commission does not find adequate support for the idea that a reconfiguration of the building footprint would significantly reduce adverse impacts on public views, due to the constrained nature of the subject lot. The Commission therefore concludes that there is adequate factual and legal support for the local government's decision that the development is consistent with the LCP in this respect.

In its action on the subject permit, the City's Planning Commission found that the project area is not located along or within any scenic area, scenic road, or public viewing area. It further found that the project area does not provide views to, and is not visible from, any scenic area, scenic road, or public viewing area. Therefore, the City determined that LIP Chapter 6 ("Scenic, Visual, and Hillside Resource Protection Ordinance") was not applicable. However, in the City Council's action upholding the Planning Commission approval, the Council found that the site is visible from scenic areas such as the beach or along Broad Beach Road, however the proposed residence is sited among existing development and blocked from view by neighboring development.

LIP Section 6.4(A) (quoted above) states that written findings of fact, analysis and conclusions addressing scenic or visual resources must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon scenic areas from or along scenic roads and public viewing areas. In this case, Broad Beach Road is a residential public street that allows for some limited views to the ocean, and although the subject project site is not directly adjacent to Broad Beach Road, or any public roads, there is still a limited ocean view from Broad Beach Road through the appellant's parcel and through the project site. Pursuant to LUP Policy 6.2, the fact that there are coastal views from this road elevates it to a "public viewing area." Therefore, pursuant to LIP Section 6.4(A), certain written findings of fact, analysis, and conclusions regarding scenic and visual resources were required.

Although the City's Planning Commission erred in its findings that the proposed development would not be visible from any public viewing areas/scenic areas, the Planning Commission did include findings that the project does block neighboring private bluewater views, however, the LCP does not contain any policies that provide for protection of private views. In addition, the project has been designed to comply with the required front, rear, and side yard setbacks and the applicant has sunk the home into the ground to lessen the overall mass and bulk of the home.

Furthermore, the City Council findings of approval (when it considered the appeal of the Planning Commission action) also concluded that the approved residence will be visible from this segment of Broad Beach Road, which is considered a scenic area, and when viewing the subject site from Broad Beach Road, views of the site and ocean are obscured by the existing development and landscaping. Furthermore, the City Council determined that since ocean views from Broad Beach Road have already been impacted by existing development and are obscured, the proposed development did not have the potential to create adverse impacts on scenic areas or public viewing areas. Therefore regarding the contention that the City's Planning Commission and City Council failed to make findings of approval under LIP Chapter 6, as discussed in detailed above, the City's Planning Commission and City Council did include written findings in their resolutions for approval regarding adverse impacts upon scenic areas from or along scenic roads and public viewing areas.

For all these reasons, the Commission finds the City-approved residence is consistent with the visual and scenic protection policies and provisions of the certified LCP and that the City's made the findings required by the LCP.

2. Coastal Development Permit Procedures

Permit procedures are included in the Malibu Local Implementation Plan to provide the regulatory process by which the Land Use Plan policies are carried out. The purpose and intent of Chapter 13 of the LIP is to establish procedures for the City to process coastal development permits consistent with the certified LCP, the Coastal Act and the Commission's regulations, codified in Division 5.5 of Title 14 of California Code of Regulations. Specifically, Chapter 13 requires that all decisions approving coastal development permits be accompanied by written findings supporting the approval.

Local Implementation Plan Section 13.9 states:

All decisions on coastal development permits shall be accompanied by written findings:

A. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with certified City of Malibu Local Coastal Program; and
B. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).
C. The project is the least environmentally damaging alternative.
D. 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 appellant contends the City's approval of the project is inconsistent with LIP Section 13.9 (C) and LIP Section 6.4(A), both of which require all decisions on coastal development permits to be accompanied by written findings that the project is the least environmentally damaging alternative. Specifically, the appellant asserts that the City failed to consider alternatives that were less environmentally damaging alternatives that would have preserved public views of the ocean from Broad Beach Road.

Consistent with LIP Section 13.9(C) and LIP Section 6.4(A), both the City's Planning Commission and City Council resolutions included written findings that the project under consideration was the least environmentally damaging alternative. Finding A3 of the Planning Commission Resolution No. 15-06 outlines how this conclusion was reached for the subject project. Furthermore, finding A3 in the City Council Resolution No. 15-30 states the proposed project would not result in significant adverse effects on the environment and that there are no further feasible alternatives that would further reduce any impacts on the environment. The City found that the project complies with the residential development requirements of the LCP and is consistent with the Single Family Medium Density zoning classification of the subject parcel. The City also evaluated four alternatives to determine which was the least environmentally damaging.

For the reasons discussed above, the City's action was consistent with the above provisions of the City's LCP relating to Chapter 13 "Coastal Development Permits" relating to the requirement that all decisions on coastal development permits shall be accompanied by written findings for approval.

3. 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 cites several scenic and visual protection 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 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 scenic and visual resource protection policies and provisions of the certified LCP. The issue of adverse impacts to scenic and visual resources was addressed in the staff report and both the Planning Commission and City Council resolutions of approval, as described in detail above.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the project consists of residential development of a single, small (0.13-acre), infill property. Given that this lot is relatively small and the development type is consistent with the surrounding area, the extent and scope of the subject development on this particular lot is relatively small and is sized consistent with the surrounding neighborhood.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is an infill lot located in an existing developed residential community. The public view identified in the appeal is a minor view of bluewater along a small stretch of a road that is not widely used by the public through a developed site, over a fence at the front property line, between existing structures and landscaping. Given that the view is partially obscured by development and landscaping, it does not represent a significant coastal resource in this instance. The approved project is consistent with the LCP's scenic and visual protection policies.

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 the future interpretation of its LCP. In this case, the project approved for the project is consistent with the policies and provisions of the LCP and will minimize impacts to visual resources to the maximum extent feasible. 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. The appeal raises issues with regard to which are important from a statewide standpoint. However, in this case the approved project will not result in any significant adverse impacts to visual resources. As such this appeal does not present issues of 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 this area of development. Further, the approved development is supported by substantial evidence in the record and will not have an adverse effect on significant coastal resources.

D. PUBLIC ACCESS POLICIES OF THE COASTAL ACT

When an appeal alleges that proposed development is inconsistent with the public access policies of the Coastal Act, the Commission must also determine whether those allegations raise a substantial issue. (Title 14, Cal. Code Regs., §13115(b).) Here, the appeal does not allege that the proposed development is inconsistent with the Coastal Act's public access policies. It therefore does not raise a substantial issue in this regard.

The public access policies of the Coastal Act (Sections 30210-30214), which are incorporated into the Malibu LCP as policies, mandate that maximum public access and recreational opportunities be provided, consistent with public safety needs and the need to protect public rights, the rights of private property owners, and natural resource areas from overuse. Likewise, the Coastal Act requires that public access from the nearest public roadway to the sea be provided in new development project except where it would be inconsistent with public safety, military security needs, protection of fragile coastal resources and agriculture, where adequate access exists nearby, or where agriculture would be adversely affected.

The approved project is located between the first public road and the sea, although the project site is not beach-fronting. The site is accessed from Sea Level Drive, a private and gated road, which is accessed from Broad Beach Road, a public road used by the public for access to Broad Beach and the Lechuza Beach Accessway. No trails, parks or recreation areas are shown on or adjacent to the subject property. In addition, the project site does not contain or offer any public recreational opportunities. Therefore, although the appeal did not raise this issue, the Commission also finds that the proposed project conforms to the public access policies and standards of the Coastal Act, which are also incorporated into the certified Malibu LCP.

E. SUBSTANTIAL ISSUE REVIEW CONCLUSION

For the reasons discussed above, the Commission finds that the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the City's certified LCP or the public access policies in Chapter 3 of the Coastal Act. Applying the five factors identified above, the Commission finds the City's record adequately supports its position that the proposed project is consistent with the applicable LCP polices. In addition, the development is relatively small in scope, does not have a significant adverse effect on significant coastal resources, would not be an adverse precedent for future coastal development permits, and doesn't raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds on which it was filed.

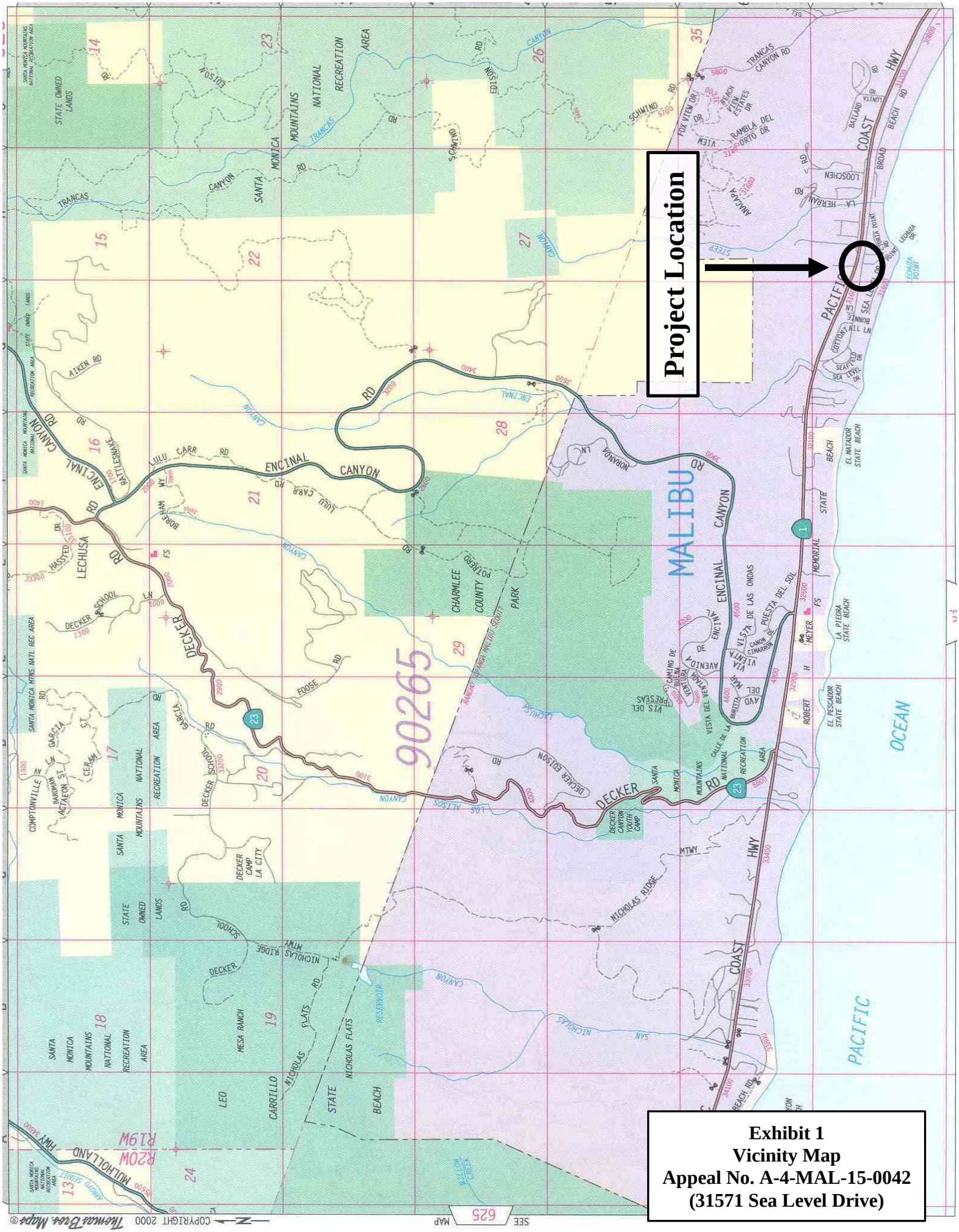
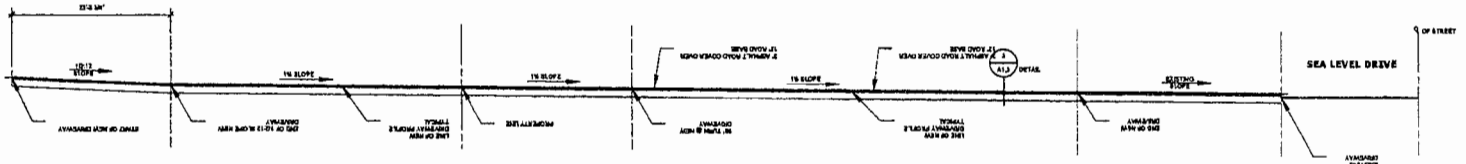
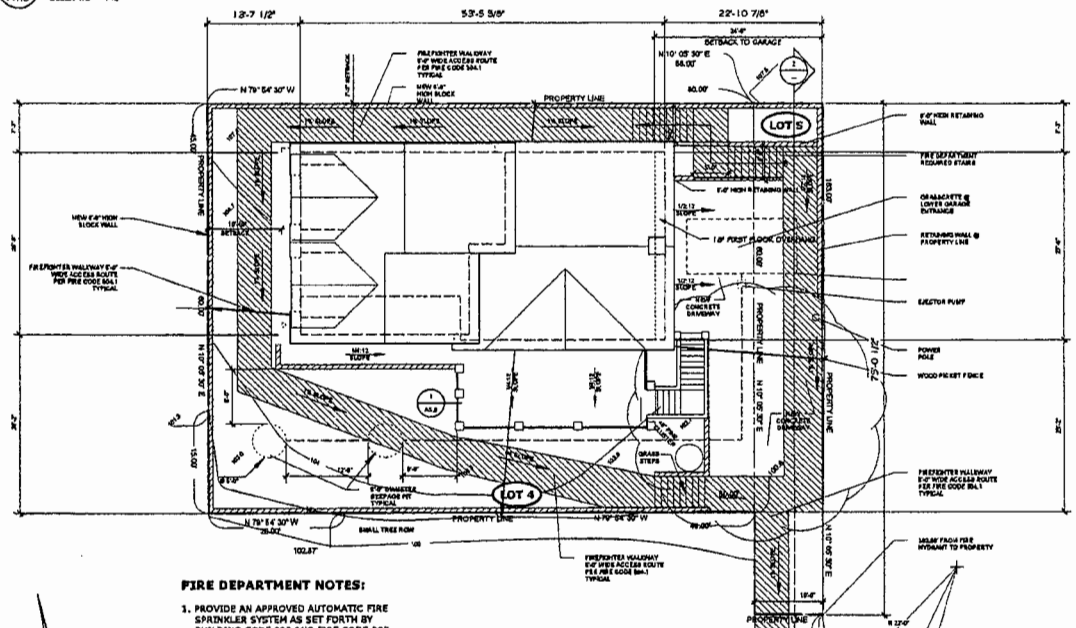


