Supplemental Commission Agenda Report

To: Chair Jennings and Members of the Planning Commission

Prepared by: Justine Kendall, Assistant Planner

Reviewed: Bonnie Blue, Planning Director

Date prepared: February 26, 2020  Meeting date: March 2, 2020

Subject: Coastal Development Permit No. 19-003 and Demolition Permit No. 19-024 – A follow-up application for soldier pile bluff stabilization and associated development (Continued from February 18, 2020)

Location: 28820 Cliffside Drive, within the appealable coastal zone

APN: 4466-009-032
Owner: TES Trust

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 20-19 determining the project is categorically exempt from the California Environmental Quality Act, and approving in part Coastal Development Permit No. 19-003 and Demolition Permit No. 19-024 to allow the construction of 20 soldier piles tied together by a grade beam and demolition of a portion of the existing single-family residence, which took place under Emergency Coastal Development Permit No. 15-009 and installation of a permanent wall at the demolished portion of the house, and denying the construction of 14 additional soldier piles, located in the Rural Residential-One Acre zoning district at 28820 Cliffside Drive (TES Trust).

DISCUSSION: On February 3, 2020, 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 Planning Commission deliberated, and directed staff to return with an updated resolution approving the demolition permit, the 20 piles and grade beam already constructed, and the proposed permanent wall to cap the exposed portion of the house; denying the request to add additional piles to the property; and adding the following conditions to require:
- that a report on the erosion of the bluff face 20 years from the date of approval and every five years thereafter be provided to the Planning Commission;
- that any new landscaping shall be drought tolerant; and
- that a swale shall be located along the top of the bluff.

The Commission also directed staff to look into the indemnity provisions already included in the resolution and add or adjust them as necessary to deal with any issues related to the erosion of the bluff.

On February 18, 2020, the Commission continued the item at staff’s request to allow for further refinement of the resolution, particularly the findings pertaining to the 14 piles that were not approved. The revised resolution is attached for the Commission’s consideration. The resolution is presented in underline/strikethrough format to highlight the changes made from the version originally presented at the February 3rd Planning Commission meeting.

ATTACHMENT:  Planning Commission Resolution No. 20-19
CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 20-19


The Planning Commission of the City of Malibu does hereby find, order, and resolve as follows:

SECTION 1. Recitals.

A. On August 12, 2009, City staff sent a letter to the owners of 28820 Cliffside Drive, noting the observation of a significant land failure of the coastal bluff near habitable structures located on the property and directing the property owner to investigate the landslide.

B. On July 31, 2018, the City of Malibu issued ECDP No. 15-009, which approved emergency slope and drainage infrastructure system repairs to protect the home. This work has been completed.

C. On January 23, 2019, an application for Coastal Development Permit (CDP) No. 19-003 was submitted to the Planning Department by applicant Blue Onyx Design and Engineering, on behalf of the owners, TES Trust. The application was routed to the City Biologist, City Coastal Engineer, City Environmental Health Administrator, City Geologist, and the City Public Works Department for review.

D. On March 25, 2019, Planning Department staff conducted a site visit to document site conditions, the property, and the surrounding area.

E. On May 10, 2019, Demolition Permit (DP) No. 19-024 was added to the application for CDP No. 19-003 to memorialize the demolition which took place under ECDP No. 15-009.

F. On August 20, 2019, a Notice of Coastal Development Permit Application was posted on the subject property.

G. On September 5, 2019, 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.

H. On September 16, 2019, the Planning Commission Regular Meeting was adjourned to October 7, 2019.

I. On October 7, 2019, the Planning Commission continued the item to the October 21, 2019 Planning Commission Regular Meeting.

ATTACHMENT 1
J. On October 21, 2019, the Planning Commission continued the item to the November 4, 2019 Planning Commission Regular Meeting.

K. On November 4, 2019, 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. The item was continued to the meeting scheduled for February 3, 2019 to allow the applicant to provide additional information in response to questions raised at during the public hearing.

L. On February 3, 2020, 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 Planning Commission deliberated, and voted 3-2 (Jennings and Marx dissenting) directing staff to return with an updated resolution on the Consent Agenda approving the demolition permit, the 20 piles and grade beam already constructed, and the proposed permanent wall to cap the exposed portion of the house; and denying the request to add 14 additional piles to the property; and adding additional conditions to the project.

M. On February 18, 2020, the Planning Commission continued the item to the March 2, 2020, Regular Planning Commission meeting.

