

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 08-65**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU ADOPTING NEGATIVE DECLARATION NO. 07-007 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 04-051, VARIANCE NOS. 05-043, 05-045, 07-043 AND 07-044, LOT LINE ADJUSTMENT NO. 08-003, SITE PLAN REVIEW NO. 05-052 TO ALLOW FOR THE CONSTRUCTION OF A 28 FOOT HIGH, TWO-STORY 10,517 SQUARE FOOT, SINGLE-FAMILY RESIDENCE WITH A 398 SQUARE FOOT COVERED LOGGIA, BASEMENT, POOL, TRELIS, WALLS, TENNIS COURT, HARDSCAPE, DRIVEWAY, LANDSCAPING, AND AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, INCLUDING A SITE PLAN REVIEW FOR HEIGHT ABOVE 18 FEET, UP TO 28 FEET WITH A PITCHED ROOF, VARIANCES FOR CONSTRUCTION ON SLOPES EXCEEDING 2½ TO 1, RETAINING WALLS IN EXCESS OF SIX FEET (TO WIDEN THE ACCESS ROAD), A REDUCTION IN THE REQUIRED ESHA SCRUB BUFFER AND A REDUCTION IN THE REQUIRED ESHA STREAM BUFFER, A LOT LINE ADJUSTMENT FOR THE FOUR PROPERTIES INVOLVED THAT ARE LOCATED AT 21100 AND 21000 SEABOARD ROAD (DIANE BREITMAN, AS TRUSTEE OF THE BREITMAN RESIDENCE TRUST DATED 10/1/03)

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

Section 1. Recitals.

- A. On April 8, 2004, an application for Plot Plan Review (PPR) No. 04-050 and Site Plan Review (SPR) No. 04-021 for the proposed residence was submitted for processing. The application was deemed complete on October 25, 2004; however, no action was taken because the City began issuing Coastal Development Permits (CDP).
- B. On October 28, 2004, an application for Administrative Plan Review (APR) No. 04-091 to widen Seaboard Road to provide Fire Department access to the site was submitted for processing. At the time of submittal, the City was not yet issuing CDPs. The California Coastal Commission required applicants to obtain local planning approval before they could apply for a CDP. During November 2004, the City began issuing CDPs. Therefore, this APR was no longer required and the applicant filed for a CDP at the City.
- C. On September 7, 2004, the subject applications were converted to CDP No. 04-051.
- D. On December 15, 2005, a Notice of CDP was posted on the subject property.
- E. On April 6, 2005, an application for CDP No. 05-061 to process a lot line adjustment (LLA) for the subject property and neighboring properties was submitted for processing.

- F. On April 20, 2006, 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 1,000 foot radius of the subject property.
- G. On May 1, 2006, the Planning Commission continued the public hearing to June 5, 2006 due to lack of a quorum.
- H. On June 5, 2006, the Planning Commission continued the public hearing to June 19, 2006 at the request of the applicant.
- I. On June 19, 2006, the Planning Commission continued the public hearing to July 31, 2006 since the City Biologist was not available to provide testimony.
- J. On July 31, 2006, the Planning Commission continued the public hearing to a date uncertain.
- K. The project was scheduled to be heard at a Special Planning Commission meeting on September 14, 2006. However, the meeting was canceled due to lack of a quorum and this item was continued to the Regular Planning Commission meeting of October 3, 2006.
- L. On October 3, 2006, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the attached agenda report, public testimony, and all related information. The Planning Commission requested that the item be brought back at a later date so the lot line adjustment could be heard concurrently. As a result, the Planning Commission continued the item to a date uncertain.
- M. On August 25, 2008, staff merged the lot line adjustment proposed under CDP No. 05-061 into the scope of work proposed under CDP No. 04-051.
- N. On September 4, 2008, 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 1,000 foot radius of the subject property.
- O. On September 16, 2008, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony and other information in the record. The Commission directed staff to bring back a resolution including additional conditions of approval.
- P. On October 7, 2008, the Planning Commission adopted the amended resolution.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), an Initial Study to determine whether the proposed project may have a significant effect on the environment was prepared for the project. The Initial Study determined that the proposed project will not have a potentially significant effect on the environment, and a Negative Declaration was prepared.

Pursuant to Section 15105 of CEQA, when a Negative Declaration is submitted to the California State Clearinghouse (SCH) for review by state agencies, the public review period shall not be less than 30 days. The Negative Declaration was submitted to the SCH on May 22, 2008 (SCH Number 2008051112). In addition, the Negative Declaration was sent to all responsible agencies for review. On June 26, 2008, the City received a CEQA compliance letter from the SCH.

Initial Study (No. 07-008)/ Negative Declaration (No. 07-007) analyzed multiple impact areas of the project. The project, as proposed, does not have the potential to significantly degrade the quality of the environment, nor does it have impacts which are individually limited but cumulatively considerable, because the nature of the development will remain consistent with the General Plan and LCP. The environmental impacts associated with this project will occur at the onset of development during the construction stage, and will be short-term in nature. The project use is consistent with its zoning designation and will, therefore, not have environmental effects or cause significant adverse impacts either directly or indirectly.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Local Implementation Plan (LIP) Sections 13.7.B and 13.9, the Planning Commission adopts the findings in the attached agenda report, the findings of fact below, and approves CDP No. 04-051, LLA No. 08-003, Variance (VAR) Nos. 05-043, 05-045, 07-043, and 07-044, SPR No. 05-052, and IS No. 07-008 and ND No. 07-007.

The project has been reviewed by the City Geologist, City Environmental Health Administrator, City Biologist, City Public Works Department, and the Los Angeles County Fire Department (LACFD). A Phase I Archaeological Study was prepared by Robert J. Wlodarski for the project in January 2005. According to the study, the results yielded no evidence of prehistoric or historic archaeological resources and the proposed improvements will have no adverse impacts on known cultural resources. The project is consistent with the LCP's zoning, grading, water quality, and onsite wastewater treatment system (OWTS) requirements. The project is consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made below.

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

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

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

The project, as conditioned, conforms to the certified LCP, in that it meets the required development standards. As discussed throughout this resolution, the project conforms to the LCP, with the inclusion of the variances and site plan review.

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

The project is not located between the first public road and the sea. The project will not result in potentially significant adverse impacts on public access and/or recreation. As discussed, the project conforms to the public access and recreation policies of the Coastal Act.

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

Pursuant to CEQA, the Planning Division prepared an Initial Study to determine whether the project may have a significant effect on the environment. The Initial Study determined that the project would not have a significant impact on the environment. Subsequently, a Negative Declaration was prepared pursuant to CEQA Guidelines Section 15070.

The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no other feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements of the LCP and the Malibu Municipal Code (M.M.C.). The development proposed in the subject CDP application is consistent with the Rural Residential 20 acre lot size minimum zoning designation of the subject property. Based on the analysis contained in the Initial Study, the project will not result in potentially significant impacts on the physical environment.

The following alternatives may be considered.

1. No Project – The no project alternative would avoid any change to the project site and natural resources. The project site is zoned for residential use, and an existing road easement provides for access to the site and adjacent properties. Therefore, the no project alternative is not economically or legally feasible.
2. Smaller Project – A smaller project could be proposed on the project site. However, the project proposed complies with the LCP, provided that a lot line adjustment is processed. In any case, it is not anticipated that a smaller project would substantially change the project's potential for environmental damages since fuel modification and road widening would still be required to develop a residence on the subject property.
3. Project without the Lot Line Adjustment – The project could be redesigned to meet the required setback for the existing parcel on which the residence is proposed. Such a project would not require a lot line adjustment. It is not anticipated that such a project would substantially change the project's potential for environmental impacts. Variances for construction on slopes and retaining wall height for the walls along the road would still be required. Without adequate access, the proposed residence could not be built. In addition, this type of project leaves the lots in their current configuration. Since each parcel can be developed with a single-family residence, required emergency access driveways would also have to be constructed. These driveways would require additional grading and clearing of ESHA, therefore this alternative results in greater disturbance to the onsite ESHA.
4. Alternative Road Alignment – An alternative road alignment could be proposed. However, an existing easement provides for the continuation of the paved portion of Seaboard Road along the alignment of the unpaved portion. In addition, the proposed road falls within the prescribed road easement for use by the subject properties as well as those surrounding them. It is anticipated that alternative alignments would result in additional grading. Based on the results of the April 12, 2005, Biological Assessment by Steven G.

