CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 15-77

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 14-035 TO ALLOW THE ABANDONMENT OF AN EXISTING ONSITE WASTEWATER TREATMENT SYSTEM AND DEWATERING WELL, AND INSTALLATION OF A NEW ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, AND A NEW DEWATERING WELL IN THE RURAL RESIDENTIAL–TWO ACRE ZONING DISTRICT LOCATED AT 25321 MALIBU ROAD (ARENSON AND ADELSON)

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

Section 1. Recitals.

A. On February 2, 2012, an application for Administrative Coastal Development Permit (ACDP) No. 12-006 was submitted to the Planning Department by the applicant, Kevin Poffenbarger, on behalf of the property owners, Joseph Arenson and Steve Adelson. The application was routed to the City Geologist, City Environmental Health Administrator, City Biologist, and the City Public Works Department for review.

B. On May 27, 2014, the applicant amended the application to include a new dewatering well, and the application was changed to Coastal Development Permit (CDP) No. 14-035.

C. On December 3, 2014, Planning Department staff conducted a site visit to document site conditions, the property and surrounding area.

D. On June 9, 2015, a courtesy notice of the proposed project was mailed to all property owners and occupants within a 500-foot radius of the subject property.

E. On May 19, 2015, a Notice of Coastal Development Permit Application was posted on the subject property.

F. On July 23, 2015, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

G. On August 17, 2015, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.
Section 2. **Environmental Review.**

Pursuant to the authority and criteria contained in CEQA, the Planning Commission has analyzed the proposed project. The Planning Commission found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to Section 15302(c) — Replacement or Reconstruction, and 15303(d) — New Construction or Conversion of Small Structures. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

Section 3. **Coastal Development Permit Findings.**

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, CDP No. 14-035 to allow the abandonment of an existing onsite wastewater treatment system (OWTS) and dewatering well, and installation of a new alternative onsite wastewater treatment system (AOWTS), and a new dewatering well in the Rural Residential — Two Acre (RR-2) zoning district located at 25321 Malibu Road.

The project is consistent with the zoning, grading, cultural resources, water quality, and OWTS requirements. The project, as conditioned, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

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

1. The project has been reviewed for conformance by the Planning Department, City Biologist, City Environmental Health Administrator, City Geologist, and City Public Works Department and was found to conform with the LCP.

2. The project is not located between the first public road and the sea and therefore, complies with public access and recreation policies.

3. Evidence in the record demonstrates that as conditioned, the project will not result in biological impacts, has been designed to minimize grading, maximize water quality, and maintain public safety by enhancing slope stability. There is no evidence that an alternative project would substantially lessen any potential significant adverse impacts of the development on the environment.

4. The project is not located in or adjacent to an environmentally sensitive habitat area (ESHA) or ESHA buffer.

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

1. The project consists of structures located underground. The project will not result in potential adverse impacts on site stability or structural integrity. The record demonstrates that the project, as proposed and conditioned, will not decrease stability of the site or structure integrity from geologic, flood or fire hazards.
2. The project has been conditioned to ensure it will have no significant adverse impacts on site stability or structural integrity.

3. The proposed project has been demonstrated to be the least environmentally damaging alternative.

4. There are no alternatives that would avoid or substantially reduce impacts to site stability or structural integrity because no such adverse impacts are expected.

5. There are no siting alternatives that would further reduce sensitive resources impacts because no such adverse impacts are expected.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CDP No. 14-035, subject to the following conditions.

Section 5. Conditions of Approval.

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application is to allow for the following:
   a. Abandonment of the existing septic tank and three seepage pits in the rear yard;
   b. Removal and destruction of the existing dewatering well and vault under Bayshore Drive;
   c. 1,360 gallon MicroSepTec Alternative Onsite Wastewater Treatment System (AOWTS) with tertiary treatment encased in a below grade vault at the front of the property;
   d. 1,321 square foot pressure dosed leach bed dispersal area below Bayshore Drive;
   e. Install a new dewatering well located 20 feet upslope of the driveway area, to be tied into the existing discharge system; and
   f. Removal and replacement of the existing asphalt concrete pavement on Bayshore Drive in the area of the proposed new leach bed.

3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped May 20, 2015. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

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

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

6. This resolution, signed Acceptance of Conditions Affidavit and all Department Review Sheets attached to the August 17, 2015 Planning Commission agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check.