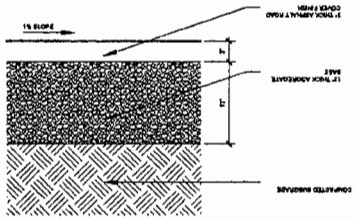
Exhibit 1
Vicinity Map
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)

Exhibit 2
Aerial Photo
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)



2 A1.3 NEW DRIVEWAY ROADWAY PROFILE
Scale: 1/8" = 1'-0"





3 A1.3 ROADWAY SECTION DETAIL
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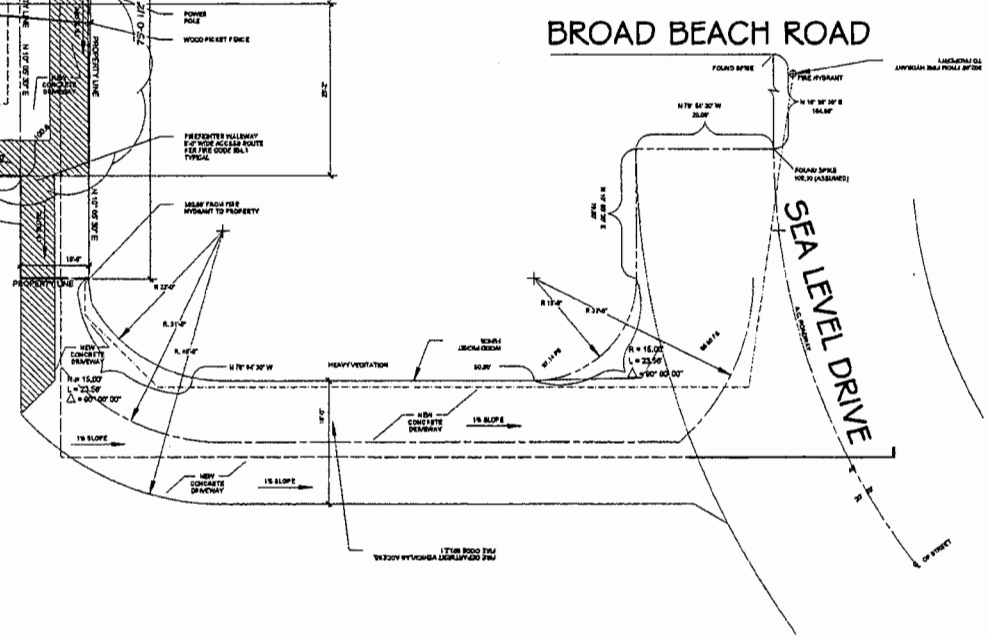

FIRE DEPARTMENT NOTES:

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

   REASON: RESIDENTIAL CODE & FIRE CODE 903.1 & FIRE FLOW REDUCTION

   TYPE OF FIRE SPRINKLER SYSTEM: 903.3.1.1, 903.3.1.2, 903.3.1.3

2. FIRE DEPARTMENT VEHICULAR ACCESS ROADS MUST BE INSTALLED AND MAINTAINED IN A SERVICEABLE MANNER PRIOR TO AND DURING THE TIME OF CONSTRUCTION. FIRE CODE 501.4

3. THE REQUIRED FIRE FLOW IS BASED ON THE FOLLOWING CALCULATION:

- TYPE OF CONSTRUCTION PER THE BUILDING CODE: TYPE VB
- VHFHSZ: YES
- SIZE OF LOT (ACRES): LESS THAN ACRE
- FIRE FLOW BASED ON THE FIRE-FLOW CALCULATION AREA: 1250 GPM
- REDUCTION FOR FIRE SPRINKLERS (MAXIMUM 50%): 250 GPM
- TOTAL FIRE FLOW REQUIRED: 1000 GPM

Revisions
28-NOV-2014

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Kalani Jensen
Architecture & Design
23652 Pacific Coast Highway
Unit #513
Malibu, California 90265
cell: 310.292.8604
fax: 310.457.7645
email: kalani_j_arch@yahoo.com

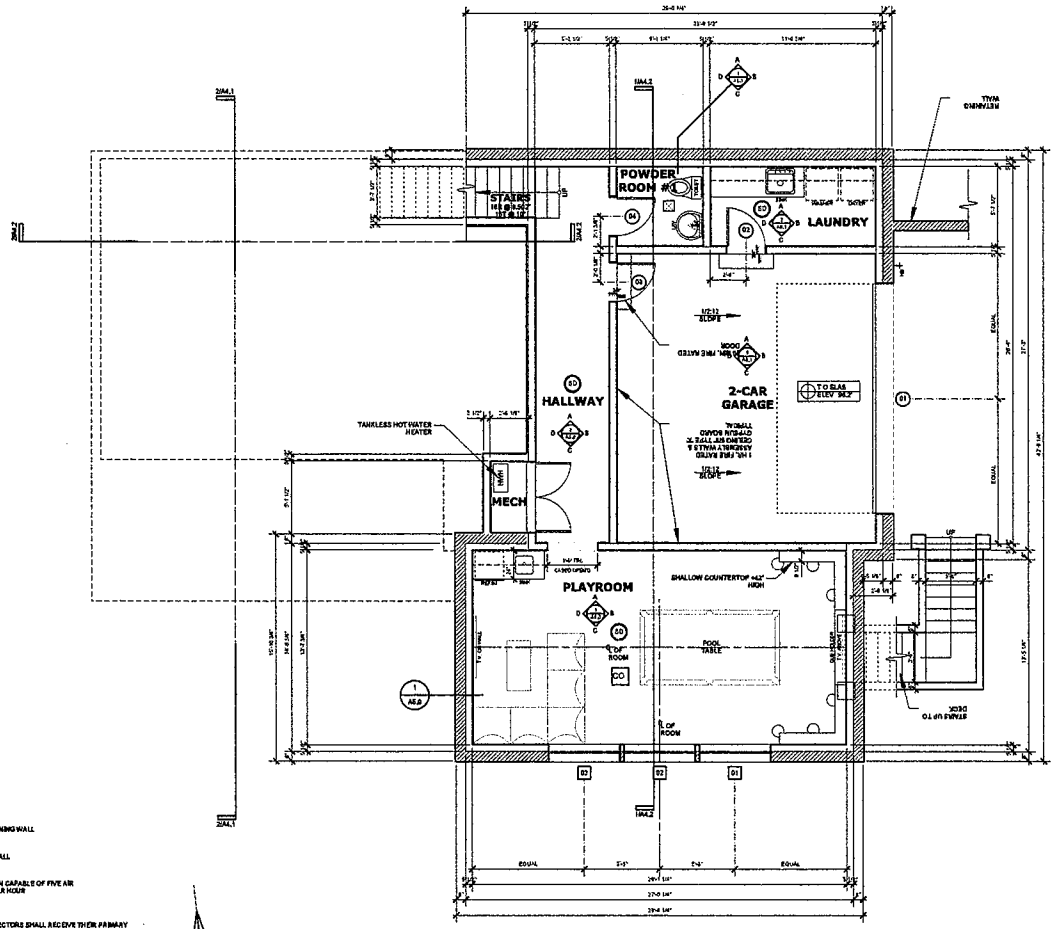
Project
Keane Residence
31571 Sea Level Drive
Malibu, California 90265

Sheet Title
Site Plan

Date:
June 30, 2014

Sheet Number
A1.3

Exhibit 3
Project Plans
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)



NOTES:

- NEW RETAINING WALL
- NEW 2x8 WALL
- EXHAUST FAN CAPABLE OF FIVE AIR CHANGES PER HOUR
- SD — SMOKE DETECTORS SHALL RECEIVE THEIR PRIMARY POWER SOURCE FROM THE BUILDING WIRING AND SHALL BE EQUIPPED WITH A BATTERY BACK UP AND LOW BATTERY SIGNAL. SMOKE DETECTORS SHALL BE LOCATED IN EACH SLEEPING ROOM & HALLWAY OR AREA GIVING ACCESS TO A SLEEPING ROOM, AND ON EACH STORY AND BASEMENT FOR DWELLINGS WITH MORE THAN ONE STORY
- CO — CARBON MONOXIDE DETECTOR

1 / A2.0 BASEMENT LEVEL FLOOR PLAN
Scale: 1/4" = 1'-0"

Revisions
28-NOV-2014

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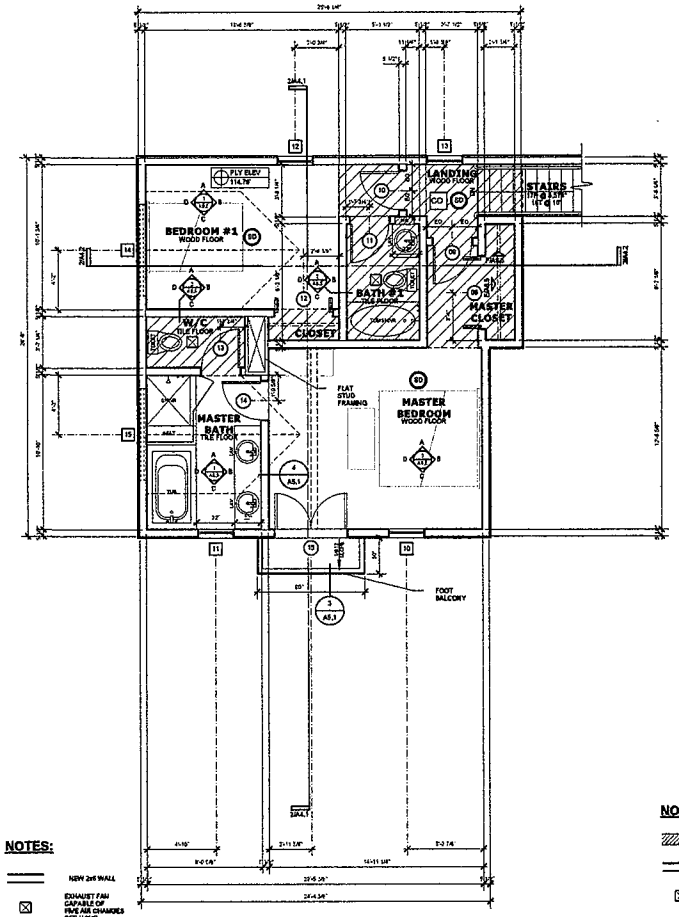
Kalani Jensen
Architecture & Design
23852 Pacific Coast Highway
Unit #513
Malibu, California 90265
cell: 310.292.8804
fax: 310.457.7945
email: kalani_jensen@yahoo.com

Project
Keane Residence
31571 Sea Level Drive
Malibu, California 90265

Sheet Title
Basement Level Floor Plan

Date:
June 30, 2014

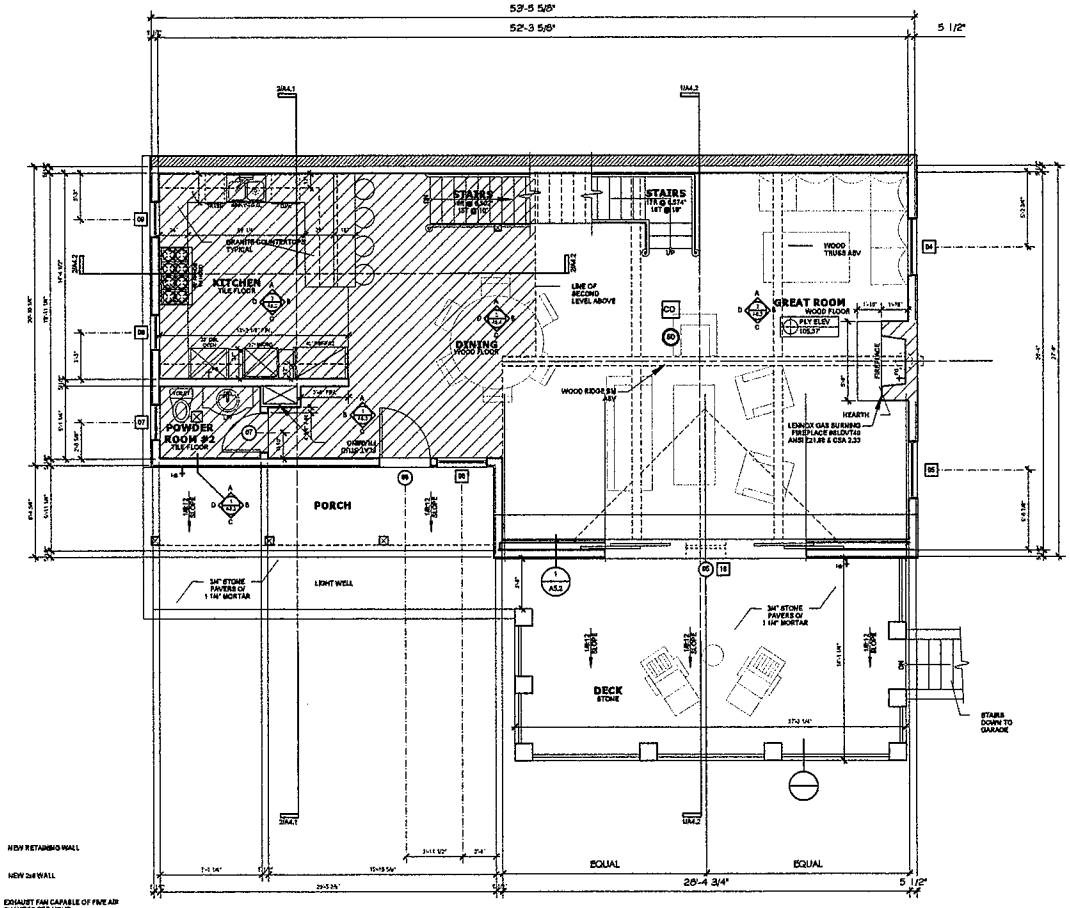
Sheet Number
A2.0



NOTES:

- NEW 2x6 WALL
- EXHAUST FAN CAPABLE OF FIVE AIR CHANGES PER HOUR
- SD — SMOKE DETECTORS SHALL RECEIVE THEIR PRIMARY POWER SOURCE FROM THE BUILDING WIRING AND SHALL BE EQUIPPED WITH A BATTERY BACK UP AND LOW BATTERY SIGNAL. SMOKE DETECTORS SHALL BE LOCATED IN EACH SLEEPING ROOM & HALLWAY OR AREA GIVING ACCESS TO A SLEEPING ROOM, AND ON EACH STORY AND BASEMENT FOR DWELLINGS WITH MORE THAN ONE STORY
- CO — CARBON MONOXIDE DETECTOR