Nelson, an alternative alignment would result in greater ESHA impacts. These impacts would occur because the site is surrounded by scrub ESHA and utilization of any road other than the existing road would require a greater amount of ESHA clearance. No alternative alignment is known that would not require variances for retaining wall height and/or construction on slopes. In addition, the current alignment avoids geological hazards that surround the project site to the east.

5. Proposed Project – The project proposes a lot line adjustment, new access road, and construction of a single-family residence and associated development. Currently the project site is undeveloped and consists of four legal parcels. The lot line adjustment will bring three of the four lots closer to conformance with the required lot size minimum. The proposed reconfiguration results in four building pads that will be clustered around one access road. Clustering the building pads benefits the onsite scrub and stream ESHA by reducing the need for multiple access roads and enlarged fuel modification zones. The potential building sites allow for the required fuel modification zones of each parcel to overlap.

Only the emergency access road and the retaining walls required to widen the road to meet LACFD standards, will encroach within the required ESHA buffer. Without adequate access, the proposed residence cannot be constructed. The proposed residence, associated development, and required fuel modification are located outside the required ESHA buffer. Given this, the proposed location for the residence would have the least amount of impacts to onsite ESHA and would take advantage of a previously graded road.

An existing unpaved road currently encroaches into the required ESHA scrub buffer and is located near an unmapped drainage feature. Per the LIP, a variance for the reduction of the required stream buffer must be processed to allow for the encroachment of development near a drainage feature even if it is not mapped. In addition, a variance to allow for the reduction of the scrub buffer must also be processed. Currently, the unpaved road does not comply with LACFD standards. In order to develop the property, the unpaved portions of Seaboard Road must be widened and retaining walls must be constructed on slopes exceeding 2½ to 1. Nearby properties include access and retaining walls through slopes that formerly exceeded 2½ to 1. Stabilization of the road with retaining walls is necessary to develop the site according to its rural residential zoning classification. In addition, the retaining walls will provide better protection for the road and nearby properties than under the existing geologic conditions. The required retaining walls and the road itself encroach into the required ESHA scrub buffer; however, there are no feasible alternatives to avoid encroachment into the required buffer as the existing unpaved road is located in the buffer. By granting the variances to allow for construction on slopes and retaining walls in excess of six feet, the road will be widened and improved to comply with LACFD standards and provide adequate emergency access to the proposed residence.

Finding 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.

As discussed previously, the site of the proposed residence is not located within ESHA or ESHA buffer. However, the existing access road which is located within the prescribe easement passes through ESHA and crosses a drainage feature. This drainage is not considered a mapped stream; however a variance for the reduction in the required ESHA buffer is required. The reduced drainage buffer is being processed as a stream buffer reduction variance per the LIP. The project was reviewed by the Environmental Review Board

(ERB) on February 22, 2006. The ERB's recommendations have been incorporated into the project design and conditions. Therefore, the project conforms with the recommendations of the ERB. In addition, the City Biologist has determined that the project is consistent with the LCP.

B. Site Plan Review Findings for Construction above 18 Feet in Height (LIP Section 13.27.5)

Site Plan Review No. 05-052 is included as the project proposes a structure up to 28 feet in height with a pitched roof. The LCP requires that the City make six findings, two of which are required by the City of Malibu Municipal Code (M.M.C.). These six findings must be made in the consideration and approval of a site plan review for construction in excess of the City's base 18 feet in height up to 28 feet with a pitched roof. Based on the foregoing evidence contained within the record and pursuant to LIP Section 13.27, the six required findings are made as follows.

Finding 1. That the project is consistent with policies and provisions of the Malibu LCP.

As previously stated, the project has been reviewed and analyzed for conformance with the LCP by staff and all other appropriate agencies. With the variance and site plan review inclusions, the project is consistent with the policies and provisions of the LCP.

Finding 2. That the project does not adversely affect neighborhood character.

Story poles were placed on the site to demonstrate the project's potential for aesthetic changes. The story poles were first inspected on December 12, 2005 and subsequently again in August 2008. No substantial impact on private views is anticipated because the project site is relatively flat and no developed properties are located in the immediate vicinity. Developed properties in the area are generally at a much higher elevation than the subject property. The project's height and bulk will not adversely affect neighborhood character because the surrounding neighborhood is comprised of two-story structures that are above 18 feet in height. The project will be sited on a relatively large site, far from neighboring properties, consistent with the surrounding area's rural residential character. The project complies with the required TDSF, setback, and impermeable coverage regulations. The project does not adversely affect neighborhood character.

Finding 3. That the project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The project site is not visible from PCH, other public streets, or the beach. Although the project site may be visible from the ocean and public parkland, the project site is far enough from these areas that little, if any, change in views of the site is anticipated. The site was visited after the story poles were placed and the project was evaluated for any potential impacts to public views. The project is consistent with the site's rural residential character in that one residence will be constructed on a relatively large lot. The project provides maximum feasible protection to public views as required by the LCP.

Finding 4. The proposed project complies with all applicable requirements of state and local law.

The project has been reviewed by the City Biologist, City Geologist, City Public Works Department, City Environmental Health Administrator, and the LACFD. It must also be approved by the LACFD, Los Angeles County Water District 29, and the City of Malibu Environmental and Building Safety Division, prior to

issuance of City building permits. The project complies with all applicable requirements of state and local law.

Finding 5. The project is consistent with the City's general plan and local coastal program.

The project is consistent with the General Plan designation for the site. As discussed, the project is consistent with the LCP.

Finding 6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C Section 17.40.040(A)(17).

The project site has been visited and the proposed development has been evaluated relative to private views. Because the site of the proposed residence is flat and relatively far from nearby developed properties, it is unlikely that any private views will be impacted by the project. Only three residences are located within 1,000 feet of the subject property. In addition, their views are oriented towards the south (Pacific Ocean). The proposed residence is located west of these three homes. Based on this evaluation, and that no correspondence has been received regarding potential view impacts, it is not anticipated that the design and/or location of the proposed residence will obstruct visually impressive scenes of the Pacific Ocean, offshore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

C. Variance for Retaining Wall Height in Excess of Six Feet (LIP Section 13.26)

LIP Section 8.3(C) limits retaining wall height to six feet for one wall, or 12 feet for any combination of walls. VAR No. 05-043 has been included because the proposed retaining walls along the access road have a maximum height of 12 feet for a single wall. The applicant has proposed retaining walls along the access road to provide for required emergency access and to meet current building and safety standards. The walls will be located in the vicinity of cut slopes along the existing dirt access road, on both the uphill and downhill sides of the road. No variance for retaining wall height is required on the site of the proposed residence. The findings required by LIP Section 13.26 are made below.

Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The existing unpaved access road is proposed to be widened to comply with LACFD standards. In order to meet the required safety standards, retaining walls in excess of six feet in height must be installed. Although sets of retaining walls, where any one wall does not exceed six feet, could be constructed to potentially avoid a variance, such retaining walls would result in greater disturbance to ESHA. Pursuant to LIP Section 4.6.4(B) modifications to development standards such as height shall be permitted where necessary to minimize ESHA impacts.

A variance for retaining wall height is warranted because special circumstances exist on the property as a

result of existing topography/geology as well as emergency vehicle access requirements. The proposed retaining walls result in the least amount of ESHA impacts and still meet the applicable LACFD access requirements. In addition the current road is located within the prescribed road easement. Therefore, there are special circumstances and exceptional characteristics applicable to the subject property such that strict application of the zoning ordinance deprives the property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

Finding 2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The project has been reviewed and approved by the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, and the LACFD for consistency with all applicable regulations and policies. The proposed retaining walls result in the least amount of ESHA impact and still meet the applicable LACFD access and Building Code requirements. The walls will be located along an existing dirt road with steeply cut slopes. Therefore, the granting of the variance will not be detrimental to the public interest, safety, health, or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone in which the property is located.

Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

Nearby properties are developed with walls and/or slope cuts exceeding the permitted height. The subject walls will be sited along existing cut slopes along an existing unpaved road. Granting of the variance is necessary to create an access road that will provide for emergency access to the site. The LACFD has required the applicant to create a 20 foot wide driveway with a surface that provides access regardless of weather conditions. Without adequate emergency access the proposed residence cannot be built. The granting of the variance will not constitute a special privilege to the applicant or the property owner as the LACFD standards are applied uniformly to residential development.

Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

As discussed throughout this resolution, with the variance and site plan review inclusions, the project is consistent with the LCP. The project is consistent with the purpose and intent of LIP Chapter 13. The granting of the variance will not be contrary to, or in conflict with, the general purposes and intent of LIP Chapter 13, nor to the goals, objectives, and policies of the LCP.

Finding 5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The proposed variance is a request to allow for the construction of 12 foot high retaining walls. Granting of this variance will allow the applicant to avoid the onsite ESHA to the greatest extent possible. There is no project alternative that would result in less impacts to ESHA. The project does propose two additional

variances for the reduction of required ESHA buffer distances. The findings for those variances are discussed in this resolution.

Finding 6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The project does not involve variances to stringline standards.

Finding 7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The project does not include any use or activity variances. The project is consistent with the site's rural residential zoning.

Finding 8. The subject site is physically suitable for the proposed variance.

Granting of the variance is required to provide for required LACFD access and to meet current building and safety standards. The proposed walls will stabilize the road and better protect the property and nearby properties than under existing conditions. With the implementation of specific geo-technical standards, the subject site is physically suitable for the proposed variance. The topography of the site physically constrains proposed development of the site, but it does not prevent development given certain locally-common engineering measures. Therefore, the subject site is physically suitable for the proposed variance. The project has been reviewed and approved by the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, and the LACFD for consistency with all applicable regulations and policies.

Finding 9. The variance complies with all requirements of state and local law.

The variance is required to meet emergency access and building and safety standards. As discussed throughout this resolution, with the exception of the variances and site plan review, the project is consistent with the LCP. The variance for retaining wall height is consistent with the requirements of state and local law.

Finding 10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The project does not involve a variance to parking standards. The project will not otherwise result in reduction or elimination of public parking for access to the beach, public trails, or parklands.

D. Variance for Construction on Slopes (LIP Section 13.26)

Variance No. 05-044 is included to allow for construction on slopes exceeding 2½ to 1. In order to develop the property, the unpaved portions of Seaboard Road must be widened through slopes exceeding 2½ to 1, and retaining walls must be constructed on slopes exceeding 2½ to 1. Nearby properties include retaining walls that were constructed on slopes that exceed 2½ to 1. Stabilization of the road with retaining walls is

necessary to develop the site according to its zoning classification. In addition, these retaining walls are necessary to provide the required LACFD access and meet current building and safety requirements. Approximately 410 linear feet of retaining walls will be built on slopes that require a variance. No variance for construction on slopes is required for the site of the proposed residence. The findings required by LIP Section 13.26 are made below.

Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The topography of the subject property is such that the strict application of the zoning ordinance deprives the subject property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. LIP Section 3.6(J) limits the site of residential construction to areas containing slopes less than 2½ to 1; however, the topography of the subject property precludes development that would be located on slopes greater than 2½ to 1.

The existing unpaved access road is proposed to be widened to comply with LACFD requirements. In order to provide for the required safety and access standards, retaining walls on slopes exceeding 2½ to 1 must be installed. Due to the nature of the surrounding topography and location of the road easement, it is impossible to avoid slopes exceeding 2½ to 1 to widen the road.

Special circumstances exist on the property due to existing topography/geology, location of the road easement, and emergency vehicle access requirements. The location of the proposed retaining walls results in the least amount of ESHA impacts while still providing the required LACFD access to the site. Therefore, there are special circumstances and exceptional characteristics applicable to the subject property such that strict application of the zoning ordinance deprives the property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

Finding 2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

In order to develop the property, the unpaved portions of Seaboard Road must be widened through slopes exceeding 2½ to 1, and retaining walls must be constructed on slopes exceeding 2½ to 1. Nearby properties include retaining walls that were constructed on slopes that exceed 2½ to 1. Stabilization of the road with retaining walls is necessary to develop the site according to its zoning classification. The project will provide better onsite stability than current conditions through the use of engineered retaining walls. The project has been reviewed and approved by the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, and the LACFD for consistency with all applicable regulations and policies. Therefore, the granting of the variance will not be detrimental to the public interest, safety, health, or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone in which the property is located.

Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

In order to develop the property, access to the site must be provided and must be able to accommodate emergency vehicles. To create this access, the current unpaved road will be widened through slopes exceeding 2½ to 1 and retaining walls will be constructed on slopes exceeding 2½ to 1. Nearby properties include access and retaining walls constructed on such slopes. Stabilization of the road with retaining walls is necessary to provide for required LACFD access and to comply with building and safety requirements. Without an emergency access road that is 20 feet in width, the property owner cannot receive LACFD approval and therefore cannot build the proposed residence. Granting of the variance is necessary to develop the property. The proposed project is for the construction of a single-family residence on a lot that is zoned for that use. Granting of the variance will not constitute a special privilege to the applicant or the property owner.

Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

As discussed throughout this resolution, with the inclusion of the variances and site plan review, the project is consistent with the LCP. The granting of the variance will not be contrary to, or in conflict with, the general purposes and intent of LIP Chapter 13, nor to the goals, objectives, and policies of the LCP. As stated earlier, granting the variance will allow the subject property to be developed in a similar manner as surrounding properties with similar topographic constraints and will allow for the construction of a single-family residence, a planned use in the RR-20 zoning district.

Finding 5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The proposed variance is a request to allow for construction on slopes. Granting of this variance will allow the applicant to avoid the onsite ESHA to the greatest extent possible. There is not project alternative that would result in less impact to ESHA. The project does propose two additional variances for the reduction of required ESHA buffer distances. The required ESHA findings are made in this resolution.

Finding 6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The project does not involve a variance to stringline standards.

Finding 7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The project does not include any use or activity variances. The project is consistent with the site's rural residential zoning classification.

Finding 8. The subject site is physically suitable for the proposed variance.

The granting of the variance will allow for the construction of an emergency access road and retaining walls along the driveway. The proposed alignment of the driveway is oriented along an existing unpaved access road and within the prescribed access easement. Any other proposed road alignment would result in increased ESHA impacts and additional grading. The proposed alignment is along the flattest, least environmentally damaging area of the property. With the implementation of specific geo-technical standards, the subject site is physically suitable for the proposed variance. The topography of the site physically constrains proposed development of the site, but it does not prevent development given certain locally-common engineering measures. Construction on slopes exceeding 2½ to 1 is necessary to develop the property. In addition, the proposed road will allow for improved emergency vehicle access. The project has been reviewed and approved by the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, and the LACFD for consistency with all applicable regulations and policies. Therefore, the subject site is physically suitable for the proposed variance.

Finding 9. The variance complies with all requirements of state and local law.

The project will be required to comply with all building and safety regulations prior to issuance of building permits. As discussed throughout this resolution, with the inclusion of the variances and site plan review, the project is consistent with the LCP.

Finding 10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The project does not involve variances to parking standards. The project will not otherwise result in reduction or elimination of public parking for access to the beach, public trails, or parklands.

E. Variance for the Reduction in the Required Stream Buffer (LIP – Section 13.26.5)

Malibu LIP Section 4.6.1(A) prohibits development within 100 feet of the outermost edge of the canopy of the riparian vegetation. The current access road is located near an unmapped drainage. The proposed road alignment will follow the existing road alignment. Based on the biological assessment there is no alternative road alignment that would result in less impacts to onsite ESHA. The findings required by LIP Section 13.26 are made below.

Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

Currently the unpaved road is located near an onsite drainage feature. The existing unpaved road will be improved to provide the required emergency access to the site. Per the Biological Assessment completed by Steven G. Nelson for the proposed project, any other road alignment would result in greater onsite ESHA impacts. Per the LIP, a variance for the reduction of the required stream buffer must be processed to allow for the encroachment of development near a drainage feature, even if it is not mapped. Without providing access to the property, the proposed residence could not be constructed. Therefore, strict application of the zoning ordinance would deprive the owner from constructing a single-family residence. The proposed residence and the required fuel modification do not encroach into ESHA. The proposed retaining walls

required to widen the road, and the road itself, encroaches into the required stream buffer; however, there is no feasible alternative to avoid encroachment into the required buffer. Strict application of the zoning ordinance would not permit the construction of the road improvement and, therefore, deprives the property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

Finding 2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The project will meet all applicable building and engineering safety codes and will not be detrimental to other adjacent properties or improvements. Currently, the unpaved road does not comply with LACFD standards. By granting the variance, the ESHA buffer will be reduced and the road will be widened and improved to comply with LACFD standards and provide adequate emergency access to the proposed residence. In addition, the proposed road will allow for greater fire access to the area and surrounding area during a wildfire and improve public safety. As stated previously, the proposed project has been reviewed and approved by the LACFD, the City Public Works Department, and the City Geologist. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies and will not be detrimental to the public's interest, safety, health or welfare.

Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

The project proposes to widen and improve the access road to meet LACFD standards which require adequate emergency access. This road cannot be widened without the reduction of the required ESHA buffer. Without access to the property, the proposed residence could not be constructed; therefore, strict application of the zoning ordinance would deprive the owner from constructing a single-family residence. Since the applicant is constructing a single-family residence consistent with the use allowed by the zoning district, and surrounding properties are developed with single-family residences, the granting of this variance does not constitute a special privilege to the property owner.

Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

The granting of the variance is not contrary to, or in conflict with, the general purposes or intent of the LCP in that granting the variance will allow for construction of a road for a single-family residence in the RR-20 zoning district. Further, as proposed, the single-family residence and required fuel modification do not encroach into the required ESHA setback and only the road, and retaining walls required to widen the road, require a reduction in the stream buffer. By utilizing an existing road, increased disturbance to onsite ESHA can be avoided.

Finding 5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The subject parcels contains stream and scrub ESHA and the proposed residence, associated development,

and required fuel modification with the exception of the road are located outside the required ESHA buffer. Only the road and the retaining walls required to widen the road will encroach within the required ESHA buffer. The granting of this variance will allow for an existing unpaved road to be widened to comply with LACFD standards; and therefore, providing adequate access to the proposed residence. Without adequate access, the proposed residence cannot be constructed. Project alternatives are discussed under A. General Coastal Development Findings, Finding C. Given this, the proposed location would have the least amount of impacts to the ESHA and would take advantage of a previously graded road.

Finding 6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The proposed variance is not for a deviation of stringline standards; therefore, this finding is not applicable.

Finding 7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The variance is consistent with the purpose and intent of the RR-20 zoning district as a single-family residence will not be permitted to be constructed without adequate access. The proposed variance to allow for a reduction in the required stream buffer setback does not authorize a use or activity that is not expressly authorized by the zoning regulations for the subject property.

Finding 8. The subject site is physically suitable for the proposed variance.

The granting of the variance will allow for the construction of an emergency access driveway that at one point will encroach into the required ESHA stream buffer. The proposed alignment of the driveway is oriented along an existing unpaved access road that currently encroaches into this setback. Any other proposed road alignment would result in increased ESHA impacts and grading. The proposed alignment is along the flattest, least environmentally damaging area of the property. With the implementation of specific geotechnical standards, the subject site is physically suitable for the proposed variance. The topography of the site physically constrains proposed development of the site, but it does not prevent development given certain locally-common engineering measures. Therefore, the subject site is physically suitable for the proposed variance. The project has been reviewed and approved by the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, and the LACFD for consistency with all applicable regulations and policies. The subject site is physically suitable for the variance.

Finding 9. The variance complies with all requirements of state and local law.

The project will be required to demonstrate compliance with all building and safety regulations prior to issuance of building permits. As discussed throughout this resolution, with the variance and site plan review inclusions, the project is consistent with the LCP.

Finding 10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The project does not involve a variance to parking standards. The project will not otherwise result in

reduction or elimination of public parking for access to the beach, public trails, or parklands.

F. Variance for the Reduction in the Required Scrub ESHA Buffer (LIP – Section 13.26.5)

LIP Section 4.6.1(E) prohibits development within 100 feet of the outermost edge of the scrub ESHA and that no fuel modification will take place in the ESHA. The current access road is located adjacent to scrub ESHA. The proposed road alignment will follow the existing road alignment. Based on the biological assessment there is no alternative road alignment that would result in less impacts to onsite ESHA. The findings required by LIP Section 13.26 are made below.

Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

Currently the unpaved road is located near an onsite drainage feature. The existing unpaved road will be improved to provide the required emergency access to the site. Per the Biological Assessment completed by Steven G. Nelson for the proposed project, any other road alignment would result in greater onsite ESHA impacts. Per the LIP, a variance for the reduction of the required scrub buffer must be processed to allow for the encroachment of development. Without providing access to the property, the proposed residence could not be constructed. Therefore, strict application of the zoning ordinance would deprive the owner from constructing a single-family residence. The proposed residence and the required fuel modification do not encroach into ESHA. The proposed retaining walls required to widen the road, and the road itself, encroaches into the required scrub buffer; however, there is no feasible alternative to avoid encroachment into the required buffer. Strict application of the zoning ordinance would not permit the construction of the road improvement and, therefore, deprives the property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

Finding 2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The project will meet all applicable building and engineering safety codes and will not be detrimental to other adjacent properties or improvements. Currently, the unpaved road does not comply with LACFD standards. By granting the variance, the ESHA buffer will be reduced and the road will be widened and improved to comply with LACFD standards and provide adequate emergency access to the proposed residence. In addition, the proposed road will allow for greater fire access to the area and surrounding area during a wildfire and improve public safety. As stated previously, the proposed project has been reviewed and approved by the LACFD, the City Public Works Department, and the City Geologist. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies and will not be detrimental to the public's interest, safety, health or welfare.

Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

The project proposes to widen and improve the access road to meet LACFD standards which require adequate

emergency access. This road cannot be widened without the reduction of the required ESHA buffer. Without access to the property, the proposed residence could not be constructed; therefore, strict application of the zoning ordinance would deprive the owner from constructing a single-family residence. Since the applicant is constructing a single-family residence consistent with the use allowed by the zoning district, and surrounding properties are developed with single-family residences, the granting of this variance does not constitute a special privilege to the property owner.

Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

The granting of the variance is not contrary to, or in conflict with, the general purposes or intent of the LCP in that granting the variance will allow for construction of a road for a single-family residence in the RR-20 zoning district. Further, as proposed, the single-family residence and required fuel modification do not encroach into the required ESHA setback and only the road, and retaining walls required to widen the road, require a reduction in the scrub buffer. By utilizing an existing road, increased disturbance to onsite ESHA can be avoided.

Finding 5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The subject parcels contains stream and scrub ESHA and the proposed residence, associated development, and required fuel modification with the exception of the road are located outside the required ESHA buffer. Only the road and the retaining walls required to widen the road will encroach within the required ESHA buffer. The granting of this variance will allow for an existing unpaved road to be widened to comply with LACFD standards; and therefore, providing adequate access to the proposed residence. Without adequate access, the proposed residence cannot be constructed. Project alternatives are discussed under A. General Coastal Development Findings, Finding C. Given this, the proposed location would have the least amount of impacts to the ESHA and would take advantage of a previously graded road.

Finding 6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The proposed variance is not for a deviation of stringline standards; therefore, this finding is not applicable.

Finding 7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The variance is consistent with the purpose and intent of the RR-20 zoning district as a single-family residence will not be permitted to be constructed without adequate access. The proposed variance to allow for a reduction in the required scrub buffer setback does not authorize a use or activity that is not expressly authorized by the zoning regulations for the subject property.

Finding 8. The subject site is physically suitable for the proposed variance.

The granting of the variance will allow for the construction of an emergency access driveway that at one point will encroach into the required ESHA scrub buffer. The proposed alignment of the driveway is oriented along an existing unpaved access road that currently encroaches into this setback. Any other proposed road alignment would result in increased ESHA impacts and grading. The proposed alignment is along the flattest, least environmentally damaging area of the property. With the implementation of specific geotechnical standards, the subject site is physically suitable for the proposed variance. The topography of the site physically constrains proposed development of the site, but it does not prevent development given certain locally-common engineering measures. Therefore, the subject site is physically suitable for the proposed variance. The project has been reviewed and approved by the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, and the LACFD for consistency with all applicable regulations and policies. The subject site is physically suitable for the variance.

Finding 9. The variance complies with all requirements of state and local law.

The project will be required to demonstrate compliance with all building and safety regulations prior to issuance of building permits. As discussed throughout this resolution, with the variance and site plan review inclusions, the project is consistent with the LCP.

Finding 10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The project does not involve a variance to parking standards. The project will not otherwise result in reduction or elimination of public parking for access to the beach, public trails, or parklands.