7. This CDP shall expire if the project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request.

8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.

9. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Geologist, City Biologist, City Public Works Department, and City Environmental Health Administrator, as applicable. Notwithstanding this review, all required permits shall be secured.

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

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

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

Cultural Resources

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

14. If human bone is discovered, the procedures described in Section 7050.5 of the California Health
and Safety Code shall be followed. These require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

**Biology/Landscaping**

15. No new landscaping is proposed with this project. Therefore, none is approved. Should the applicant intend to plant any new vegetation with a potential to exceed six (6) feet in height or to exceed 5,000 square feet in area, a detailed landscape plan shall be submitted for review and approval prior to any planting.

**Environmental Health**

16. A final plot plan shall be submitted showing an AOWTS design meeting the minimum requirement of the Malibu Plumbing Code and the LCP and LIP, 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, existing improvements, and proposed improvements. The plot must fit on an 11 inch by 17 inch sheet leaving a five inch left margin clear to provide space for a City-applied legend. If the plan scale 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 inch by 22 inch for review by Environmental Health).

17. All project architectural plans and grading/drainage plans shall be submitted for Environmental Health review and approval. These plans must be approved by the Building Safety Division prior to receiving Environmental Health final approval.

18. Show on the final OWTS plan the locations of all underground utilities within the parcel boundary. Provide with the OWTS plan check submittal approved plans to move conflicting underground utility lines, if any.

19. The OWTS construction drawings must bear evidence of approval by the Fire Department local station Captain, including his/her signature and any conditions of approval.

20. A final AOWTS design report and construction drawings with system specifications (four sets) shall be submitted to describe the AOWTS design basis and all components proposed for use in the construction of the AOWTS. All plans and reports must be signed by the California-registered civil engineer, registered environmental health specialist, or professional geologist who is responsible for the design. The final AOWTS design report and construction drawings shall be submitted with the designer’s signature, professional registration number, and stamp (if applicable).

21. The final AOWTS design submittal 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 (gpd), and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture schedule, and the subsurface effluent dispersal system acceptance rate. The drainage 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. Sewage and effluent pump design calculations.

c. 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 the design basis for engineered systems.

d. Specifications, supporting geology information, and percolation tests results for the subsurface effluent dispersal portion on the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drain field, trench, seepage pit, subsurface drip, etc.) as well as the system’s geometric dimensions and basic construction features. Supporting calculations shall be presented that related 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 project subsurface effluent acceptance rate shall be reported in units of total gpd and gallons per square foot per day (gpsf). Specifications for the subsurface effluent dispersal system shall be shown to accommodation the design hydraulic loading rate (i.e., average and peak AOWTS effluent flow, reported in units of gpd). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units, and building occupancy characteristics.

e. All AOWTS design drawings shall be submitted with the wet signature and typed name of the AOWTS designer.

22. All proposed reductions in setback from the OWTS to structures (i.e., setbacks less than those shown in Malibu Plumbing Code Table H 1.7) must be supported by a letter from the project structural engineer and a letter from the project soils engineer (i.e., a geotechnical engineer or civil engineer practicing in the area of soils engineering). Both engineers must certify unequivocally that the proposed reduction in setbacks from the treatment tank and effluent dispersal area will not adversely affect the structural integrity of the OWTS, and will adversely affect the structural integrity of the structures for which the Table H 1.7 setback is reduced.

23. All proposed reductions in setbacks from the OWTS to buildings (i.e., setbacks less than those shown in Malibu Plumbing Code Table H 1.7) also must be supported by a letter from the project architect, who must certify unequivocally that the proposed reduction in setbacks will not produce a moisture intrusion problem for the proposed building(s). If the building designer is not a California licensed architect, then the required architect’s certification may be supplied by an engineer who is responsible for the building design with respect to mitigation of potential moisture intrusion from reduced setback to the wastewater system; in this case the engineer must include in his letter an explicit statement of responsibility for mitigation of potential moisture intrusion. If any specific construction features are proposed as part of a moisture intrusion mitigation system in connection with the reduced setback(s), then the architect (or engineer) must provide associated construction documents for review and approval during building plan check.
24. The wastewater plans and the construction plans must be specifically referenced in all certification letters. The construction plans for all structures and/or buildings with reduced setback must be approved by the City of Malibu Building Safety Division prior to Environmental Health final approval. The architectural and/or structural plans submitted for Building Safety Plan Check must detail methods of construction that will compensate for the reduction in setback (e.g., waterproofing, concrete additives, etc.). For complex waterproofing installations, submittal of a separate waterproofing plan may be required. The architectural/structural/waterproofing plans must show the location of OWTS components in relation to those structures from which the setback is reduced, and the plans must be signed and stamped by the architect, structural engineer, and geotechnical consultants (as applicable).