N. On March 2, 2020, the Planning Commission considered the subject resolution.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the 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 15301(a) and (f) - Existing Facilities. 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. Findings for Denial of 14 New Piles.

Based on substantial evidence contained within the record, including discussions during the public hearing, the Planning Commission denies the proposal to construct 14 additional soldier piles to the north of the residence. The Planning Commission finds that the General CDP findings A (that the project conforms with the LCP) and C (that the project is the least environmentally damaging alternative) cannot be made. The size of the lot would accommodate the relocation or removal of portions of existing development and the installation of the 14 piles is not necessary. The applicant has not demonstrated that existing structures are at risk from identified hazards and that the proposal is the least environmentally damaging alternative as detailed in LIP Section 10.4(K). The denial of the proposed 14 additional soldier piles is without prejudice.
SECTION 4. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to 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, and approves CDP No. 19-003 to approve the construction of 20 soldier piles tied together by a grade beam and demolition of a 272.5 square foot portion of the existing single-family residence which took place under Emergency Coastal Development Permit (ECDP) No. 15-009, but not the construction of 14 additional soldier piles, and a permanent wall at the demolished portion of the house, including DP No. 19-024 to memorialize the demolition which took place under ECDP No. 15-009, located in the Rural Residential-One Acre (RR-1) zoning district at 28820 Cliffside Drive.

The project is consistent with the LCP’s zoning, grading, cultural resources, water quality, and wastewater treatment system standards requirements. With the inclusion of the proposed demolition permit, 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 is located in the RR-1 residential zoning district, an area designated for residential uses. The project has been reviewed for conformance with the LCP and MMC by the Planning Department, City Biologist, City Environmental Health Administrator, City Geologist, and the City Public Works Department. As discussed herein, based on submitted reports, project plans, visual analysis and site investigation, the project, as conditioned, conforms to the LCP in that it meets all applicable residential development standards.

2. The project is located between the first public road and the sea. However, there are no known or planned trails onsite or near the subject property, and the project does not affect the existing beach access available from the adjacent properties. Therefore, no potential project-related or cumulative impact on public access is anticipated to result from the project. 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).

3. Evidence in the record demonstrates that as designed and conditioned, the project as conditioned minimizes the disturbance of the coastal bluff and property, adequately stabilizes the property and protects scenic resources. There is no evidence that an alternative project would offer any environmental advantages, and a project to remove the 20 piles would cause significant environmental damage to the bluff face. The project has been determined not to result in adverse biological, scenic, or visual resource impacts and is the least environmentally damaging feasible alternative.

B. Hazards (LIP Chapter 9)

1. The project site includes a northeast descending slope and southeast descending coastal bluff that are partially located within the landslide zone on the State of California Seismic Hazard Map. In the 2014 Geotechnical Report, a block-type bedrock landslide occurred on the property July 28, 2009, and a surficial slope failure occurred in 2005 at the southeast corner of the subject property. According to the project geotechnical consultants and City geotechnical staff, the likely cause of the bluff failure was determined to be the adverse joint/fracture sets and shears along the bluffs combined with heavy rainfall years.
According to the City coastal engineering staff, wave action, including the undermining of the bluff toe and removal of support for adversely oriented joint/fracture sets, can also contribute to the occurrence of these failures but is not a condition exclusive to every bluff failure (i.e., the failures can occur without undermining from wave action, simply due to the presence of fractures near the bluff face, the steepness of the slope, and the effects of infiltrating water and gravity).

The report concludes that “based upon the subsurface data, the proposed project will be safe from landslide, settlement or slippage and will not adversely affect adjacent property…” In addition, the project consulting geologist stated that “the soldier pile wall will prevent the landward soils mass from contributing to the forces that cause landslides.” Based on the report, the City geotechnical staff confirmed that the project provides the resisting forces necessary to meet the required 1.5 static and 1.1 seismic factors of safety landward of the piles.

Based on the review of the project plans and associated geotechnical reports by City geotechnical staff, LACFD, City Public Works Department, and the City Environmental Health Administrator, these specialists determined that adverse impacts on the project site related to the as-built 20 piles are not expected. The purpose of the as-built soldier pile and grade beam installation is to prevent future major slope failure from impacting the existing residence. As such, the project will neither be subject to nor increase the instability of the site or structural integrity, provided that the certified engineering geologist and/or geotechnical engineer’s recommendations and governing agency’s building codes are followed.