G. Lot Line Adjustment (LIP Chapter 15)

The project consists of a lot line adjustment between four adjacent parcels. According to LIP Section 15.5(A), a LLA shall not be authorized unless it is approved in a coastal development permit. A coastal development permit authorizing a LLA shall not be approved unless the evidence shows, and the City makes findings that the proposed LLA complies with the requirements of this Section. The required findings are made as follows:

Finding 1. All the parcels involved in lot line adjustment are legal parcels.

The applicant has submitted a valid certificate of compliance for each for the four lots involved in this lot line adjustment. These documents demonstrate that all four parcels were legally created. Each certificate of compliance was reviewed by the City's Public Works Department. It has been determined that all parcels involved in the proposed lot line adjustment are legal parcels.

Finding 2. The lot line adjustment complies with the applicable provisions of the Subdivision Map Act.

It has been determined that the proposed LLA complies with the Subdivision Map Act. Government Code Section 66412.d requires conformance with the general plan, any applicable coastal plan, zoning and building ordinances. As discussed in A. General Coastal Development Permit, Finding A, the project is in compliance with the LCP and existing zoning and building ordinances.

Finding 3. The reconfigured parcels comply with LCP size standards and the parcels can be developed consistent with all LCP policies and standards or, if the existing parcels do not meet this requirement, then the reconfigured parcels can accommodate development that does not have greater conflicts with the LCP policies and standards than would have occurred from development on the existing parcels.

The project proposes a LLA between four parcels. Currently, only one of the four parcels meets the required lot size minimum. The lot line adjustment will bring three of the four lots closer to conformance with the required lot size minimum. Additionally, the proposed reconfiguration will result in possible future development that will result in fewer impacts to ESHA. The proposed reconfiguration results in four building pads that will be clustered around one access road. Currently only three of the four lots have direct access to the unpaved access road. To access the lot located the furthest south of the terminus of the road, the applicant would have to clear ESHA and perform more grading (landform alteration). In addition, the current lot configuration further impacts ESHA because the spacing between each building pad is such that the required fuel modification zones would not overlap. The lack of overlapping fuel modification zones would result in greater ESHA disturbance.

The proposed LLA protects the onsite ESHA by reducing the need for multiple access roads and greater fuel modification clearance area. The potential building sites, as identified on the site plan, allow for the fuel modification zones of each parcel to overlap. If the adjacent pads are developed, the proposed lot configuration will reduce the amount of ESHA disturbance necessary for development. The reconfigured parcels will accommodate development that does not have greater conflict with the LCP's policies and standards than what would have occurred under the existing lot configuration.

Finding 4. If environmentally sensitive habitat is present on any of the parcels involved in the lot line adjustment, the lot line adjustment will not increase the amount of environmentally sensitive habitat that would be damaged or destroyed by development on any of the parcels, including any necessary road extensions, driveways, and required fuel modification.

The subject parcels contain mapped ESHA. The City Biologist has reviewed the application and determined that the proposed lot line adjustment is consistent with the goals and policies of the LCP. The lot line adjustment will result in lots that have their respective building pads clustered around the proposed access road. In addition to reducing the ESHA disturbance from multiple driveways, the proposed building pads are located relatively close to each other. This feature of the lot line adjustment will help cluster the required fuel modification zones near one another. The amount of ESHA disturbance required for future development of the realigned parcels would be substantially less than that what would be required for the parcels in their current configuration.

Finding 5. As a result of the lot line adjustment, future development on the reconfigured parcels will not increase the amount of landform alteration (including from any necessary road extensions or driveways) from what would have been necessary for development on the existing parcels.

As discussed in A. General Coastal Development Permit, Finding C, the amount of landform alteration required for future development of the realigned parcels would be substantially less than that what would be required for the parcels in their current configuration. In the current configuration a greater amount of grading would be required to provide adequate emergency access to each of the four lots. In addition, each of

the realigned parcels has an existing relatively flat building pad.

Finding 6. As a result of the lot line adjustment, future development on the reconfigured parcels will not have greater adverse visual impacts from a scenic road, public trail or trail easement, or public beach than what would have occurred from development on the existing parcels.

Future development of the subject parcels will be subject to review by the Planning Commission, and conditioned, as appropriate, to comply with the development standards of the LCP (specifically with regard to visual impacts). This proposed LLA will not result in greater adverse visual impacts than would have occurred under the existing configuration, nor does the LLA propose any physical or direct impact to the other three parcels. The LLA is an adjustment of the lot lines between four adjacent parcels. In addition, the lot line adjustment identifies possible building pads on the other parcels that are clustered near one another.

H. Subdivision Findings for Lot Line Adjustments (M.M.C. Section 16.28.020)

Malibu Municipal Code (M.M.C.) Title 16 (Subdivisions) implements the Subdivision Map Act for land divisions in the City. The required findings of M.M.C. Section 16.28.020 are made as follows.

Finding 1. The lots proposed to be created by the lot line adjustment comply with all applicable zoning regulations, except lot size requirements; however, the lots created shall each comply with the dimension requirement of the zoning ordinance.

The proposed LLA will result in lots that are closer to compliance with the requirements of the RR-20 (20 acre lot size minimum) zoning district. Currently only one of the four lots complies with 20 acre minimum lot size requirement. After the LLA is complete, each of the four lots will comply with the required lot dimensions for the zoning district.

Finding 2. The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities.

The LLA is simply a boundary change on paper and will not result in the need for additional improvements and / or facilities. A CDP is being processed as part of this application to develop one of the four lots. Subsequent development applications for the realigned parcels will address any future improvements or facilities.

Finding 3. No additional parcels shall result from the lot line adjustment, and any land taken from the one parcel shall be added to an adjacent parcel.

No new parcels will be created as a result of this LLA. Four adjacent parcels exist prior to the LLA and four parcels will exist subsequent to the LLA.

Finding 4. The proposed adjustment will result in a generally continuous and straight property line extending the full length of the property's dimensions.

The realigned parcels are generally continuous with straight property lines extending the full length of the properties' dimensions.

Finding 5. Adjacent property owner(s) directly involved in the lot line adjustment have provided written authorization to the applicant supporting the proposed action.

Diane Breitman, Trustee of The Breitman Residence Trust, is the property owner for all parcels involved in the proposed lot line adjustment. A grant deed and title report is on file as evidence of proof of ownership.

I. Environmentally Sensitive Habitat Area (LIP Chapter 4)

The proposed residence and its associated fuel modification zone is not located within ESHA or ESHA buffer. However, the existing access road encroaches into ESHA. A biological assessment was prepared for the project by Steven G. Nelson on April 2, 2005. According to the Assessment, the residence is not anticipated to impact ESHA. However, the elimination of coastal scrub due to the improvement of the access road will be minimized and compensated to the extent practicable. Approximately 0.78 acres of native habitat is anticipated to be affected for brush thinning and 0.046 acres is anticipated to be affected by the road widening.

The City Biologist has reviewed the project and associated biological assessment and determined that the project is consistent with City goals and policies and can proceed through the planning process. Standard conditions, such as prescribing plant species, landscaping timing and monitoring, and coverage standards are required. In addition, habitat restoration, habitat conservation, or in-lieu fees will be required to compensate for the .826 acres affected by the access road. The applicant has elected to complete the in-lieu fee option, and will be required to provide evidence or guarantee of such payment. The fee will be paid to the Habitat Impact Mitigation Fund, administered by the Santa Monica Mountains Conservancy.

In addition, the outcome of the City Biologist's review identified that the only development that encroaches into ESHA is the proposed access road. Since access roadways are excluded from development area, no limit to the size of the road is specified. However, the proposed roadway meets the minimum access requirements as determined by LACFD; and therefore, minimizes potential impacts to ESHA. Pursuant to LIP Section 4.7.6, residential development within an ESHA may be approved or conditionally approved only if the Planning Commission makes the following supplemental findings.

Finding A. Application of the ESHA overlay chapter would not allow construction of a residence on an undeveloped parcel.

LIP Section 4.6.1 limits development in ESHA. Access through ESHA must be provided to the site to allow construction of the residence on the undeveloped parcel. Due to the LACFD's requirement of a 20 foot wide access road, the existing roadway will be widened through the use of retaining walls. These retaining walls are necessary to meet current building and safety standards. This work will take place within ESHA. Therefore, application of the ESHA overlay chapter would not allow construction of a residence on this undeveloped parcel.

Finding B. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay ordinance and it complies with the provisions of Section 4.7 of the Malibu LIP.