2 / A2.1 SECOND LEVEL FLOOR PLAN
Scale: 1/4" = 1'-0"



NOTES:

- NEW RETAINING WALL
- NEW 2x6 WALL
- EXHAUST FAN CAPABLE OF FIVE AIR CHANGES PER HOUR
- SD — SMOKE DETECTORS SHALL RECEIVE THEIR PRIMARY POWER SOURCE FROM THE BUILDING WIRING AND SHALL BE EQUIPPED WITH A BATTERY BACK UP AND LOW BATTERY SIGNAL. SMOKE DETECTORS SHALL BE LOCATED IN EACH SLEEPING ROOM & HALLWAY OR AREA GIVING ACCESS TO A SLEEPING ROOM, AND ON EACH STORY AND BASEMENT FOR DWELLINGS WITH MORE THAN ONE STORY
- CO — CARBON MONOXIDE DETECTOR

1 / A2.1 FIRST LEVEL FLOOR PLAN
Scale: 1/4" = 1'-0"

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28-NOV-2014

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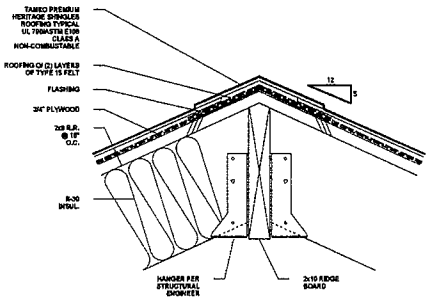
Kalani Jensen
Architecture & Design
23852 Pacific Coast Highway
Unit #513
Malibu, California 90265
cell: 310.202.6004
fax: 310.457.7645
email: kalani_jensen@yahoo.com

Project
Keane Residence
31571 Sea Level Drive
Malibu, California 90265

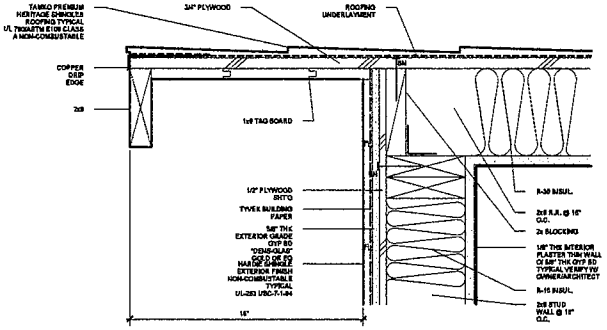
Sheet Title
First Level Floor Plan &
Second Level Floor Plan

Date:
June 30, 2014

Sheet Number
A2.1



4 A2.2 RIDGE DETAIL
Scale: 3" = 1'-0"



3 A2.2 RAKE DETAIL
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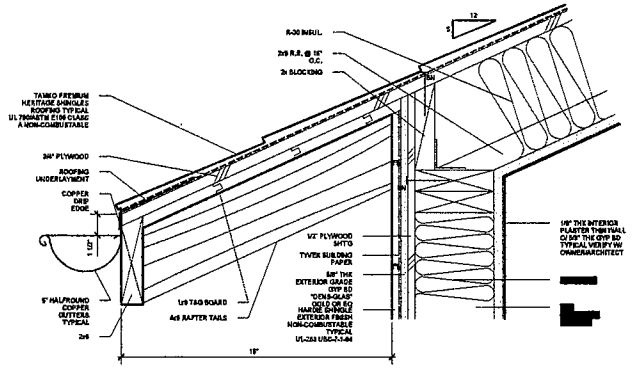

2 A2.2 EAVE DETAIL
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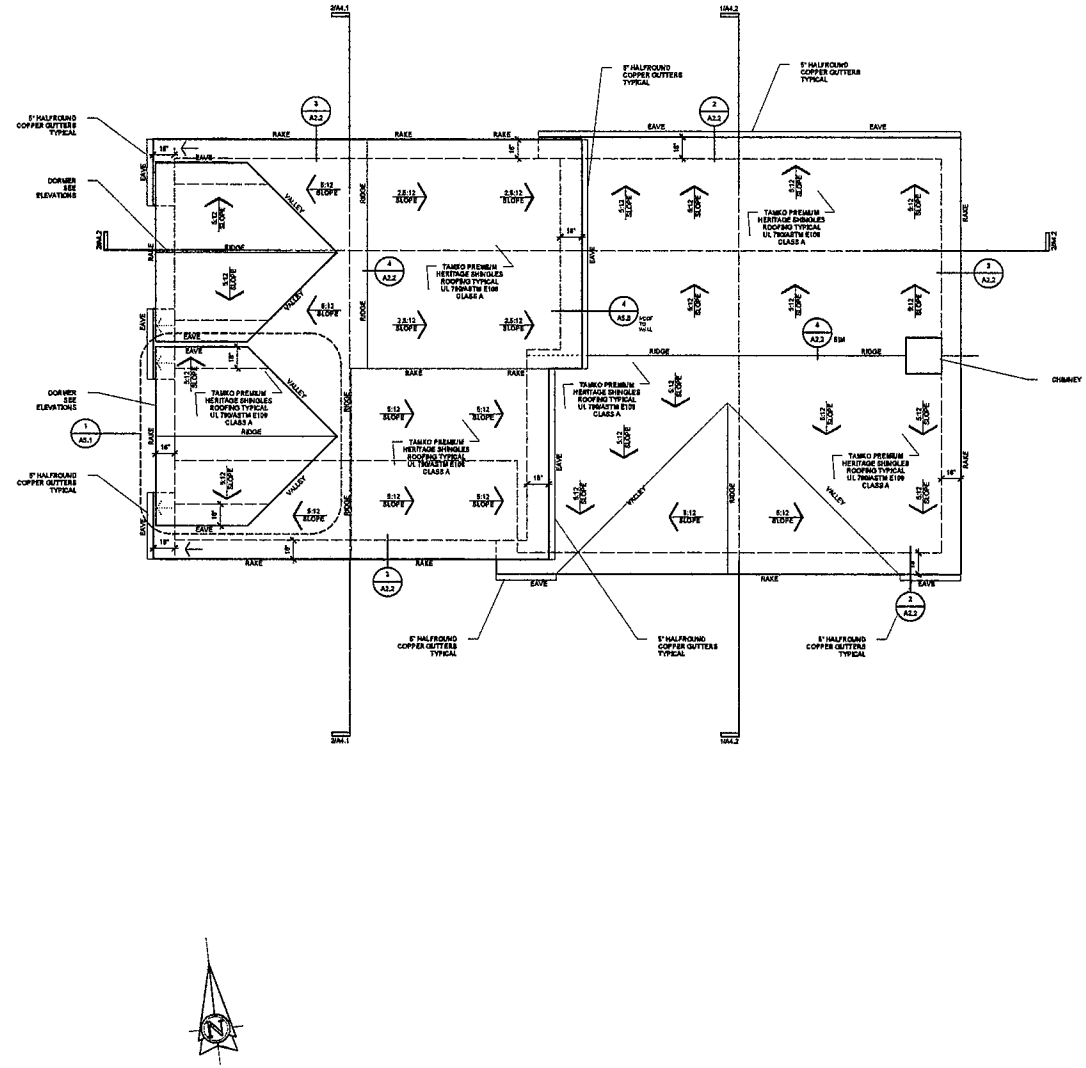

1 A2.2 ROOF PLAN
Scale: 1/4" = 1'-0"

Revisions
28-NOV-2014

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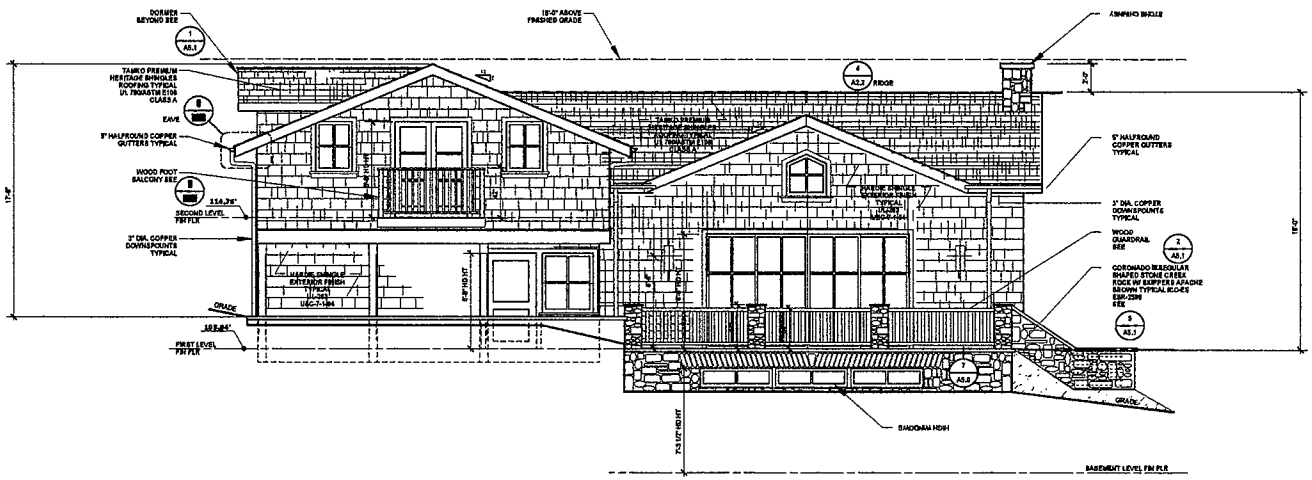
Kalani Jensen
Architecture & Design
23852 Pacific Coast Highway
Unit #513
Malibu, California 90265
call: 310.292.8504
fax: 310.457.7645
email: kalani_j_arch@yahoo.com

Project
Keane Residence
31571 Sea Level Drive
Malibu, California 90265

Sheet Title
Roof Plan

Date:
June 30, 2014

Sheet Number
A2.2



1 A4.0 SOUTH ELEVATION- GUEST HOUSE
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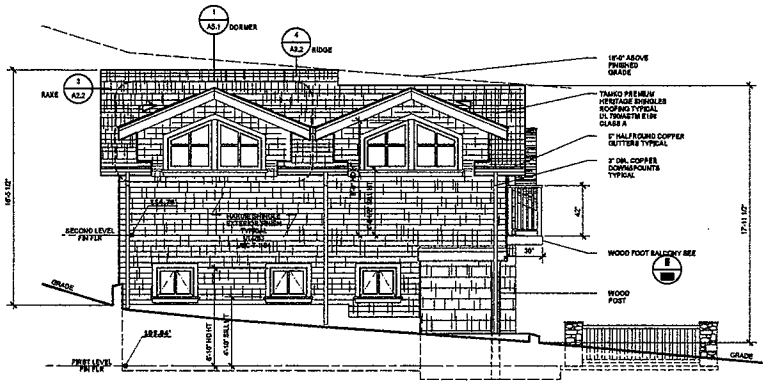
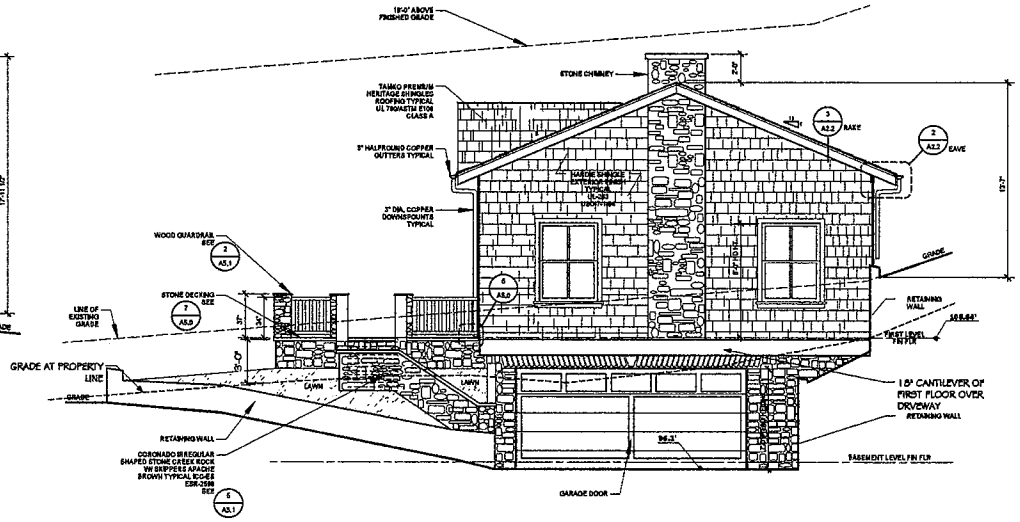


3 A4.0 WEST ELEVATION- GUEST HOUSE
Scale: 1/4" = 1'-0"



2 A4.0 EAST ELEVATION- GUEST HOUSE
Scale: 1/4" = 1'-0"

Revisions
28-NOV-2014

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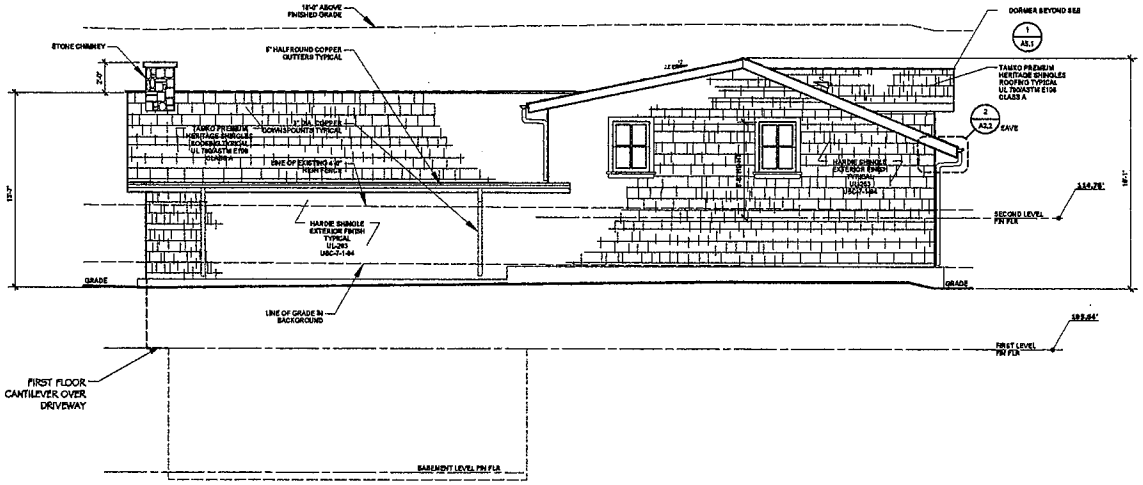
Kalani Jensen
Architecture & Design
23852 Pacific Coast Highway
Unit #513
Malibu, California 90265
cell: 310.292.9604
fax: 310.457.7645
email: kalani_jensen@yahoo.com