In addition, the entire City of Malibu is designated as a Very High Fire Hazard Severity Zone, a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The scope of work proposed as part of this application is not expected to have an impact on wildfire hazards. The subject property is currently subject to wildfire hazards, and neither the soldier pile that was installed below grade nor the new wall enclosing the demolished portion of the existing residence will increase the site’s susceptibility to wildfire. As such, the project will neither be subject to nor increase the instability of the site or structural integrity from geologic, flood, fire, or any other hazards.

2. The project as designed, conditioned, and approved by the City Geologist, LACFD and the City Public Works Department, does not have any significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to the project design.

3. The project, as conditioned, is the least environmentally damaging alternative. The project minimizes the disturbance of the coastal bluff and property, adequately stabilizes the property and protects scenic resources as removal of the 20 piles would significantly alter the bluff face and destabilize the slope.

4. There are no alternatives that would avoid or substantially lessen impacts on site stability or structural integrity. There is no evidence that an alternative project would offer any environmental advantages because a project to remove the 20 piles would cause significant environmental damage to the bluff face and destabilize the slope.

5. No adverse impacts to sensitive resources are expected as there is no onsite ESHA affected. The piles are not visible and the project is conditioned to address potential future visual impacts should the piles become exposed during the life of the project. The project has been determined not to result in adverse biological, scenic, or visual resource impacts and is the least environmentally damaging feasible alternative.
C. Shoreline and Bluff Development (LIP Chapter 10)

1 and 2. The as-built 20 soldier piles comply with the development standards detailed in LIP Section 10.4(K) and will have no significant adverse impacts on public access, shoreline sand supply, or other resources due to project design, location on the site, or any other reason. No public access currently exists on the subject property except along the wet sand along the shoreline; however, an existing lateral accessway exists on the neighboring property to the north and additional lateral access is provided on properties to the south.

In the letter submitted on September 13, California Coastal Commission staff suggested that sand supply and public access would be adversely impacted due to exacerbated beach erosion caused by the increased wave action once the proposed soldier pile structure is exposed to possible wave uprush. However, the engineering reports submitted and approved for the project indicate that no elements of the as-built 20 soldier piles would be exposed to wave uprush during the expected economic lifetime of the structure (100 years, as defined by LIP Section 10.4.A). The toe of the bluff is more than 34 feet seaward from the nearest soldier pile, and the long-term average bluff retreat rate of 1.8 inches per year was calculated by the project geotechnical consultant using retreat studies from several other properties located on Cliffside Drive and was approved to be in conformance with LIP Section 10.4.D by the City’s geotechnical and coastal engineering staff. At that rate, even if the estimated rate of retreat were to double for unanticipated reasons, the soldier pile located closest to the existing toe of the coastal bluff would not be exposed, or impact natural bluff retreat within 100 years.

Furthermore, given that the project will not impede the bluff’s natural rate of retreat during its expected lifetime, it will therefore not interrupt any contribution to sand supply by the bluff face. No hardening of the bluff face is proposed. In addition, according to the Response to Coastal Commission Letter submitted by GeoConcepts, Inc. dated September 30, 2019, the main source of sand for the subject area is from stream sediments rather than the coastal bluff. The bluff on which the project is proposed produces predominantly silt and clay rather than sand during the erosion process. According to the City coastal engineering staff, the material underlying the bluff at the subject property is the Monterey Formation, which consists predominantly of diatomaceous shale (silt and clay-size particles) with 5 to 25 percent sandstone interbeds. Thus, after the bluff fails and leaves a pile of debris on the beach and the debris breaks down, 75 to 95 percent of it will be washed offshore in suspension (i.e., particles floating in water) and therefore does not become beach sand. As a result, failures of these bluffs in this rock formation contribute very little to the sand supply.

Moreover, as determined by the project geotechnical consultant, the soldier pile structure is not located on the beach and does not impact the grading and drainage of the subject property in a way that would impede any supply of sand from beyond the bluff face. Any sand supply from the landward areas of the property would not be affected by the soldier piles. As no adverse impacts to sand supply would take place as a result of the project, public access would similarly not be adversely impacted by a new reduction in sand. Therefore, the required 100-year analysis does not support CCC staff contentions.