As stated in Section A. General Coastal Development Permit, Finding A of this report, with approval of the

site plan review and variances which include the reduction of the required ESHA stream and scrub buffers; the proposed project is consistent with all provisions of Malibu's certified LCP.

J. Native Tree Protection (LIP Chapter 5)

Based on the Biological Assessment completed by Steven Nelson that was reviewed by the City Biologist, no native trees were found onsite. Page 3 of the Biological Assessment states that, "No native tree species regulated by the LCP were observed onsite." Therefore, according to LIP Section 5.7, the native tree findings are not applicable.

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

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. As discussed previously, the site is not visible from such resources as designated in the LCP. Story poles were placed on the site to evaluate any potential view impacts that could possibly exist.

The site was inspected to determine if any public views would be significantly impacted. It was determined that no ocean or scenic views will be impacted by the project. Nonetheless, the findings required by LIP Chapter 6 can be made as follows.

Finding 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.

Story poles were first placed onsite in December 2005. At that time a visual resources analysis was conducted. It was determined that no public views were affected by the proposed project. In addition, no correspondence has been received regarding view blockage. The project proposes a single-family residence on a relatively large lot, similar to other development in the vicinity. An existing access road is proposed to be widened and improved. Neither the residence nor the access road will be visible from a LCP designated scenic area or road. Therefore, no potentially significant adverse scenic or visual impact is anticipated due to project design, location, or other reasons.

Finding 2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As previously stated, the project will not result in significant adverse scenic or visual impacts. The conditions of approval include restrictions on materials, landscaping, and lighting. Therefore, the project will not have any significant adverse scenic or visual impacts due to project modifications, new landscaping or other conditions.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in A. General Coastal Development Permit, Finding C, the project, as proposed or as conditioned, is the least environmentally damaging alternative.

Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As previously discussed, the project is not expected to result in any significant adverse impact. Therefore, there are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

Finding 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.

As discussed in Finding 4 of this section the project is not expected to result in any significant adverse impacts. The project as proposed is conditioned to blend into the hillside through use of earth tone colors and veneers on retaining walls.

L. Transfer Development Credits (LIP Chapter 7)

Pursuant to LIP Section 7.2 the regulations requiring a transfer development credit only apply to any action to authorize a coastal development permit for a land division. The proposed coastal development permit does not involve a land division, but rather a lot line adjustment. Therefore, LIP Chapter 7 does not apply to this application.

M. Grading (LIP Chapter 8)

There are no required findings enumerated in Chapter 8. The project proposes 990 cubic yards of non-exempt grading which is less than the 1,000 cubic yards maximum permitted, and is therefore consistent with the LCP's grading provisions. The fill for the road is anticipated to roughly equal the cut for the residence (after shrinkage); therefore, no substantial import or export of soils along the paved portions of Seaboard Road is anticipated.

N. Hazards (LIP Chapter 9)

The project was extensively analyzed by the Planning Commission for the hazards listed in LIP Section 9.2(A)(1-7). Analysis of the project for hazards included geotechnical reports prepared by GeoConcepts, Inc. dated December 22, 2005, July 20, 2005, December 13, 2004, and June 7, 2004, with references to Evans, Dolbaugh, and Associates reports dated December 4, 2001, October 21, 2001, October 5, 2001, September 28, 2001, September 11, 2001, and June 6, 2001. These technical studies were reviewed by the City Geologist, who has determined that the project is geologically feasible and can proceed through the planning process. The project has been reviewed by the City Public Works Department and the LACFD as well. In summary, no substantial geologic, flood, or fire risks to life and/or property have been identified. Compliance with standard engineering techniques and other readily-available solutions to address hazard issues will ensure that the project does not result in any hazardous conditions. However, the findings required by LIP Section 9.3 can be made as follows.

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project has been reviewed by the City Geologist, the City Public Works Department, and the LACFD.

During this review, the project was analyzed extensively for geologic and structural integrity hazards. Based on the reports by the applicant's consultants, the project will not be subject to nor increase instability of the site or structural integrity. The City Geologist has reviewed these reports and determined that the project is geologically feasible and can proceed through the planning process. The proposed retaining walls for the access road are adequate for site stability to accommodate the project. The retaining walls will better protect the road and nearby properties than under existing conditions.

The project site does not front on the ocean; and therefore, is not subject to unusual flood or tsunami hazards from the ocean. Adequate infrastructure is proposed to accommodate drainage over the site, including drainage over the widened access roadway. A culvert will be installed where the road crosses over the unmapped drainage. No substantial flood risk is anticipated.

Fire hazards are similar on the site as elsewhere in Malibu. However, the site is relatively isolated due to the single access point and the narrowness of Seaboard Road east of the project site. Accordingly, unpaved portions of Seaboard Road will be widened to facilitate LACFD access to the site. Turnouts are proposed along the proposed access road to further effectuate emergency access. The LACFD has determined that the paved portions of Seaboard Road are acceptable for fire access. The project will improve emergency access to the site and nearby properties relative to existing conditions.

The City is served by the LACFD, as well as the California Department of Forestry, if needed. In the event of major fires, the County has "mutual aid agreements" with cities and counties throughout the state so that additional personnel and firefighting equipment can augment the LACFD. As such, the proposed project as conditioned will not be subject to nor increase the instability of the site or structural integrity involving wild fire hazards. Nonetheless, a condition of approval has been included in Section 4 of this resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

The project has been reviewed by the City Geologist, the City Public Works Department, and the LACFD. Site specific conditions have been imposed on the project to ensure that it will not have any significant adverse impacts on site stability or structural integrity. These conditions offer the best solutions to protect the site from geologic, flood, and fire hazards, and will not worsen these risk factors.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in A. General Coastal Development Permit, Finding C, the project, as proposed or as conditioned, is the least environmentally damaging alternative. No potentially significant environmental impacts are anticipated as a result of the project.

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As discussed previously, an alternatives analysis has been completed for this project. The proposed access road consists of the improvement of an existing road. This design allows for the development to provide adequate LACFD access, while meeting current building and safety requirements, and minimizing potential impacts to ESHA. Any special conditions from the City Geologist, the LACFD, and City Public Works Department must be met prior to issuance of a building permit.

Finding 5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The City's review did not identify any unavoidable hazards or subsequent mitigation related to the development, provided that standard engineering techniques are followed. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the LCP.

O. Shoreline and Bluff Development (LIP Chapter 10)

The project is proposed inland, relatively far from the Pacific Ocean. The site of the proposed development is not near the edge of any bluff or coastal bluff. Therefore, the project does not have the potential to result in potentially significant adverse impacts on coastal resources, such as shoreline and/or bluff resources. Therefore, in accordance with LIP Section 10.3, shoreline and bluff development findings do not apply.

P. Public Access (LIP Chapter 12)

Vertical Access. The project is not adjacent to the Pacific Ocean and access to the Pacific Ocean from the project site is not possible. No potential project-related or cumulative impacts on vertical access are anticipated. Therefore, no conditions or findings for vertical access are required.

Lateral Access. The project is not located on a beach. No potential project-related or cumulative impacts on lateral access are anticipated. Therefore, no conditions or findings for lateral access are required.

Bluff-Top Access. The project site is not located near a bluff edge, but the overall parcel on which the project is proposed, includes a feature that may be considered a bluff. This feature lies several hundred feet south of the project site. This feature rises above PCH and provides for visually impressive scenes of the Pacific Ocean, offshore islands, and onshore landforms, including Palos Verdes and Santa Monica. However, the site is only accessible via the private portion of Seaboard Road. The subject landform feature is located relatively far from the proposed residence, is unstable in areas, and accommodates ESHA. Conditioning the project to provide bluff access could expose people to hazardous conditions at the bluff edge and potentially impact ESHA. Conditioning the project to provide access to the bluff would not provide additional access to coastal resources because adequate public access is provided in the vicinity along PCH. Since existing access to coastal resources is adequate, and the project site is located on a private road that is not accessible to the public, no legitimate governmental or public interest would be furthered by requiring access at the project site.

No potential project-related or cumulative impact on bluff-top access is anticipated; however, the following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding bluff top access. Due

to these findings, LIP Section 12.8.1 is not applicable.

Finding 1. The type of access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Bluff-top access would not impact fragile coastal resources or have any impact on a military facility. However, as discussed previously, providing public access to the bluff at the subject site raises significant public safety concerns. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on public access is anticipated.