Project
Keane Residence
31571 Sea Level Drive
Malibu, California 90265

Sheet Title
Exterior Elevations

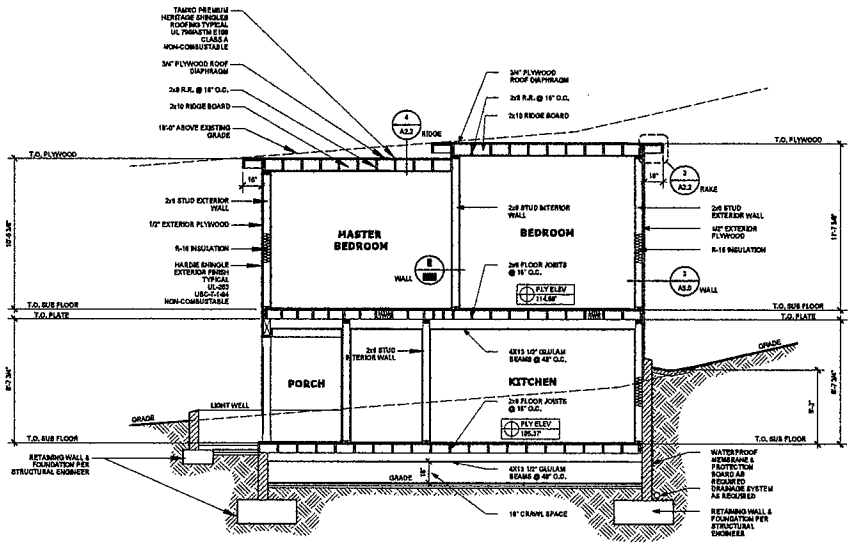
Date:
June 30, 2014

Sheet Number
A4.0



1 A4.1 NORTH ELEVATION- GUEST HOUSE

Scale: 1/4" = 1'-0"



2 A4.1 BUILDING SECTION

Scale: 1/4" = 1'-0"

Revisions

28-NOV-2014

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Kalani Jensen
Architecture & Design
23852 Pacific Coast Highway
Unit #513
Malibu, California 90265
cell: 310.292.9504
fax: 310.457.7645
email: kalani_jensen@yahoo.com

Project

Keane Residence

31571 Sea Level Drive
Malibu, California 90265

Sheet Title

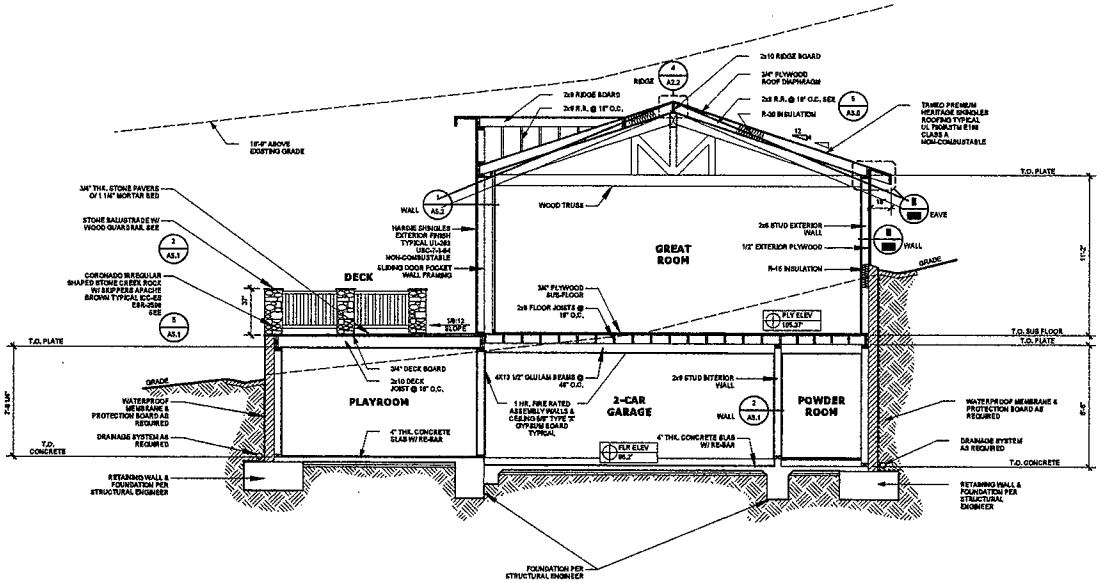
Exterior Elevation & Building Section

Date:

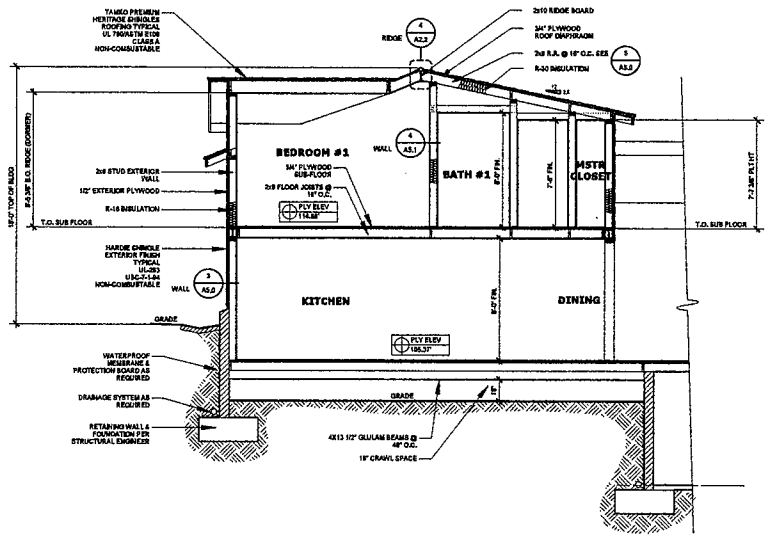
June 30, 2014

Sheet Number

A4.1



1 / A4.2 BUILDING SECTION
Scale: 1/4" = 1'-0"



2 / A4.2 BUILDING SECTION
Scale: 1/4" = 1'-0"

Revisions
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Kalani Jensen
Architecture & Design
23852 Pacific Coast Highway
Unit #513
Malibu, California 90265
cell: 310.292.8604
fax: 310.457.7645
email: kalani_j_arch@yahoo.com

Project
Keane Residence
31571 Sea Level Drive
Malibu, California 90265

Sheet Title
Building Sections

Date:
June 30, 2014

Sheet Number
A4.2

Received

JUL 03 2015

California Coastal Commision
South Central Coast District

STATE OF CALIFORNIA – THE RESOURCES AGENCY

EDMUND G. BROWN JR., *Governor*

CALIFORNIA COASTAL COMMISSION

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Ms. Carol Bird

Mailing Address: 31562 Broad Beach Road,

City: Malibu Zip Code: 90265 Phone: 1-310-699-2455

SECTION II. Decision Being Appealed

1. Name of local/port government:

   City of Malibu.

2. Brief description of development being appealed:

   1,931 square foot single family residence and subterranean garage.

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

   31571 Sea Level Drive, Malibu, CA 90265; APN: 4470-022-005

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-15-0042

DATE FILED: 7/3/15

DISTRICT: So. Central Coa

Exhibit 4
Appeal by Carol Bird
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)

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: June 8, 2015

7. Local government's file number (if any): CDP No. 13-041

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:

Kalani Jensen, representing owner Tom Keane, Jorthe, Inc. 23623 Malibu Road, #50-131, Malibu, CA 90265
Lawyers for owner: Jeremy S. Johnson, Alison K. Hurley, Bremer Whyte Brown & O'Meara LLP, 20320 S.W. Birch Street, Second Floor, Newport Beach, CA 92660

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) Ms. Carol Bird, 31562 Broad Beach Road, Malibu CA, 90265.

(2) Frank Angel, 2601 Ocean Park Boulevard, Suite 205, Santa Monica, CA 90405; and Sara Wan 22350 Carbon Mesa Road, Malibu, CA 90285

(3) Doug Burdge, Burdge & Associates Architects, Inc., 21235 PCH, Malibu, CA 90265

(4) Certified public notice property owner and occupant addresses
See Atachment, Exhibit 1

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.

See Attachment, Exhibit 2.

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.

Sara J Wan + Frank Angel

Signature of Appellant(s) or Authorized Agent

Date: July 2, 2015

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

Section VI. Agent Authorization

I/We hereby authorize Sara Wan + Frank Angel to act as my/our representative and to bind me/us in all matters concerning this appeal.

Carol Bird

Signature of Appellant(s)

Date: July 2, 2015

ANGEL LAW

2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405-5269
Tel: (310) 314-6433
Fax: (310) 314-6434
angellaw.com

EXHIBIT 2 TO APPEAL BY CAROL BIRD FROM DECISION OF MALIBU CITY COUNCIL OF JUNE 8, 2015 APPROVING COASTAL DEVELOPMENT PERIT NO. 13-041, FOR PROJECT LOCATED AT 31571 SEA LEVEL DRIVE

I. INTRODUCTION

We appeal to the California Coastal Commission the final action taken by the Malibu City Council (Malibu or City Council) on June 8, 2015, concerning coastal development permit (CDP) application No. 13-041 (Jensen/Keane -- 31571 Sea Level Drive, Malibu). The City Council determined that the project subject to this CDP is categorically exempt from the California Environmental Quality Act (CEQA) and affirmed the Malibu Planning Commission's own approval of the CDP. Finding that project height does not exceed 18 feet, City officials took the categorical position (as they have in past cases) that they lack discretion to reduce visual impact *even when it is not infeasible to do so*, i.e., when avoiding or mitigating visual impact on public ocean views would not prevent a reasonable residential use. Given the substantial amount of new development Malibu has permitted since the certification by the Coastal Commission in September 2002 of the Malibu local coastal program (MLCP) and the lack of new, improved or restored public views along Broad Beach Road, Malibu's failure to protect one of the last remaining scenic ocean vistas visible from this 1.6-mile long road is indicative of its general failure to properly interpret the public view protection policies of the MLCP. Broad Beach Road is heavily used by the public for access to four existing vertical public accessways.

Additionally, it is important to keep in mind that Malibu is a major public access area. People from the Los Angeles metropolis and all over the world use its beaches and expect to view the ocean, but because of Malibu's systematic failure to adequately enforce the policies of the MLCP as they relate to the protection of public views, visitors see less and less ocean and coast. By the same token, loss of ocean views along residential streets that feature vertical access points impedes and reduces the use of those access points as intimidated members of the public tend to draw wrong conclusions regarding the vertical shoreline access that is available between uninterrupted walls of private development. This has become an acute problem along Broad Beach Road where ocean view obstruction is a predominant condition because the neighborhood is built out and ocean views are totally obstructed almost uninterruptedly along the entire length of the road as

even side yards between large two-story single-family residences are closed off by solid fences and gates. State coastal zone interests clearly call for Coastal Commission intervention and review of Malibu's action in this case.

While the project, in and of itself, consists of no more than a 1,931 square foot, two-story single-family residence, due to the applicant's choices in locating development footprint and configuring volumetric mass, the project's adverse impacts on coastal zone resources -- specifically, the public's views to and along the ocean from Broad Beach Road -- are directly and cumulatively significant. Excluding this location, there are at best only four places left where the ocean remains visible.

This appeal raises a substantial coastal issue, especially considering:

- The visual barrier of residential development that exists today along the 1.6-mile length of Broad Beach Road;

- Malibu's refusal to apply and enforce the provisions of chapter 6 (entitled "Scenic, Visual, and Hillside Resource Protection Ordinance") of the Malibu local implementation plan (MLIP), part of the MLCP, which implements and expressly incorporates the scenic and visual resources protection policy of chapter 3 of the California Coastal Act of 1976 (see Pub. Resources Code, § 30251); and

- Malibu's prioritizing (as a matter of planning policy, unfortunately) an applicant's choice of development footprint location and design over the public's rights under the MLCP, by avoiding consideration of *feasible*, substantially less damaging alternatives -- which we had shown to exist, based on expert evidence, including detailed graphics illustrating how changing project footprint and design can feasibly minimize the loss of the public's view to and along the ocean through the project site.

By approving CDP application No. 13-041, Malibu has acted at the expense of the public's rights under the Coastal Act and the MLCP. We urge the Coastal Commission to find substantial issue and hear the matter de novo. Guidance from the Commission for adequate enforcement of MLIP chapter 6 is badly needed, lest important standards of the MLCP continue to go unenforced. (See Pub. Resources Code, § 30625, subd. (c).) Malibu should not be allowed to continue to adhere to its unwritten policy that when a residential project's height does not exceed 18 feet (such that discretionary site plan review is not required), it is powerless to mitigate the project's adverse impacts on scenic ocean or coastline views.

II. GROUNDS FOR APPEAL

Where a project is subject to a certified LCP and raises no issues under the public access policies of Chapter 3 of the Coastal Act (see Pub. Resources Code, §§ 30210-30214), the grounds for an appeal must be limited to whether the project conforms to the standards set forth in the certified LCP. (Pub. Resources Code, § 30603, subd. (b)(1).) To understand why the project fails to conform to the standards set forth in the certified MLCP -- here, the standards of chapters 6 of the MLIP and the Malibu Land Use Plan (MLUP), part of the MLCP, and of chapter 13 of the MLIP -- a description of the project and its coastal setting is necessary.[1]

The project is a 1,931 square foot two-story single-family residence proposed on a nearly flat, 0.13-acre (5,550 ft^2) generally rectangular shaped lot (Lot). The Lot is a flag lot, accessible from Broad Beach Road via East Sea Level Drive, which is gated. (Exh. 1, pp. 1 & 2 [red line in close-up aerial at p. 2 outlines project footprint within Lot].) The coastline and ocean are to the south, less than 1,000 feet south of Broad Beach Road. The Lot lies seaward and below the grade of Broad Beach Road, a public road used by the visiting public for access to Broad Beach and its dedicated lateral access areas, via vertical access corridors located east of Lechuza Point, connecting Broad Beach Road to the sandy beach. Closest to the intersection of East Sea Level Drive and Broad Beach Road, west of Lechuza Point, is the Lechuza Beach Access, operated by the Mountains Recreation and Conservation Authority. The Lechuza Beach Access offers visitor access to Malibu's most scenic beaches, including state beaches to the west. (Exh. 2, pp. 1-4.)