Nevertheless, a condition has been included to require the monitoring of bluff erosion, the status of which is to be reported to the Planning Commission every five years, starting 20 years after the date of approval. The project has been reviewed, conditioned and approved by City geotechnical staff and the City Public Works Department and, due to the location of the subject property and nature of the scope of work, the project will have no significant adverse impacts on public access, shoreline sand supply or other resources.
3 and 4. The project, as conditioned, is the least environmentally damaging alternative, as the piles were necessary to stabilize the site and removing them would result in significant damage to the bluff. Alternative project designs were dismissed because they had increased negative impacts on public access or aesthetic resources, or because they would have been more environmentally damaging. The project, as approved, is not expected to result in any significant adverse impact on public access, shoreline sand supply, or other resources. Therefore, there are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts to public access, shoreline sand supply, or other resources.

5. According to the City coastal engineering staff, the as-built soldier piles already installed under ECDP No. 15-009 are not in place to protect the house or wastewater treatment system from breaking waves or wave uprush; rather they have been constructed to provide lateral resistance to prevent future major slope failure from impacting the existing residence, garage, and OWTS located landward of the soldier piles as the bluff continues to retreat. While future bluff instability and retreat are going to be, in part, due to wave action and the rate of sea-level rise, the project is not considered an SPD, as it is landward enough to avoid exposure to any possible wave action prior to the expected economic lifetime of the project (100 years, as defined by LIP Section 10.4.A).

D. Public Access (LIP Chapter 12)

1. The project is located between the first public roadway and the sea. No onsite vertical, lateral, bluff-top, recreational, or trail access is currently provided on the subject parcel. However, an existing lateral access way exists on the neighboring property to the north, and additional lateral access is provided on properties to the south. During the hearing on November 4, 2019, the applicant mentioned a public accessway on the neighboring property; however, there is no public access in that location. No proposed or existing public trails or public beaches are shown on or adjacent to the subject property on the LCP Park Lands Map; therefore, trail and recreational accesses are not applicable. Point Dume Beach and Natural Preserve, located less than a mile south of the subject property, provide public vertical, bluff-top, and lateral access to the shore.

In the letter submitted on September 13, 2019, CCC staff suggested that public access would be adversely impacted due to the increased amount of wave action and subsequent beach erosion caused by the proposed soldier pile structure once it is exposed to wave uprush. However, such exposure would not occur during the expected economic lifetime of the structure, as defined by LIP Section 10.4.A. In addition, no adverse impacts on sand supply would take place as a result of the project, and public access would, therefore, not be adversely impacted by a lack of sand. Vertical, bluff-top and lateral access would not impact fragile coastal resources, do not raise a significant public safety concern, or have any impact on a military facility. The basis for the exception to the requirement for vertical, bluff-top and lateral access is associated with the availability of access nearby.

2. No new vertical, bluff-top, or lateral access is provided by the project, and the project would not impact fragile coastal resources, does not raise a significant public safety concern, or have any impact on a military facility.
3. The as-built soldier piles and grade beam are located on the top of a coastal bluff and do not affect access to a public beach nor block or impede access to the ocean. The project site does not provide vertical access to the coast as it is a steep, hazardous coastal bluff. In addition, the public has the ability through other reasonable means to reach the same area of public tidelands as would be made accessible by an access way on the subject property. Lateral public access exists along the State of California’s “wet sand right-of-way,” which allows public use of lands seaward of the mean high tide and provides public access along, and parallel to, the sea or shoreline. No development is proposed on or adjacent to a shoreline; therefore, no condition for lateral access is required by the Local Coastal Program. Existing vertical, bluff-top, and lateral accessways are located approximately half a mile south at Point Dume State Beach and Point Dume Natural Preserve. No legitimate governmental or public interest would be furthered by requiring vertical, bluff-top, or lateral access at the project site because 1) existing access to coastal resources is adequate; 2) the project will not impact the public’s ability to access the shoreline or other coastal resources, and 3) the project site is not within the vicinity of a public beach.

E. Demolition Permit Findings (MMC Chapter 17.70)

1. Conditions of approval, including the recycling of demolished materials, have been included to ensure that the project will not create significant adverse environmental impacts.

2. This CDP application is being processed concurrently with DP No. 19-024, and approval of the demolition permit is subject to the approval of CDP No. 19-003.


Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CDP No. 19-003 and DP No. 19-024, 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 project described herein. The scope of work approved includes:

   1) Follow-up to ECDP No. 15-009 which allowed for:
      a. Installation of 20 soldier piles with diameters ranging between 36 inches and 72 inches and lengths between 50 feet and 83 feet, tied together by a grade beam located two feet below grade;
      b. Demolition of 272.5 square feet of the house adjacent to the edge of the southeast-facing slope and installation of a temporary wall.
2) Construction of a new 14-foot-long, 12-foot-high residence wall with associated foundation.

3) Discretionary Request:
   a. DP No. 19-024 for 53 lineal feet or 8.16 percent of the existing exterior residence walls.

3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped as received on January 23, 2019. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

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

5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to plan check 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 February 3, 2020 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. In the event of an appeal, the CDP shall expire if the project has not commenced within three years from the date the appeal is decided by the decision-making body or withdrawn by the appellant.

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 Biologist, City Coastal Engineer, City Environmental Health Administrator, City geotechnical staff, City Public Works Department, Los Angeles County Waterworks District No. 29 and LACFD, as applicable. Notwithstanding this review, all required permits shall be secured. 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 MMC 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 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.

**Site Specific**

13. A report shall be made to the Planning Commission on the erosion of the bluff face twenty (20) years from the date of approval and every five years thereafter for the lifetime of the project.

14. A swale, whose designed shall be approved by the Public Works and Geology Department, shall be located along the top of the coastal bluff.

**Cultural Resources**

15. 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 MMC Section 17.54.040(D)(4)(b) shall be followed.

16. If human bone is discovered during geologic testing or during construction, work shall immediately cease, and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

**Biology/Landscaping**

17. Should the applicant plant any new vegetation on the bluff top, regardless of the square footage of the planting area, that vegetation shall be required to be drought-tolerant.

18. No exterior lighting is proposed as part of this project; therefore, no new exterior lighting is permitted as part of this project.

19. No new landscaping is proposed with this project; therefore, none is approved. Should the applicant intend to plant any new vegetation with the potential to exceed six feet in height or an area of 2,500 square feet or more, a detailed landscaping plan shall be submitted for review and approval prior to any planting.

20. Grading and/or demolition shall be scheduled only during the dry season from April 1 – October 31. If it becomes necessary to conduct grading activities from November 1 – March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
21. Any site preparation activities, including removal of vegetation, between February 1 and September 15, will require nesting bird surveys by a qualified biologist at least five days prior to initiation of site preparation activities. Should active nests be identified, a buffer area no less than 150 feet (300 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City within two business days of completing the surveys.

22. No equipment/material staging or storage shall occur on the beach at any time.

**Environmental Health**

23. All final project 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.

**Geology**

24. 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.

25. 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**

26. 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 LIP Section 8.3.

27. 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 not limited to:

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28. 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.

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

Deed Restrictions

30. The property owner is required to execute and record a deed restriction which shall require the submittal of an application to the City of Malibu to assess and address, as needed, the impacts of the development of aesthetic/visual resources in the event that visual exposure of the soldier piles and/or grade beam occurs.

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

32. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, 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 the Planning Department prior to final Planning Department approval.

33. The property owner is required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the bluff top soldier piles which extends the seaward footprint of the subject piles shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. Said deed restriction shall be submitted to the Planning Department for approval prior to recordation. The deed restriction shall also acknowledge that the intended purpose of the structure is solely to protect existing structures located on the site, in their present condition and location, including the onsite wastewater treatment system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for the structure.
34. The property owner is required to acknowledge, by the recordation of a deed restriction, that new development on a bluff-top lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be sited and designed so as to not require a shoreline protection structure as part of the proposed development or at any time during the life of the development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235.

Construction / Framing

35. 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.

36. 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.

37. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural BMPs to control the volume, velocity and pollutant load of stormwater runoff in compliance with all requirements contained in LIP Chapter 17, including:
   a. Construction shall be phased to the extent feasible and practical to limit the amount of disturbed areas present at a given time.
   b. Grading activities shall be planned during the southern California dry season (April through October).
   c. During construction, contractors shall be required to utilize sandbags and berms to control runoff during on-site watering and periods of rain in order to minimize surface water contamination.
   d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within the project site.

Prior to Final Sign-Off

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

39. 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

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

41. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted thereunder.

SECTION 6. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of March 2020.

__________________________________________
JEFFREY JENNINGS, 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 approval 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. 20-19 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting held on the 2nd day of March 2020 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____________________________________
KATHLEEN STECKO, Recording Secretary