Finding 2. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

No mitigation measures are available to manage the type, character, intensity, hours, season or location of access relative to public safety because the subject bluff exhibits a steep face over its entire width. No impacts to military security or to fragile coastal resources have been identified. No potential project-related or cumulative impact on public access is anticipated.

Finding 3. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

Access to public tidelands is not possible from the project site. The project, as proposed, does not block or impede access to the ocean. The project site is located at the end of a private road and is not accessible to the public. Public access to the ocean and views of the ocean, off-shore islands, Palos Verdes, and Santa Monica are available at a vista point on PCH at the base of Big Rock Drive. Conditioning the project to provide public access would not provide additional access to coastal resources because adequate public access is provided in the vicinity.

Trail Access. The LCP does not propose a trail on or near the project site. However, the Trails Master Plan proposes a trail through the project site along the alignment of Seaboard Road. This Plan does not include a mechanism by which to acquire easements for trails. Furthermore, the Trails Master Plan is a component of the General Plan, which has not been amended to include the updated Trails Master Plan. The Malibu/Santa Monica Mountains Area Plan Trail System in the General Plan Open Space and Recreation Element does not include the subject trail. Once the General Plan has been updated to incorporate the new Trails Master Plan, and appropriate tools are provided to acquire trail easements, the City may pursue implementing a trail through the applicant's property. Due to the scope of the project, no potential project-related or cumulative impacts on public trail access are anticipated.

Issues of public prescriptive rights have been raised in regards to alleged public use of a trail over the site. No adjudication of the prescriptive right is known to exist. No evidence has been presented that use of the site for a trail meets the criteria specified in LIP Section 12.7.6(A) regarding implied dedication. Therefore, the finding could be made that substantial evidence does not warrant the conclusion that public prescriptive rights exist, pursuant to LIP Section 12.7.6(B)(1). Even if proof of such rights existed, the finding pursuant to LIP Section 12.7.6(B)(2) could be made that the development will not interfere with those rights since the

project will not block the trail.

Recreational Access. The project site does not include or have any access ways to existing or planned public recreational areas. The project will not result in potential project-related or cumulative recreational impacts. Therefore, no conditions or findings for recreational access are required.

Q. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses AOWTS. LIP Section 18.7 includes specific siting, design, and performance requirements. The project includes an AOWTS, which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C., and the LCP. The subject system will meet all applicable requirements, and operating permits will be required. The system will incorporate a MicroSepTec ES 12 unit. The unit will provide the residence with secondary and tertiary treatment. An operation and maintenance contract and recorded covenant covering such shall be in compliance with City Environmental Health requirements. Conditions of approval have been included in this resolution which require continued operation, maintenance, and monitoring of onsite facilities. If applicable, any above ground equipment will be required to be screened.

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby adopts IS No. 07-008 and ND No. 07-007 and approves CDP No. 04-051, LLA No. 08-003, VAR Nos. 05-043, 05-045, 07-043, and 07-044, and SPR No. 05-052 subject to the conditions listed below:

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for:
 - a. Construction of a new, 28 foot high, two-story, 10,517 square foot, single-family residence;
 - b. A 398 square foot covered loggia;
 - c. A basement;
 - d. 723 square foot pool;
 - e. Attached trellises;
 - f. Retaining walls (2,750 lineal feet, ranging in size from two to 12 feet in height);
 - g. 7,325 square foot tennis court;
 - h. Hardscape, including a driveway, landscaping;
 - i. Alternative Onsite Wastewater Treatment System;
 - j. Widening unpaved portions of Seaboard Road to 20 feet; and
 - k. A lot line adjustment between four lots.

Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Division, dated August 29, 2004. The LLA shall be in compliance with the plans submitted to planning on January 5, 2006. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

3. The applicant shall be required to submit a revised basement design to the Planning Division prior to submittal to Plan Check. The basement shall be redesigned to be in compliance with the current LIP basement standards as set forth in LIP Section 3.6. The resulting design of the structure shall be in substantial conformance with the approved plans.
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 Division within 10 days of this decision and prior to issuance of any development permits.
5. The applicant shall submit three complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any buildings or development permit.
6. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
7. The coastal development permit shall be null and void if the project has not commenced within two years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
9. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Public Works Department, Los Angeles County Water District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the LCP. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved coastal development permit shall not commence until the coastal development permit is effective. The coastal development permit is not effective until all appeal, including those to the California Coastal Commission, have been exhausted. In

the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.

12. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
13. 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 48 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

14. 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.
15. Final plans approved by the City Geologist shall be in substantial conformance with the approved coastal development permit relative to construction, grading, sewage disposal, and drainage. Any substantial changes may require amendment of the coastal development permit or a new coastal development permit.

Onsite Wastewater Treatment System

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

of the proposed AOWTS. For all AOWTS, final design drawings and calculations must be signed by a California registered civil engineer, a registered environmental health specialist or a professional geologist who is responsible for the design. The final AOWTS design drawings shall be submitted to the City Environmental Health Administrator with the designer's wet signature, professional registration number and stamp (if applicable).

19. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than six tall.
20. The final design report shall contain the following information (in addition to the items listed above).
 - a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;
 - b. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;
 - c. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak OWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics; and
 - d. All final design drawings shall be submitted with the wet signature and typed name of the OWTS designer. If the scale of the plan is such that more space is needed to clearly show construction details, larger sheets may also be provided (up to a maximum size of 18 inch by 22 inch, for review by Environmental Health). Note: For AOWTS final designs, full-size plans are required for review by Building Safety and/or Planning.
21. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
22. An operations and maintenance manual specified by the AOWTS designer shall be submitted to the City Environmental Health Administrator. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed AOWTS.

23. Prior to final Environmental Health approval, a maintenance contract executed between the owner of the subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed AOWTS after construction shall be submitted. Please note only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.
24. Prior to final Environmental Health approval, a covenant which runs with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive, notice to any future purchaser for value that the OWTS serving subject property is an alternative method of onsite wastewater disposal pursuant to the City of Malibu Uniform Plumbing Code, Appendix K, Section 10). Said covenant shall be provided by the City of Malibu Environmental Health Administrator and shall be submitted to the City of Malibu with proof of recordation with the Los Angeles County Recorder.
25. The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator.
26. The City Biologist's final approval shall be submitted to the City Environmental Health Administrator. The City Biologist shall review the AOWTS design to determine any impact on Environmentally Sensitive Habitat Area if applicable.

Grading/Drainage/Hydrology

27. The non-exempt grading for the project shall not exceed a total of 1,000 cubic yards, cumulative for cut and fill.
28. A Grading and Drainage Plan shall be approved, and submitted to the City Public Works Department, containing the following information prior to the issuance of grading permits for the project:
 - a. Public Works Department general notes;
 - b. Slopes created for development shall not exceed 3 (horizontal) to 1 (vertical);
 - c. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - d. The limits of land to be disturbed during project development shall be delineated on the Grading Plan and a total area shall be shown on the plan. Areas disturbed by grading equipment beyond the limits of grading shall be included within the area delineated;
 - e. The grading limits shall include the temporary cuts made for retaining walls, buttresses and over excavations for fill slopes; and
 - f. Private storm drain systems. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with the Grading Plan.
29. A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the City Public Works Department prior to the issuance of grading permits if grading or construction activity is anticipated to occur during the rainy season. The following elements shall be included in this plan:

- a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
 - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked offsite.
30. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review and approval by the City Public Works Department prior to issuance of building permits. This plan shall include:
- a. Dust Control Plan for the management of fugitive dust during extended periods without rain;
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - c. Designated areas for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
 - d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
31. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2(B)(2).
32. Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that includes grading on slopes greater than 4 to 1. Approved grading operations shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1, unless the Planning Manager or Deputy Building Official determines that completion of grading would be more protective of resources.
33. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
34. Exported soil from a site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
35. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
36. A Storm Water Management Plan (SWMP) shall be submitted for review and approval of the City Public Works Director. The SWMP shall be prepared in accordance with the LCP and all other applicable ordinances and regulations.
37. A Water Quality Management Plan (WQMP) shall be submitted for review and approval of the City Public Works Director. The WQMP shall be prepared in accordance with the LCP and all other applicable ordinances and regulations.

38. The design of the proposed project shall comply with the applicable provisions of the WQMP, and if required by the WQMP, shall include structural or other measures to collect and treat the first 3/4 inches of stormwater runoff from the site, and control peak flow discharge.