Existing baseline conditions are such that members of the public driving, jogging or biking on Broad Beach Road currently enjoy a scenic ocean vista through appellant's property (fronting on Broad Beach Road), the Lot and undeveloped property immediately south of the Lot. (Exh. 3, pp. 1, 2 & 3 [note project story poles and flaglines].) This fact can be independently verified by a Coastal Commission staff site visit. The additional undeveloped property south of the Lot is owned by the applicant as well. It shares a common boundary with the Lot. (Exh. 1, p. 2.) The applicant's developable real estate holdings are separated by an ocean-facing bluff from lower Sea Level Drive and the sandy beach which lower Sea Level Drive runs parallel to. (Exh. 1, p. 1.)

The project's total development square footage (TDSF) of 1,931 square feet is just *51* square feet less than maximum allowed TDSF, but *1,131* square feet more than the minimum required floor area of 800 square feet. (See MLIP, § 3.6 (D).) This goes to

[1] The data cited, describing the project is taken from the City's planning file.

show that alternatives with a TDSF ranging between 800 and 1,931 square feet are feasible. Such alternatives are relevant to CDP review here because the MLCP specifically provides for "restricting the building maximum size" as a means to conform to its public view preservation standards. (MLUP Policy 6.5; MLIP, § 6.5 (A).)

As designed, the first floor footprint (including the second story portion of the project) extends right up to the minimum required rear yard setback (12.07 feet) on the west; and right up to the minimum required front yard setback (18.09 feet) on the east.[2] The southerly side yard, however, which is furthest away from Broad Beach Road, is twice as wide (30 feet) as need be under Malibu's development standards (14.97 feet). *The project thus maximizes TDSF by spreading development along all available Lot depth (defined by the longer lines of the rectangle forming the Lot). Put differently, it uses up the entire 60.28 foot long developable Lot depth (90.45' – [12.07' + 18.09']). This project design maximizes building barrier effect on the public ocean view from Broad Beach Road.*

We point out the above data to emphasize that although the Lot is relatively small in size, there is no lack of potential for an alternative development footprint and design, with just a slightly reduced TDSF (or not even reduced), allowing the siting of development "in the least visible portion of the site" as is required by MLIP section 6.5(A) when no building site location would prevent the entire project from being not visible. No such alternative was described by the applicant or City planning staff. However, we retained Burdge & Associates Architects, Inc. to design a two-story alternative that would, among other things, meet the "least visible" MLIP standard by moving the development footprint as much to the east and southeast on the Lot as is feasible without compromising vehicular access (including grade requirements to provide vehicular access to the basement garage), or creating any conflict with City building, safety or public health regulations.[3] Burdge & Associates Architects designed a two-story, 1,503-square foot project alternative (Burdge Architects Alternative) that accomplishes this objective. It mostly eliminates the project's adverse impact on the public's scenic vista of the ocean.

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[2] Access to the project being from Sea Level Drive (to the east of the Lot), the Lot "depth" (east to west) is 90.45 feet. The Lot "width" (north to south) is 59.88 feet.

[3] Burdge & Associates Architects are based in Malibu where they have designed many projects that have passed muster with the Coastal Commission. They are highly familiar with the MLCP, as well as City building and health and safety regulations.

(Exh. 4, pp. 1-4; note the flagline continuing east of tree at p. 3; compare alternative siting in relation to tree on top picture at p. 4].)[4]

In summary, the view-eliminating barrier created by the current project could not be any longer. However, this barrier can be very substantially shortened by concentrating development footprint (including the second story portion) in the Lot's easterly and southeasterly portion, where baseline conditions already shield ocean views from Broad Beach Road. (Exh. 3, p. 2.) The portion of the project footprint that the Burdge Architects Alternative would eliminate is the portion shown by the story poles to be sited smack dab within the public's ocean view. (*Id.*; Exh. 4, pp. 1-4.) The scenic ocean view that the public now enjoys, by and large, is through the westerly portion of the Lot.

A. MALIBU APPROVED THE PROJECT BASED ON THE ERRONEOUS ASSUMPTION THAT MLIP CHAPTER 6 DOES NOT APPLY; ITS ACTION IS HIGHLY PREJUDICIAL AS IT RELATES TO CURRENT AND FUTURE INTERPRETATIONS OF THE MLCP.

Claiming that views of the Lot are not visible from Broad Beach Road, Malibu determined that the findings of MLIP chapter 6 were "not applicable." (City Council Res. No. 15-30, at 5 [D].) As a result, Malibu failed to review the project under the standards of MLIP chapter 6, and failed to minimize adverse project impacts on public ocean views to the maximum feasible extent, as it must under chapter 6.

Because the segment of Broad Beach Road directly facing the Lot currently offers members of the public traveling, jogging or biking on this road a scenic vista of the ocean, under the MLUP, this place on the road qualifies as a public viewing area.

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[4] The photographs showing the digital massing of the Burdge Architects Alternative (Exh. 4, p. 4) were taken from the patio of appellant's residence, which is landward (north) of the Lot, but seaward (south) of Broad Beach Road. Except for an old detached guest unit (rented), all development on her lot (her residence) is a one-story building, built below road grade, such that it does not obstruct the public's ocean views. However, because the project entirely wipes out her own ocean view, she asked Burdge Associates Architects to design an alternative that would lessen the project's effect on both the public's and her own ocean views.

Given the physical conditions on the ground (the location of appellant's home in relation to Broad Beach Road), alternatives that reduce the private ocean view impact she would suffer invariably reduce the ocean view impacts the public would suffer, and vice-versa. Therefore, the fact that the Burdge Architects Alternative will protect her own view is irrelevant to a finding of substantial issue so long as it protects the public's ocean view, *as it does*.

(MLUP Policy 6.2.) In fact, public roads where there are views of the ocean are considered "Scenic Roads." (*Id.*) And, places on, along or within such roads that offer scenic vistas of the ocean are considered "Scenic Areas." (MLUP Policy 6.4.)

These MLUP classifications and the physical baseline conditions in this case trigger the policies, standards and provisions of MLIP chapter 6. (MLIP, § 6.2.)[5] Yet, Malibu determined that the findings of MLIP chapter 6 were inapplicable. (City Council Res. No. 15-30, at 5 [D].) The fatal flaw in this determination is that it is extrapolated from the factually incorrect assumption that existing residential development and landscaping south of Broad Beach Road blocks the entire Lot from the public's view. (*Id.*; see also, *id.* at 3 [#6].) This mistake is puzzling since the story poles outlining the project's volumetric mass are plainly visible from Broach Beach Road. Anyone driving or walking by can see the poles. Only the ocean view through the easterly portion of the Lot is affected. (Exh. 3, p. 2.)

currently

Malibu's erroneous determination that MLIP chapter 6 is inapplicable is substantially prejudicial. The result of it was a failure to enforce CDP application submittal requirements (MLIP, § 6.7) and coastal development standards (MLIP, § 6.5) that must be enforced, and a failure to make findings that must made (MLIP, § 6.4), all to protect scenic and visual qualities of far greater than local importance. The MLCP standard is clear: these scenic and visual qualities "shall be protected and, where feasible, enhanced." (MLUP Policy 6.1; see MLUP at 110.) Malibu's manner of proceeding likewise prejudiced public review under MLIP chapter 6. It put the cart before the horse by sidestepping the analysis the MLCP requires it to make in order to determine *whether* "[t]the project, as proposed, will have no adverse scenic or visual impacts due to project design, location on the site or other reasons." (MLIP, § 6.4 (A)(1).)

There is an almost uninterrupted barrier of single-family residential development all along Broad Beach Road. With very few exceptions, since 2002, when the Coastal Commission certified the MLCP and entrusted Malibu with CDP authority, nary an ocean

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[5] MLIP section § 6.2 unequivocally states:

> "All Coastal Development Permit 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 *shall be governed by the policies, standards and provisions of this chapter* in addition to any other policies or standards contained elsewhere in the certified LCP which may apply."

(Emphasis added.)

view remains.[6] Scenic and visual qualities have not been enhanced one bit. Especially between the second vertical access before the uphill grade in the road and the Lechuza Beach Access, there are fewer public views now than there were when Malibu assumed CDP authority 13 years ago. Malibu has been completely oblivious to the direct and cumulative effects of its CDP decisions. This is wrong. As courts have recognized, the more degraded a natural public resource has become, the greater the potential for cumulative harm from an individual project that incrementally increases the harm -- and the greater the need to reverse the past trend and protect the resource from future incremental degradation. (See *Kirkorowicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980, at 994-995 [degraded wetlands]; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, at 507-508 [degraded environmentally sensitive habitat area]; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, at 1027-1028 [degraded urban acoustic environment]; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, at 721 [degraded air basin]; *Coastal Southwest Development Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, at 536, 542 [degraded visual setting; loss of one of the last remaining vista points for viewing ocean-front area]; see also Pub. Resources Code, § 30105.5.) The principle enunciated in *Coastal Southwest* is as relevant today as it was then:

> "Under the Act creating Commission, ... it may be just that last outpost that will make it possible to hold onto some of the values the preservation of which is the stated purpose of the Act. That is consistent with the concept that a site which represents a diminishing coastal resource is to be preserved and gives a stronger reason for its preservation as such resource."

(55 Cal.App.3d at 538 [upholding the Coastal Commission's reversal of a local government permit for a hotel project in Oceanside].) While do not ask for the preservation of the Lot in an undeveloped state, we do ask that the project's direct and cumulative scenic vista impact be minimized to the maximum feasible extent. The MLCP requires nothing less of Malibu. (MLUP Policy 6.5; MLIP, § 6.5 (A).)

In summary, having found MLIP chapter 6 inapplicable, Malibu completely discounted public ocean views. MLUP Policy 6.5 and MLIP section 6.5(A), implementing chapter 3 policy of the Coastal Act at the local level, call for the project to be "sited and designed to minimize adverse impacts on scenic areas from scenic roads or public viewing areas to the maximum feasible extent." Malibu's failure to account for the project's direct and

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[6] We reserve the right to provide examples of post-2002 residential development projects in Malibu demonstrating that this case is not an isolated example of non-enforcement or inadequate enforcement of MLIP chapter 6.

cumulative impacts on a scenic ocean vista from Broad Beach Road is grounds for de novo Coastal Commission CDP review.

As a result of this failure, Malibu operated outside the MLCP framework requiring it to identify and evaluate concrete alternatives that feasibly protect public views to and along the ocean. The applicant should be directed to work with Coastal Commission staff toward an alternative footprint and design that will minimize the loss of one of the last remaining scenic ocean views left in this coastal area after years of past residential development. This is why de novo review is necessary.

B. THERE ARE FEASIBLE ALTERNATIVES THAT WOULD PROTECT THE PUBLIC'S VIEWS TO AND ALONG THE OCEAN, BUT MALIBU FAILED TO CONSIDER ANY; AS SUCH, MALIBU FAILED TO CONSIDER ALTERNATIVES THAT ARE LESS ENVIRONMENTALLY DAMAGING THAN THE PROJECT, WITH THE RESULT THAT ITS FINDING THAT THE PROJECT IS THE LEAST ENVIRONMENTALLY DAMAGING ALTERNATIVE IS FACTUALLY AND LEGALLY UNTENABLE.

The express written findings mandated by the MLIP to support CDP decisions are among the most consequential MLCP standards. The project fails to conform to those standards. They are set forth in MLIP section 13.9 and also MLIP section 6.4. Finding C in section 13.9 of the MLIP required the City Council to show that "The project is the least environmentally damaging alternative." So did finding No. 3 of MLIP section 6.4.

Malibu here summarily compared the project to two development alternatives which it failed to describe in any meaningful way, thus making it difficult to verify the merits of excluding the alternatives. (City Council Res. No. 15-30, at 4.) Moreover, it did not explain how the objectives it cited to select the project (compliance with numerical MLIP section 3.6 development standards; a residence and driveway layout providing adequate vehicular access; and an open yard area for installation of an alternative onsite wastewater treatment system) make the project the least environmentally damaging alternative, or why alternatives could not be designed to meet any of these objectives. (City Council Res. No. 15-30, at 5 [d].) Malibu reached the conclusion that the project is the least environmentally damaging alternative while ignoring the Burdge Architects Alternative or, for that matter, any alternative that would eliminate development footprint on the Lot's westerly half where no baseline conditions north or south of the project site shield public views of the ocean from Broad Beach Road. (What good does public

participation do when a local government does not acknowledge substantive, expert-backed public comments?)

As was first revealed at the June 8, 2015 hearing before the City Council, the project footprint and design is the product of an understanding between the applicant and the owner of the residence located on the corner of Sea Level Drive and Broad Beach Road, east of the project. But one neighbor's privacy or private view concerns cannot be protected *at the expense of the public*. Under any Coastal Commission-certified LCP, protection of the public's ocean views always takes precedence.

Notably, in concluding that the project is the least environmentally damaging alternative, Malibu narrowly focused on how its otherwise two indeterminate alternatives relate to private "neighboring development" and how they impact "primary views from neighboring properties." (City Council Res. No. 15-30, at 4.) But determination of the least environmentally damaging alternative cannot be dictated by those standards. It must be dictated by the environmental protection standards of the MLCP. The questions raised thus should have been:

- Does the approved project conform to the MLIP standard that it "shall protect public ocean views" (MLIP, § 6.5 (E));

- Is the approved project the least environmentally damaging alternative for purposes of protecting public ocean views -- views to and along the ocean (MLUP, p. 112 [incorporating Public Resources Code section 30251]);[8] and

- Does the selected project footprint and design minimize scenic impacts by "siting development in *the least visible portion* of the site," or by "restricting the building maximum size…." (MLIP, § 6.5 (A), emphasis added; MLUP Policy 6.5.)

The Malibu City Council here failed in its duty under the MLCP to prioritize preservation of public views by exploring "project alternatives including resiting, or reducing … bulk…." (MLUP Policy 6.6; see MLIP, § 6.5 (A)(3) ["Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method"].) It failed to actually minimize adverse impact to a scenic vista "to the maximum feasible extent." (MLUP Policy 6.5.) And it failed to substantiate the MLIP findings requirement that the project is the least environmentally damaging alternative. (MLIP, §§ 6.4, 13.9.)

[8] The City Council completely eliminated public view issues from the equation, having determined that "the required findings of LIP Chapter 6 are not applicable." (City Council Res. No. 15-30, at 5 [D].)

Rather, the evidence affirmatively shows that the project is anything but the least environmentally damaging alternative.

The evidence also shows that the approved project is virtually identical to the project as proposed before public review before the Malibu Planning Commission began. This confirms the lack of genuine, meaningful public review by Malibu of alternatives less environmentally damaging than the project. One of the two indeterminate alternatives mentioned in rote fashion in the Malibu City Council's resolution wasn't even mentioned in the Malibu Planning Commission's resolution. (Resolution No. 15-06 at 3.) The faceless alternatives cursorily mentioned in the City Council's resolution appear to be an afterthought. Simply put, there is no factual or legal support for Malibu's decision that the project is the least environmentally damaging alternative.