25. Proof of ownership of subject property shall be submitted.

26. An operations and maintenance manual specified by the AOWTS designer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.

27. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted. Please note only original “wet signature” documents are acceptable.

28. A covenant running 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 construction 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 Plumbing Code, Appendix H, Section H 1.10. Said covenant shall be provided to the Environmental Health Administrator. Please submit a certified copy issued by the Los Angeles County Recorder.

29. A covenant running 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 successors in interest that 1) the private sewage disposal system serving the development on the property does not have a one hundred percent expansion effluent dispersal area (i.e., replacement disposal field(s) or seepage pit(s)), and 2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures including, but not limited to, limitations on water use enforced through an operating permit and/or repairs, upgrades or modification to the private sewage disposal system. The recorded covenant shall state and acknowledge that future maintenance and/or repair of the private sewage disposal system may necessitate interruption in use of the private sewage disposal system and, therefore, any building(s) served by the private sewage disposal system may become non-habitable during any required future maintenance and/or repair. Said covenant shall be in a form acceptable to the City Attorney and approved by the Environmental Sustainability Department. Please submit a certified copy issued by the Los Angeles County Recorder.

30. City of Malibu Department of Public Works final approval of the de-watering well abandonment and relocation (final construction) shall be submitted.
31. City of Malibu Geologist and Geotechnical Engineer final approval of the AOWTS plan, and the
de-watering well abandonment and relocation (final construction), shall be submitted.

32. In accordance with M.M.C. Chapter 15.14, an application shall be made to Environmental Health
office for an AOWTS operating permit. An operating permit in accordance with the adopted fee
schedule at the time of final approval shall be submitted with the application.

**Geology**

33. 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.

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

**Public Works**

35. A Local Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the
Grading/Building permits for the project. This plan shall include an erosion and sediment control
plan (ESCP) that includes, but is not limited to the following:

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<td>Silt Fence</td>
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All best management practices (BMP) shall be in accordance to the latest version of the California
Stormwater Quality Association (CASQA) BMP handbook. Designated areas for the storage of
construction materials, solid waste management, and portable toilets must not disrupt drainage
patterns or subject the material to erosion by site runoff.

36. Installation of the replacement dewatering well shall be inspected during construction by the City
Geologist to verify that the installation meets the City’s design specifications.

37. The applicant shall not block Bayshore Drive during construction. Prior to the issuance of the
grading and/or building permit, the applicant shall submit a detailed construction traffic control plan. At a minimum, one travel lane shall be open at all times and no lane closures will be allowed.

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

Grading and Drainage

39. Grading permits shall not be issued between November 1 and March 31 of each year per LIP Section 8.4. Projects approved for grading shall not receive grading permits unless the project can be rough graded before November 1. A note shall be placed on the project plans that address this condition.

40. Exported soil from the 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 the City’s LIP Section 8.3. A note shall be placed on the project site addresses this condition.

Deed Restrictions

41. The property owners of 25321 Malibu Road are required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning approval.

Construction / Framing

42. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.

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

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

Prior to Final Sign-Off

45. The applicant shall request a final Planning Department inspection prior to final inspection by the City of Malibu Environmental and Sustainability Department. A final approval shall not be
issued until the Planning Department has determined that the project complies with this CDP.

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

Fixed Conditions

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

48. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

Section 6. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 17th day of August 2015.

ROOHI STACK, Planning Commission Chair

ATTEST:

KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org, 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. 15-77 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 17th day of August 2015 by the following vote:

AYES: 5 Commissioners: Brotman, Jennings, Mazza, Pierson, Stack
NOES: 0
ABSTAIN: 0
ABSENT: 0

KATHLEEN STECKO, Recording Secretary