Water Service

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

Construction / Framing

40. 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 and federal, state and local holidays.

41. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, will 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.

42. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in LIP Chapter 17, including:

- a. Construction shall be phased to the extent feasible and practical to limit the amount of disturbed areas present at a given time.
- b. Grading activities shall be planned during the southern California dry season (April through October).
- c. During construction, contractors shall be required to utilize sandbags and berms to control runoff during on-site watering and periods of rain in order to minimize surface water contamination.
- d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within project sites.

43. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. Said document shall be submitted prior to for verification prior to building inspector sign off on framing and commencement of further construction activities. The Planning Division shall sign off stating that said document has been received and verified.

Colors and Materials

44. New development shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
- a. Colors shall be 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.
45. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
46. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.

Lighting

47. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
- a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited;
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
 - h. Prior to issuance of the coastal development permit, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.
48. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot candle.

Site Specific

49. The project applicant and their contractor shall implement and monitor the use of the following best management practices, with all construction contracts requiring contractor(s) to perform the following actions:
- a. Apply non-toxic soil stabilizers according to manufacturers' specification to all inactive construction areas (previously graded areas inactive for ten days or more).
 - b. Replace ground cover in disturbed areas as quickly as possible.
 - c. Enclose, cover, water twice daily or apply non-toxic soil binders to manufacturers' specifications to exposed piles (i.e., gravel, sand, dirt) with five percent or greater silt content.
 - d. Water active sites at least twice daily.
 - e. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (i.e., minimum vertical distance between top of the load and the top of the trailer) in accordance with the requirements of California Vehicle Code.
 - f. Sweep streets (paved) at the end of the day if visible soil material is carried onto adjacent public or private paved roads (recommend water sweepers with reclaimed water).
 - g. Apply water three times daily, or non-toxic soil stabilizers according to manufacturers' specifications, to all unpaved parking or staging areas or unpaved road surfaces.
 - h. Prevent trucks from idling longer than two minutes.
 - i. Schedule all truck haulings and related traffic lane closures during off-peak hours (no sooner than 8:00 a.m. and no later than 5:00 p.m.) to minimize delays during periods of higher traffic volumes as much as possible. No truck hauling at any time shall be permitted during between the hours of 5:00 p.m. Friday through 8:00 a.m. Monday.
 - j. Utilize flagmen at appropriate narrow locations along the route to ensure the safety of pedestrians and other vehicles.
50. The applicant shall conduct a pre-construction assessment of the existing condition of Seaboard Road prior to the issuance of grading permits. A copy of this assessment shall be kept on file with the City. In addition, the applicant shall submit a post-construction assessment of Seaboard Road to identify any damage as a result of development activities prior to obtaining final approval for a certificate of occupancy. A photo survey shall be utilized to complete this assessment. The applicant/property owner shall be responsible to repair any damage to the road. Any obvious damage to the road that becomes apparent during the construction phase (including, but not limited to, pot holes, etc.,) shall be immediately repaired by the applicants/property owner's.
51. No fences or gates which block access along Seaboard Road are approved under this application.
52. Prior to issuance of any building permits or grading permits for the road, a bond must be posted in an amount determined by the City Public Works Director, sufficient to guarantee performance of conditions relating to constructing the road, including repair of any reasonably foreseeable damage to paved portions of Seaboard Road. The amount of the bond shall in no way limit the applicants/property owner's potential liability for damage to the road.

53. Prior to issuance of grading permits, the applicant's civil engineer shall inspect the condition of the paved portion of Seaboard Road and provide the City of Malibu Public Works Department with a report containing recommendations as to the maximum weight of construction equipment and vehicles that will be permitted to travel along the road.
54. No part of the currently paved portion of Seaboard Road shall be widened in connection with this project.
55. No explosives shall be used.

Swimming Pool and Spa

56. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in M.M.C. Section 8.24 (Noise).
57. The pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than six feet tall.
58. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
59. Alternative sanitation methods are required for all pools and spas. These methods may include no chlorine or low chlorine sanitation methods.
60. The discharge of chlorinated pool water shall be prohibited.
61. The discharge of non-chlorinated pool water into streets, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters shall be prohibited.

Fencing and Walls

62. The applicant shall include an elevation of the proposed electronic driveway gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.
63. Necessary boundary fencing shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40-inches high, and have a space greater than 14-inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred.
64. Fencing or walls shall be prohibited within ESHA, except where necessary for public safety or habitat protection or restoration. Fencing or walls that do not permit the free passage of wildlife shall be prohibited in any wildlife corridor.

65. Development adjacent to, but not within ESHA, may include fencing, if necessary for security, that is limited to the area around the clustered development area.

Lot Line Adjustment

66. An instrument evidencing the lot line adjustment shall be recorded prior to submittal to building plan check. The recorded instrument shall contain a legal description of the contiguous parcels. The instrument shall be reviewed and approved by the City prior to recording. A copy of the recorded instrument shall be provided to the Los Angeles County Recorder's Office. The recorded document shall be submitted to the Planning Division prior to the issuance of building permits.

Fire

67. The applicant shall receive all applicable City and LACFD approvals for the proposed extension of Seaboard Road to the applicant's property, prior to submitting for building permits.
68. The applicant shall consult with the LACFD in an effort to reduce the size of the irrigated zone and limit thinning and irrigation in Zone C.

Biology/Landscaping

69. The project shall comply with all conditions of approval as stipulated in the biology referral sheet attached to the agenda report for this project, including but not limited to payment of in-lieu fees and/or other mitigation as required by LIP Section 4.8.
70. With the exception of the access road, no development, including the tennis court, shall be located within 100 feet of ESHA.
71. No non-natives will not be allowed beyond Zone A, unless required by the LACFD. Disturbed areas will be required to be revegetated with native species, to the extent possible.
72. All open areas not used for buildings, driveways, parking areas, or walkways shall be attractively landscaped and maintained in accordance with a landscape plan, with native plant species, to the satisfaction of the Planning Manager.
73. Invasive plant species, as determined by the City of Malibu, are prohibited.
74. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
75. Native species of the Santa Monica Mountains, characteristic of the local habitat, shall be used on graded slopes or where slope plantings are required for slope stabilization, erosion control, and watershed protection. Plants should be selected to have a variety of rooting depths. A spacing of 15 feet between large woody (greater than or equal to 10 foot canopy) shrubs is recommended by the

LACFD. Lawns are prohibited on slopes greater than five percent.

76. Slope planting measures such as contour planting and terracing or other techniques shall be incorporated on slopes to interrupt the flow and rate of surface runoff in order to prevent surface soil erosion.
77. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
78. Construction fencing shall be placed within five feet of the southern limits of grading. Construction fencing shall be installed prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.
79. The landscape and fuel modification plan has been conditioned to protect natural resources in accordance with the LCP. All areas shall be planted and maintained as described in the landscape and fuel modification plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project.
80. Earthmoving shall be scheduled only during the dry season from April 1 through October 31. If it becomes necessary to conduct earthmoving activities from November 1 through March 1, a comprehensive erosion control plan shall be submitted to the City Biologist for approval prior to the issuance of a grading permit and implemented prior to initiation of vegetation removal and/or earthmoving activities.
81. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.

Prior to Occupancy

82. 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.
83. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this CDP. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

Fixed Conditions

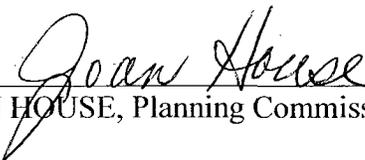
84. The coastal development permit runs with the land and binds all future owners of the property.

85. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to erosion, flooding, landslides, or other hazards associated with development along a hillside, 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 any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.
86. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.
87. Prior to final planning approval, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in condition number 47. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.
88. 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 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 7th day of October 2008.



JOAN HOUSE, Planning Commission Chair

ATTEST:



JESSICA DUBAN, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation (LIP) Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days of the Planning Commission's decision and shall be accompanied by an appeal form and filing

fee, as specified by the City Council. Appeal forms may be found online at www.ci.malibu.ca.us, in person at City Hall, or by calling (310) 456-2489, ext. 245.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 08-65 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 7th day of October 2008, by the following vote:

AYES: COMMISSIONERS: JENNINGS, MAZZA AND HOUSE

NOES: COMMISSIONERS: GILLESPIE

ABSTAIN:

ABSENT: COMMISSIONERS: SCHAAR



JESSICA DUBAN, Recording Secretary