The alternative we proposed is not the only feasible alternative that would preserve views to and along the ocean in this location. Space for alternative project footprint sites moving development further away from Broad Beach Road is available, the southerly side yard currently being twice as wide (30 feet) as need be (14.97 feet). Development can be concentrated in the easterly and southeasterly portion of the Lot, by expanding the rear yard setback, moving the second story portion east (or east and south), and/or seeking a minor modification of the front yard setback. This would allow the impact to the unobstructed ocean view through the westerly half of the Lot to be minimized to the maximum feasible extent, while maintaining or minimizing reduction of the TDSF.

III. CONCLUSION

Currently, visitors can see the ocean and skyline from the section of Broad Beach Road facing the Lot. If this project is allowed to proceed, all of this view will be gone. Therefore, the direct adverse impact of the project alone is significant. Because today nearly no ocean views on Broad Beach Road are left, not to mention the loss of lateral beach access due to recent coastal armoring, any incremental loss of scenic vista in this area will also be cumulatively significant. When new development contributes to and exacerbates already severely deteriorated baseline conditions, its individual effect must be considered cumulatively significant.

We urge the Coastal Commission to find substantial issue, and to order de novo CDP review. De novo review will effectuate project conformance with the MLCP, produce an outcome for the public in line with the Coastal Commission's intent when it certified the MLCP, and offer Malibu badly needed guidance on how to apply critically important MLCP standards.

E Sea Level Dr
E Sea

Exhibit 1, p. 2

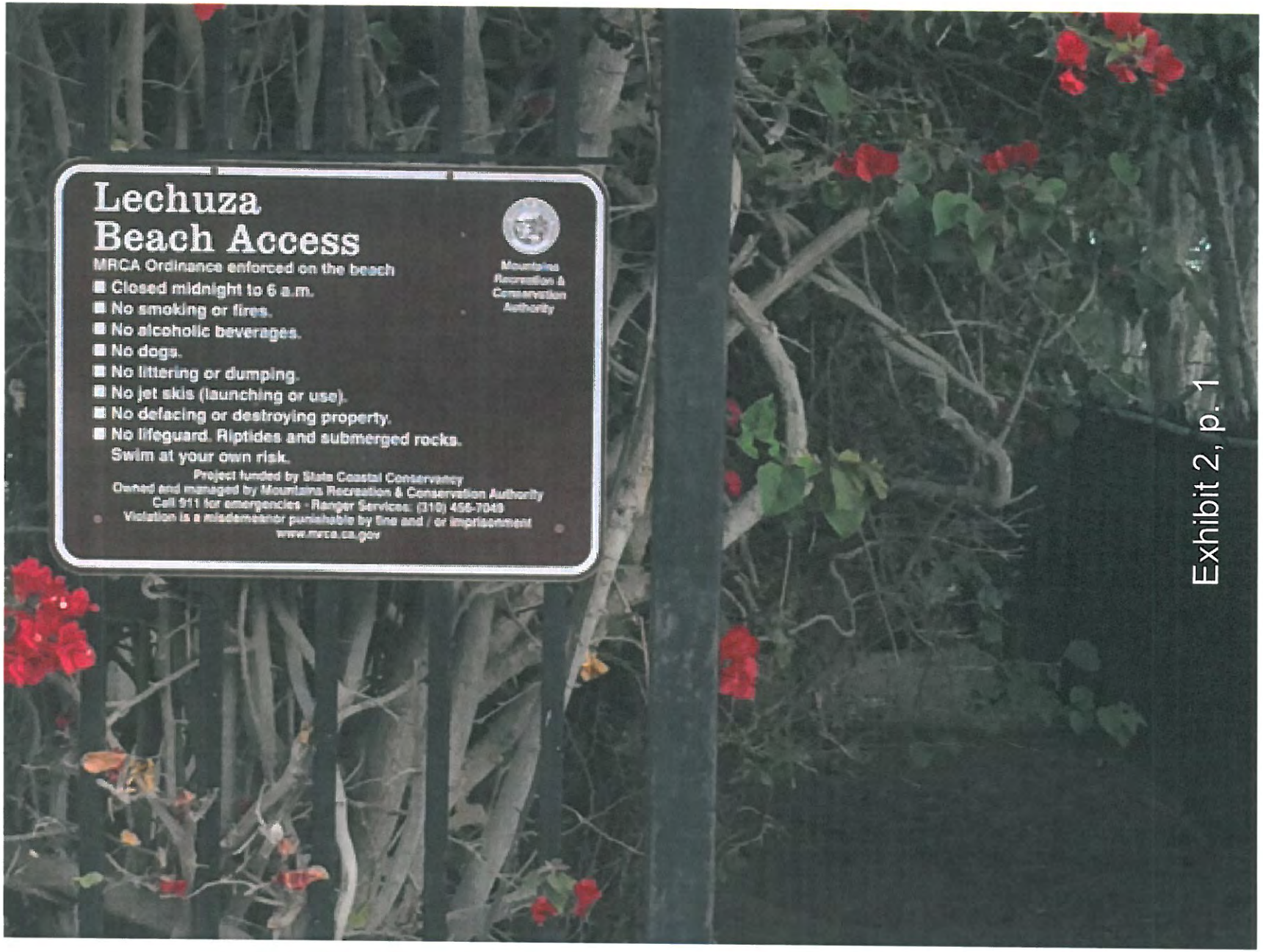

Lechuza
Beach Access
MRCA Ordinance enforced on the beach
Closed midnight to 6 a.m.
No smoking or fires.
No alcoholic beverages.
No dogs.
No littering or dumping.
No jet skis (launching or use).
No defacing or destroying property.
No lifeguard. Riptides and submerged rocks.
Swim at your own risk.
Project funded by State Coastal Conservancy
Owned and managed by Mountains Recreation & Conservation Authority
Call 911 for emergencies - Ranger Services: (310) 456-7049
Violation is a misdemeanor punishable by fine and / or imprisonment
www.mrca.ca.gov
Mountains Recreation & Conservation Authority

Exhibit 2, p. 1

Exhibit 2, p. 2 (sign at bottom of Lechu[illegible]ch Acc[illegible])

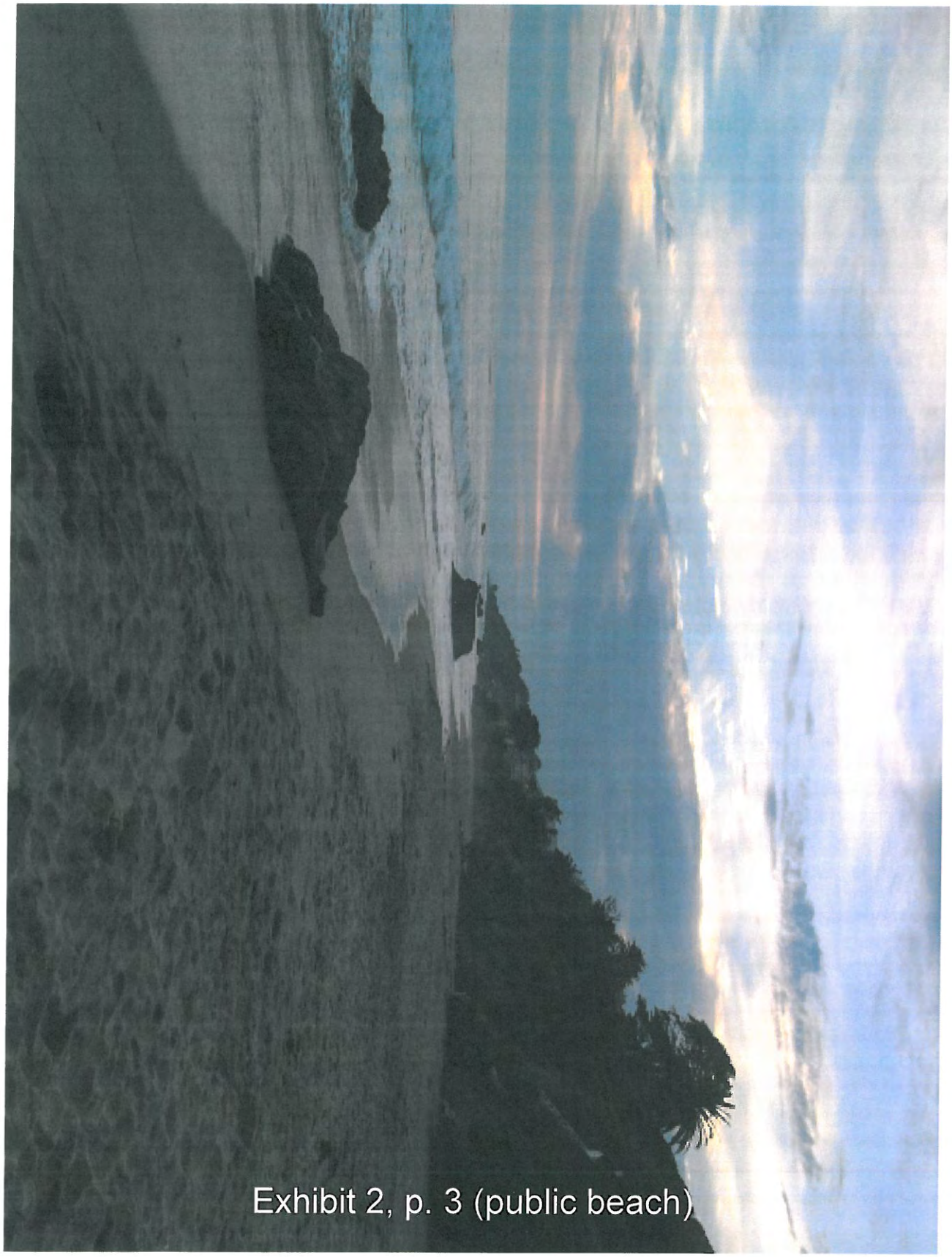


Exhibit 2, p. 3 (public beach)

Exhibit 2, p. 4 (beach referred to as "private beach")

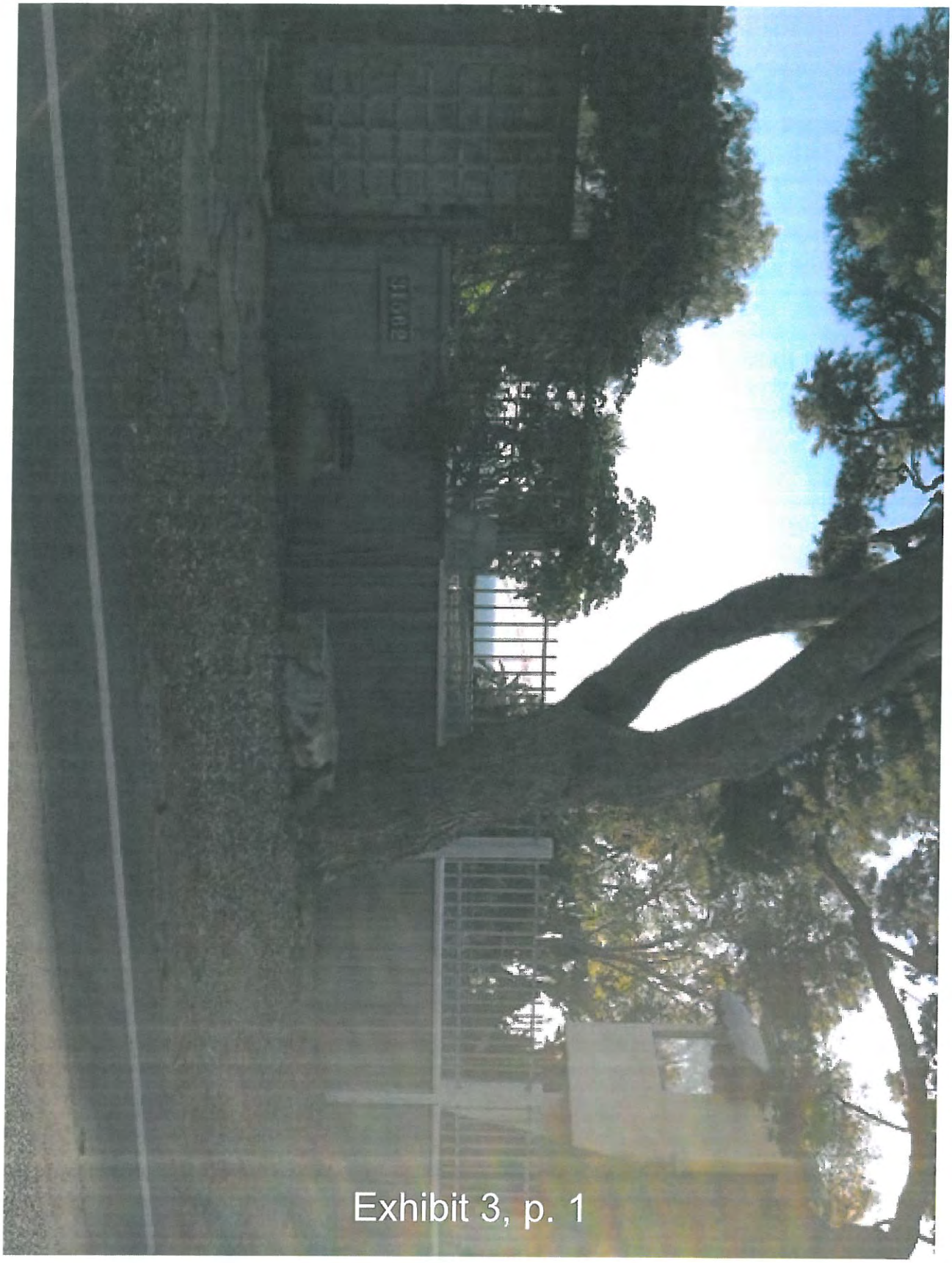


Exhibit 3, p. 1

Exhibit 3, p. 2

Exhibit 3, p. 3

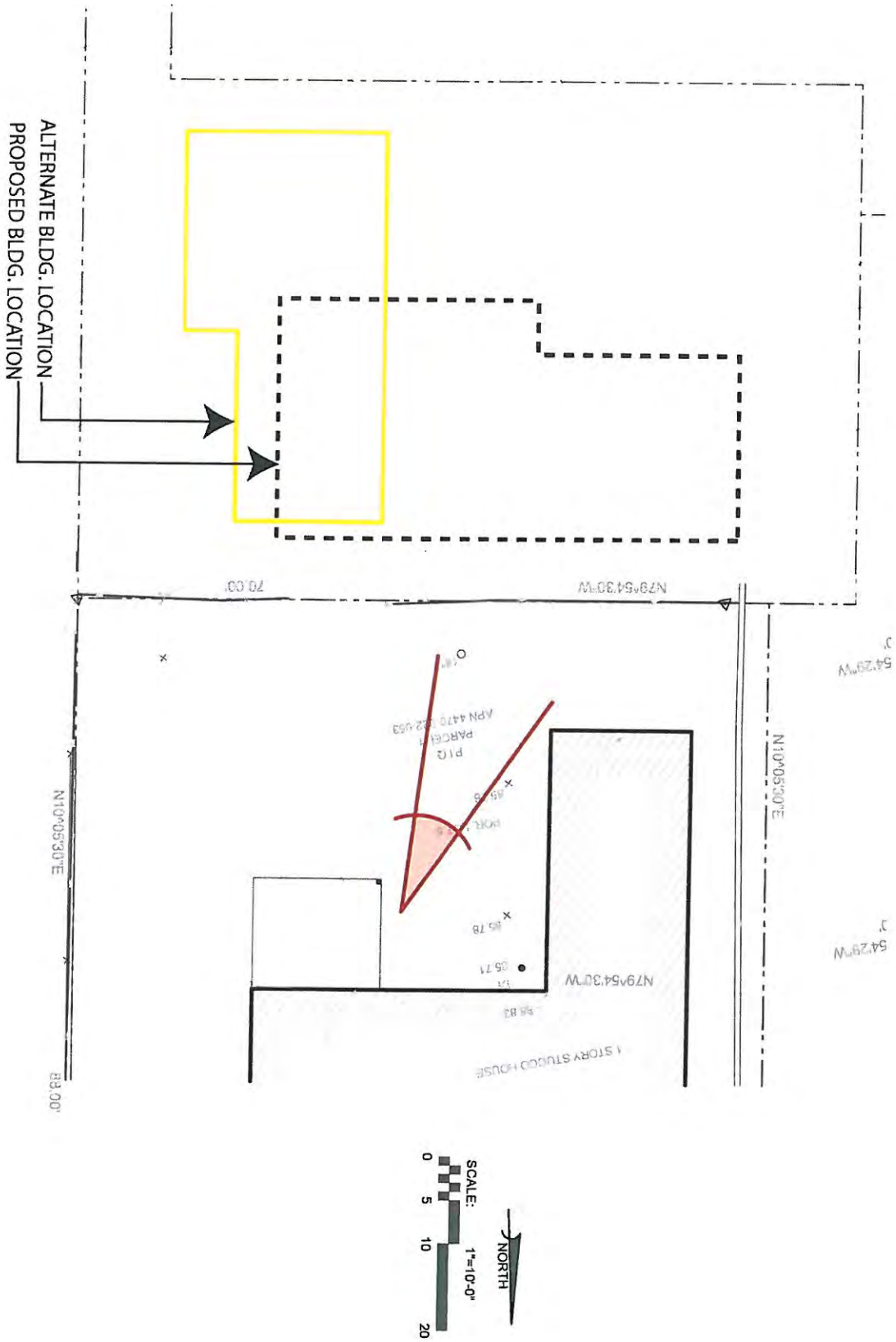
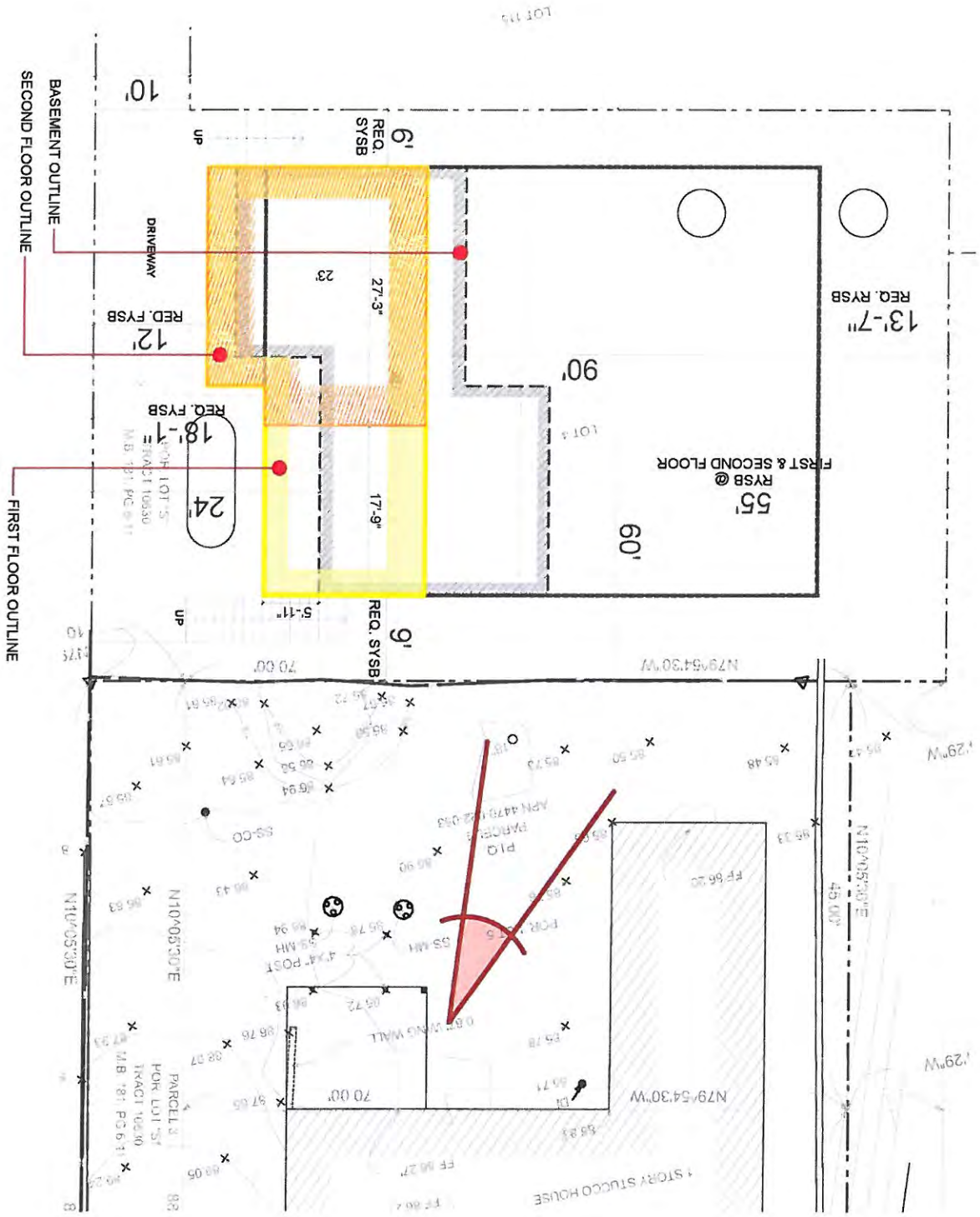

ALTERNATE BLDG. LOCATION
PROPOSED BLDG. LOCATION
N79°54'30"W
70.00'
N10°05'30"E
88.00'
1 STORY STUCCO HOUSE
SCALE:
1"=10'-0"
0
5
10
20
NORTH

Exhibit 4, p. 1



First Floor:	902 sf
Second Floor:	601 sf
Subtotal	1,503 sf
Basement:	28 sf
1056-1000=56 x 50%= 28 sf	
Total:	1,531 sf
Total Enclosed:	2,559 sf

NORTH

SCALE: 1"=10'-0"

0 5 10 20

Exhibit 4, p. 2

Exhibit 4, p. 3

Exhibit 4, p. 4 (Burdge Architects Alternative)

4-MAL-15-0569

NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

JUN 19 2015 BR

California Coastal Commission
South Central Coast District

Date of Notice: June 9, 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:
Richard Mollica RM
Senior Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
(310) 456-2489

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

Project Information

COASTAL DEVELOPMENT PERMIT NO. 13-041– An application for the construction of a 1.931 square foot two-story single-family residence that includes a 1.056 square foot basement and subterranean garage, landscaping, alternative onsite wastewater treatment system, retaining walls, hardscaping, and a deck

Application Date:	September 9, 2013
Issue Date:	June 8, 2015
Applicant:	Kalani Jensen, 22631 Pacific Coast Highway, Malibu, CA 90265
Owner:	Tom Keane, Jorthe, Inc
Location:	31571 Sea Level Drive
APN:	4470-022-005

Final Action Information

Final Local Action: ☐ Approved ☑ Approved with Conditions ☐ Denied
Final Action Body: Approved by the City Council on June 8, 2015.

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: June 8, 2015 City Council Meeting		6/1/2015
Adopted Findings and Conditions: City Council Resolution No. 15-30	X	
Site Plans and Elevations		6/1/2015

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.

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

Copies of this notice have also been sent via first-class mail to:
- Property Owner/Applicant

Prepared by: Patricia Salazar,

Exhibit 5
Final Local Action Notice
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)

Received

JUN 29 2015

California Coastal Commision
South Central Coast District

RESOLUTION NO. 15-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 15-001, DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND APPROVING NEW CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE; COASTAL DEVELOPMENT PERMIT NO. 13-041 TO ALLOW CONSTRUCTION OF A NEW, 1,931 SQUARE FOOT, TWO-STORY, SINGLE-FAMILY RESIDENCE THAT INCLUDES A 1,056 SQUARE FOOT BASEMENT AND SUBTERRANEAN GARAGE, LANDSCAPING, ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, RETAINING WALLS, HARDSCAPING, AND A DECK IN THE SINGLE-FAMILY MEDIUM ZONING DISTRICT LOCATED AT 31571 SEA LEVEL DRIVE (TOM KEANE, JORTHE, INC.).

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

Section 1. Recitals.

A. On September 9, 2013, an application for Coastal Development Permit (CDP) No. 13-041 was submitted to the Planning Department by the applicant, Kalani Jensen, on behalf of the property owner Tom Keane. The CDP application was routed to the City Geologist, City Biologist, City Environmental Health Administrator, the City Public Works Department, and the Los Angeles County Fire Department (LACFD) for review.

B. On August 20, 2014, story poles were erected on site.

C. On September 3, 2014, Planning Department staff conducted a site visit with the applicant to document site conditions.

D. On September 18, 2014, a notice of CDP application was posted on the subject property.

E. On November 16, 2014, the CDP application was deemed complete for processing.

F. On January 10, 2015, 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.

G. On January 20, 2015, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record, and adopted Planning Commission Resolution No. 15-06 approving the project.

H. On January 29, 2015, the appellant, Carol Bird, filed a timely appeal of Planning Commission Resolution No. 15-06, approving CDP No. 13-041.

I. On May 15, 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 January 29, 2015, alleges that the findings set forth in Planning Commission Resolution No. 15-06 are not supported by the evidence in the record and that the decision was contrary to law.

Specifically, the appellant contends that the findings pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Chapter 3 (General Coastal Development Permit) were not supported by substantial evidence in the record. Specifically, the project as approved, was not the least environmentally damaging alternative, is not consistent with the view protection policies of the General Plan, a smaller home could have been approved, no evidence was presented that the project complied with the public access and recreation polices of the Coast Act, and that the findings for LIP Chapter 6 should have been made to demonstrate that the project has no impact on public views.

Section 3. Findings for Denial of Appeal.

Based on evidence in the record, including the Council agenda report for the subject project presented at the June 8, 2015 City Council meeting, the City Council hereby makes the following findings:

1. The project as approved is consistent with LIP Section 13.9(C) and the determinations made by the Planning Commission regarding the height, size and location of the proposed residence comply with LIP Section 3.6 regarding residential development. Furthermore, since the project complies with LIP Section 3.6, no discretionary reviews for modified setbacks or height are required.

2. The project as approved is consistent with the City's General Plan Land Use Policies 1.1.4 and 1.1.5 regarding development that does not lead to the degradation of the natural environmental resources, including views. Malibu Municipal Code (M.M.C.) Title 17 (Zoning) contains development standards adopted by the City Council to implement the policies of the General Plan. The LIP Development Standards implement the policies of the LCP Land Use Plan. The project as approved has been determined to be in compliance with both of the above-mentioned policies in that it complies with the development standards contained in both the LIP and M.M.C. for residential development.

3. The approved development does balance both the interests of the property owner and the neighboring properties through consistency with the M.M.C. and LIP. The development as approved does not include any modifications to the applicable development standards. As approved, the proposed development complies with the residential development standards contained in LIP Section 3.6.

4. The size of the approved residence complies with LIP Section 3.6(K) and meets the definition of a primary dwelling unit. The decision to approve the home as proposed is consistent with the requirements of both the M.M.C. and LIP.

5. Given the location of the subject parcel and the surrounding residential development, the subject property does not contain opportunities for onsite public access or recreational areas. Furthermore, the subject parcel is not part of a larger public access or recreational plan. The approved development provides the required offsite parking and is not expected to affect public parking along Broad Beach Road or the existing vertical beach access located at the intersection of Bunny Lane and Broad Beach Road. The project has been determined to be consistent with the public access and recreation policies of the Coastal Act.

6. The siting of the approved development does protect public ocean views through its compliance with the LIP and location. Furthermore, the findings required in LIP Section 6.5(A) did not apply to the project because there is existing residential development located between the subject parcel and the public road (Broad Beach Road). Views of the ocean from Broad Beach Road are currently impacted by existing landscaping and multi-level residential structures located directly adjacent to Broad Beach Road. The surrounding development shields the approved development from public view.

Section 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City has analyzed the proposed project. The City Council finds that this project is among the category of projects listed that the state has determined do not have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA. Pursuant to CEQA Guidelines Sections 15303(a) and (e) – Construction of a New-Single Family Residence and Accessory Development. The City 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 the findings relating to the grounds of Appeal No. 15-001 set forth in Section 3 of this Resolution, and pursuant to LIP Sections 13.7(B) and 13.9, the City Council approves Coastal Development Permit No. 13-041 to allow for a 1,982 square foot two-story single-family residence that includes a 1,056 square foot basement and subterranean garage, landscaping, alternative onsite wastewater treatment system (AOWTS), retaining walls, hardscaping, and side yard deck located at 31571 Sea Level Drive:

A. General Coastal Development Permit (LIP Chapter 13)

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

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

2. The project is located between the first public road and the sea. The project site is located on the ocean side of Pacific Coast Highway (PCH) and is accessed from Sea Level Drive. No trails, parks or recreation areas are shown on or adjacent to the subject property according to the LCP Park Lands Map and pending 2011 Parklands and Trails System Map. In addition, the project does not contain or offer any public recreational opportunities. Therefore, the proposed project conforms to the public access and recreation policies in Chapter 3 of the Coastal Act of 1976.

3. As discussed in Section 2, the project is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the residential development requirements of the LCP and is consistent with the Single Family Medium Density (SFM) zoning classification of the subject parcel. Four alternatives were considered to determine which was the least environmentally damaging.

    a. No Project – The no project alternative would avoid any change to the project site, and hence, any change to natural resources. However, this project alternative would not accomplish any project goals and is therefore not a reasonable alternative.

    b. Alternative Project 1 – The applicant originally proposed as residence that required the modification of both the front and rear yards. This project design would have placed the project closer to neighboring development and given the small size of the lot would have not been in character with the neighborhood. The applicant was advised to revise the siting of the residence because the required findings for the reduction of the front and rear setback could not be made.

    c. Alternative Project 2– A residence with a smaller footprint and is taller could be proposed on the project site. However, it is not known if a taller structure would impact primary views from neighboring properties because story poles were not erected, nor were view impacts evaluated since a site plan review was not proposed. Furthermore, it is expected that a taller home would impact afternoon solar access to the property located to the north (directly behind the subject property). This alternative does not meet the project objectives or offer significant environmental advantages.

d. Proposed Project – The proposed project does not require any modifications to the residential development standards and complies with LIP Section 3.6. Furthermore, the layout of the home and driveway allows for adequate vehicular access and an open yard area which allows for the installation of the associated AOWTS. In addition, the proposed project will result in development that complies with the City's LIP.

4. The project site does not contain Environmentally Sensitive Habitat Area (ESHA) nor is it adjacent to ESHA. The proposed project was reviewed by the City Biologist and it was determined that the proposed project is exempt from review by the Environmental Review Board (ERB).

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

As discussed previously in Finding A4, the project site does not contain ESHA and the subject parcel is located in a developed neighborhood. The proposed project was reviewed by the City Biologist and it was determined that the project is not expected to impact sensitive resources or result in significant loss of vegetation or wildlife, since none currently exist onsite. Accordingly, the supplemental ESHA findings pursuant to LIP Section 4.7.6(C) are not applicable.

C. Native Tree Protection (LIP Chapter 5)

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

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

The subject parcel is a landlocked parcel and is blocked from view by existing residential development; as designed and condition, the project does not have the potential to cause significant adverse impacts on public viewing areas. Views of the site from Broad Beach Road are shielded by existing residential development and mature landscaping located directly adjacent to the road. When viewed from Lechuza Beach existing residential development located along East Sea Level Drive prevents the loss of any visually impressive scenes of the Santa Monica Mountains. Therefore, the required findings of LIP Chapter 6 are not applicable.

E. 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 required findings are made as follows:

1. The proposed project is not anticipated to result in the potential to create adverse impacts on site stability or structural integrity. The project has received conformance review and approval by the

City Geologist and the Public Works Department for consistency with all relevant regulations and LIP policies pertaining to potential hazards. The applicant submitted a series of geologic reports with subsequent supplemental and addendum reports, all of which have been reviewed by the City Geologist. The following is a list of technical documents that were reviewed as part of the subject application:

- GeoConcepts, Inc. (Walter and Sousa) December 20, 2012
- Supplemental Report No. 1, February 4, 2012
- Supplemental Report No. 2, April 30, 2014
- GeoConcepts, Inc. (Sousa) October 24, 2012
- Supplemental Report No. 1, December 4, 2012
- Supplemental Report No. 2, July, 29, 2013
- EPD Consultants, August 5, 2013
- Building Plans prepared by Kalani Jensen, September 6, 2013
- Grading Plans prepared by Ahsirt Engineering, Inc., February 2013

The project was reviewed and conditioned by the City Geologist and the City Public Works Department and has been found not to be subject to nor increase instability of the site or structural integrity from geologic, flood or fire hazards due project design. The project is consistent with all relevant policies and regulations regarding potential hazards.

2. 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. However, pursuant to LIP Sections 9.4(Y) and 10.6(A), as a condition of approval, the property owner will be required to record deed restrictions acknowledging and assuming the hazard risk of development at the site. The deed restriction shall state that the proposed project site is subject to high fire hazards, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against liability, claims, damages or expenses arising from any inquiry or damage due to such hazards.

3. The project will not result in potentially significant impacts and the proposed project is the least environmentally damaging alternative relative to hazards.

4. 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.

5. No adverse impacts pertaining to hazards are expected. As discussed in Sections B, C, and D the project will not conflict with LCP sensitive resource protection policies related to ESHA, native trees, and, scenic resources and shoreline and bluff development.

F. Shoreline and Bluff Development (LIP Chapter 10)

This project is not located along the shoreline or on a bluff; therefore, the findings in LIP Chapter 10 do not apply.

G. Public Access (LIP Chapter 12)

This project does not include public access or affect public access near the project area; therefore, the findings in LIP Chapter 12 do not apply.

H. 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 CDP No. 13-041, 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 new, 18-foot high, 1,959 square foot, single-family residence;
   b. 1,056 square foot subterranean garage and basement;
      i. Total Development Square footage (TDSF) is 1,987 square feet;
   c. AOWTS;
   d. Landscaping;
   e. Gates and boundary fencing;
   f. New hardscape;
   g. Side yard deck; and
   h. Retaining walls.

3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped June 5, 2013. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision and/or prior to issuance of any development permits.

5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.

6. This resolution, signed Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check.

7. This CDP shall expire 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 development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Geologist, City Biologist, and City Public Works Department, as applicable. Notwithstanding this review, all required permits shall be secured.

10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.

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

12. The applicant must submit payment for any outstanding fees payable to the City prior to issuance of any building or grading permit.

20. 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 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;
    c. The grading limits shall include the temporary cuts made for buttresses, and over-excavation for fill slopes shall be shown;
    d. Any native trees required to be protected;
    e. Any rare or endangered species as identified in the biological assessment, along with fencing of these areas if required by the City Biologist;
    f. Private storm drains, and systems greater than 12-inch diameter shall also include a plan and profile; and
    g. 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.

21. 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 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.

22. A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the Public Works Department prior to the issuance of grading permits as grading or construction activity is anticipated to occur during the rainy season. The following elements shall be included in this plan:
    a. Locations where concentrated runoff will occur;
    b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
    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.

23. A local Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review and approval by the Public Works Department prior to issuance of grading/building permits. This plan shall include:
    a. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
    b. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and

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.

Geology

15. All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.

16. 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.

Grading / Drainage

17. The approved project scope includes 600 cubic yards of non-exempt grading and 1,145 cubic yards of exempt grading. In no case shall non-exempt grading exceed 1,000 cubic yards.

18. The Total Grading Yardage Verification Certificate shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitute may be accepted.

19. Exported soil from a 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.

c. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
d. Specific BMPs to prevent erosion and BMPs for sediment control prior to discharge from the property.

24. A Water Quality Management Plan (WQMP) shall be submitted for review and approval of the Public Works Director. The WQMP shall be prepared in accordance with the LIP Section 17.3.3 and all other applicable ordinances and regulations. The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage on the site. The following elements shall be included within the WQMP:
    a. Site Design Best Management Practices (BMPs);
    b. Source Control BMPs;
    c. Treatment Control BMPs;
    d. Drainage improvements;
    e. Methods for onsite percolation, site re-vegetation and an analysis for off-site project impacts;
    f. Measures to treat and infiltrate runoff from impervious areas;
    g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
    h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
    i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at the time of submittal for review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted prior to the Public Works Department approval of building plans for the project.

Construction

25. A construction staging plan shall be submitted for review and approval by the Planning Department and Building Safety Division prior to permit issuance.

26. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.

27. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.

28. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work.

29. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

30. The mechanical equipment shall not be roof mounted. All mechanical equipment shall be ground mounted.

31. The height of the western half (portion without a basement) of the structure shall be measured from the cut under the floor as shown in Section A4.2 of the plans date-stamped March 30, 2015.

Lighting

32. 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.

33. Night lighting for sports courts or other private recreational facilities shall be prohibited.

34. 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.

35. 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

36. 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.

37. 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.

Biology/Landscaping

38. Invasive plant species, as determined by the City of Malibu, are prohibited. Furthermore, existing invasive plants located onsite shall be removed.

39. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time.

40. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.

41. 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 (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.

Deed Restrictions

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

Prior to Occupancy

43. 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.

44. 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 material that were land filled or recycled, broken down by material types. The Environmental Sustainability Department shall approve the final Summary Report.

45. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning 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.

46. 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

47. This coastal development permit shall run with the land and bind all future owners of the property.

48. 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 8th day of June 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 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. 15-30 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 8th day of June 2015 by the following vote:

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

LISA POPE, City Clerk
(seal)

Received
JUL 15 2015
California Coastal Commision
South Central Coast District

ANGEL LAW

2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405-5269
Tel: (310) 314-6433
Fax: (310) 314-6434

Received
JUL 15 2015
California Coastal Commision
South Central Coast District

July 15, 2015

California Coastal Commission
Attn: Denise Venegas, Coastal Program Analyst
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001-2801

Re: California Coastal Commission Appeal No. A-4 MAL-15-0042

By Hand

Dear Ms. Venegas:

I have enclosed as Exhibit 1 (pp. 1–3) three additional pictures of the current ocean view from Broad Beach Road as seen from the public road at 31562 Broad Beach Road (appellant's address). These pictures, which show the story poles of the applicant's project south of appellant's home, further go to show that a public ocean view currently clearly exists at this location through appellant's property, over the roofline of her below-grade home (Exh. 1, pp. 1-2); that this ocean view would be gone if the project is built as sited and designed (*id.*); and that only the ocean view through the easterly portion of the applicant's and appellant's lots is already obscured. (Exh. 1, p. 3 [depicting narrow entrance gate to stairs down to appellant's home]).[1]

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[1] The trimmed pepper tree on the left and what looks like a rubber tree (to the right, also trimmed) are on appellant's property. The pepper tree (though not eliminating the ocea easterly ocean view corridor, i.e., the site of the Burdge Architects Alternative. middle (dark) and the shorter tree behind the "rubber" tree to the right are bott

Exhibit 6
Correspondence from Appellant's Representative, dated July 15, 2015
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)

I have further enclosed a number of pictures I took yesterday on Broad Beach Road to prove an important point we raise in our appeal: today, 13 years after the Coastal Commission certified the Malibu Local Coastal Program (MLCP) and the City of Malibu assumed coastal development permit (CDP) authority over new development in the City, beachfront development along this road has resulted in long segments of *continuous* development barriers obliterating public views to and along the ocean, especially as side yards between adjacent residences are often walled off from the road by solid gates, walls and foliage. The result is that today hardly any ocean views remain along this public road.

The pictures for the following addresses are illustrative -- many additional examples support our argument:

Exhibit 2, p. 1 -- 31030-31038 Broad Beach Road: solid barrier with foliage across side yards between these two residences, eliminating ocean view through side yards.

Exhibit 2, p. 2 -- 31038-31042 Broad Beach Road: solid gate and foliage over 15 feet high cutting off ocean view through side yards.

Exhibit 2, p. 3 -- 31042-31048 Broad Beach Road: solid gate cutting off ocean view through west side yard of 31042 as well.

Exhibit 2, p. 4 -- 31118 Broad Beach Road: minimal, temporary ocean view available due to onsite construction.

Exhibit 2, p. 5 -- 31118-31122 Broad Beach Road: side yards between these two residences closed off by walls and solid gates.

Exhibit 2, p. 6 -- Broad Beach Road looking West (just east of first vertical public access after Zuma Beach).

Exhibit 2, pp. 7 & 8 -- first vertical access after Zuma Beach between 31138 and 31202 Broad Beach Road. The vertical public access hardly offers a view corridor due to signage and foliage in the side yards of these adjacent properties.

Exhibit 2, p. 8A -- 31232-31236 Broad Beach Road: twin residences with solid gate linking the residential buildings and trees on sidewalk rising above gate, eliminating ocean views between the residences.

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property. The 30+ foot trees and paradise bird plants on the right (west), likewise, are on the applicant's property along its westerly boundary. If the applicant lowered these to 4 to 6 feet, the ocean view allowed by the Burdge Architects Alternative would substantially enhanced.

Exhibit 2, p. 9 -- 31240-31250 Broad Beach Road: view corridors through adjoining side yards of these two properties eliminated by solid gate and hedge. 31240 is west of and adjoins 31236.

Exhibit 2, p. 10 -- large mansion at 31250 Broad Beach Road, adjoining 31240 (on the east) and 31260 (on the west): a more than 40-foot long, over 10 feet high white wall extends from the boundary with 31240. Then the residence itself extends the unbroken view barrier formed by the coastal development shown on pages 8A and 9 of this exhibit.

Exhibit 2, p. 11 -- 31250-31260 Broad Beach Road: mostly obstructed view corridor between these two residences.

Exhibit 2, p. 12 -- 31260-31272 Broad Beach Road: no view corridor between these two residences due to solid gate and vegetation behind.

Exhibit 2, p. 13 -- 31284 Broad Beach Road: view through entrance driveway blocked completely by foliage.

Exhibit 2, p. 14 -- 31310 Broad Beach Road: solid white wooden gate, 7 feet high, totally blocking ocean view (no house rising behind gate).

Exhibit 2, p. 15 -- 31478-31500 Broad Beach Road: no ocean view between these two residences due to solid wall across side yards.

Exhibit 2, p. 16 -- 31766 Broad Beach Road: another solid, view blocking wall over 7 feet high adjacent to entrance gate.

Please let Ms. Sara Wan or me know if you have any questions concerning this supplemental information, or if you wish any additional information.

Sincerely,

ANGEL LAW

Frank P. Angel
Enclosures

Exhibit 1, pg. 1

Exhibit 1, pg. 2

Exhibit 1, pg. 3

Exhibit 2, pg. 1

Exhibit 2, pg. 2

Exhibit 2, pg. 3

Exhibit 2, pg. 4

Exhibit 2, pg. 5

Exhibit 2, pg. 6

WARNING
ADVERTENCIA
WELCOME
TO THE BEACH
NO DOGS
ON BEACH

WELCOME
TO THE BEACH
NO DOGS
ON BEACH

Exhibit 2, pg. 8A

Exhibit 2, pg. 9

Exhibit 2, pg. 10

Exhibit 2, pg. 11

Exhibit 2, pg. 14

Exhibit 2, pg. 16

Exhibit 7
Proposed Residence Staking
Photo #1
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)

Exhibit 8
Proposed Residence Staking
Photo #2
Appeal No. A-4-MAL-15-0042
(31571 Sea Level Drive)