Subject: Conditional Use Permit No. 19-008 – An application for a conditional use permit to allow the operation of a new in-store wine tasting area located within an existing retail space in the Malibu Village shopping center, with no new square footage to be added (Continued from February 18, 2020)

Applicant: Wine Apothecary, LLC
Property Owner: Jamestown Premier Malibu Village LP
Location: 3822 Cross Creek Road, Unit 3822
APN: 4452-011-042

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 20-08 determining that the project is categorically exempt from the California Environmental Quality Act, and approving Conditional Use Permit No. 19-008 to allow the operation of a new in-store wine tasting area including a California Department of Alcoholic Beverage Control License Type 2 (Winegrower) for onsite sale, service and consumption of alcohol (Apothecary Wines), in a 190 square foot “shop-in-shop” space within the existing 4,033 square foot “Fred Segal” retail store, in the Malibu Village shopping center located at 3822 Cross Creek Road, Unit 3822, in the Commercial Visitor Serving zoning district, and authorizing the Planning Director to submit a Letter of Public Convenience or Necessity (Jamestown Premier Malibu Village LP).

DISCUSSION: On February 18, 2020, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered the 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 proposed project; and adding the following conditions to require:
- A physical boundary located on all sides of the use.
- A limitation on signage for the use to the south elevation, immediately adjacent to the main entrance; this limitation does not apply to the retail use.

The revised resolution is attached for the Commission’s consideration. Changes from the resolution originally attached to the staff report provided for the February 18, 2020 Planning Commission meeting are noted with strikeouts to indicate deletions, and underlines to indicated insertions.

ATTACHMENT: Planning Commission Resolution No. 20-08
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 CONDITIONAL USE PERMIT NO. 19-008 TO ALLOW THE OPERATION OF A NEW WINE TASTING AREA INCLUDING A CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL LICENSE TYPE 2 (WINEGROWER) FOR ONSITE SALE, SERVICE AND CONSUMPTION OF ALCOHOL (APOTHECARY WINES), IN A 190 SQUARE FOOT “SHOP-IN-SHOP” SPACE WITHIN THE EXISTING 4,033 SQUARE FOOT “FRED SEGAL” RETAIL STORE, IN THE MALIBU VILLAGE SHOPPING CENTER LOCATED AT 3822 CROSS CREEK ROAD, UNIT 3822, IN THE COMMERCIAL VISITOR SERVING (CV-1) DISTRICT, AND AUTHORIZING THE PLANNING DIRECTOR TO SUBMIT A LETTER OF PUBLIC CONVENIENCE OR NECESSITY (JAMESTOWN PREMIER MALIBU VILLAGE LP)

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

SECTION 1. Recitals.

A. On August 20, 2019, an application for Conditional Use Permit (CUP) 19-008 was submitted to the Planning Department by applicant, Wine Apothecary. The application was routed to the County of Los Angeles Fire Department, the City Public Works Department, and the Los Angeles County Sheriff’s Department for review.

B. On September 16, 2019, Planning Department staff conducted a site visit to document site conditions, the property and surrounding area.

C. On October 7, 2019, the CUP application was deemed complete for processing.

D. On December 4, 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.

E. On January 6, 2020, 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 Planning Commission continued the agenda item, requesting further information and clarification.

F. On January 23, 2020, 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 February 18, 2020, 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 Planning Commission deliberated and voted (4-1, Mazza dissenting) to direct staff to return with an updated resolution on the consent agenda approving the proposed CUP with additional conditions.
On March 2, 2010, 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 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 15301(a) - 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. Conditional Use Permit Findings of Fact.

Pursuant to Malibu Municipal Code (MMC) Section 17.66.080, a CUP may be approved if the Planning Commission makes all of the required findings. CUP No. 19-008 is to allow the operation of a wine tasting room with the onsite retail sales and tastings of wine. The Planning Commission hereby approves CUP 19-008 based on the findings of fact as follows:

A. Conditional Use Permit Findings (MMC Chapter 17.66)

1. Wine tasting venues are considered similar to bars in that there is no meal service. MMC Sections 17.26.030(A) and 17.24.030(C) allow bars as conditionally permitted uses in the CV-1 zoning district. The subject application will permit the onsite sale and consumption of a single brand of alcoholic beverages pursuant to a Type 2 Winegrower license within a retail store in the CV-1 zoning district. The CV-1 district is intended to provide for visitor serving uses for enjoyment by both residents and visitors. The CV-1 district is intended to provide for visitor serving uses for enjoyment by both residents and visitors. In addition, such uses shall be designed to be consistent with Malibu’s rural character and natural environmental setting. The project will be conditioned accordingly to meet the intent of the CV-1 zoning district by providing a local and visitor serving use with appropriate noise restrictions and limited hours of operations inside an existing commercial tenant space in a developed shopping center. Therefore, the proposed use complies with the intent of all of the applicable provisions of Title 17 of the MMC.

2. The proposed wine tasting and sale of wine in the existing retail space will be a commercial use in the CV-1 zoning district. The scope of the proposed use (i.e., wine tasting) is more limited in nature than a bar or liquor store, both of which are also allowed in this district. The request for wine tasting and wine sales is ancillary to the primary retail use and will serve to augment the overall shopping experience. Furthermore, the consumption of alcoholic beverages will be wholly contained within the building’s interior and will not generate detrimental impacts onto surrounding properties. Pursuant to MMC Section 17.66.010, conditional uses are those uses which are regarded as compatible with uses that are automatically permitted in a zoning district but which have a special impact or uniqueness such that their effect on the surrounding environment cannot be determined in advance. It is not expected that the wine tastings or the sale of wine within the existing retail space will impact surrounding structures located outside of the shopping center. Therefore, the proposed wine tasting and wine sales is considered a compatible use with all other permitted uses in the same zoning district. Therefore, the proposed use is not expected to impair the integrity and
character of the zoning district in which it is located.

3. The subject site is developed with a shopping center that includes a mix of retail, personal services, and eating establishments, of which several serve alcohol. The proposed wine tasting and wine sales are compatible with these existing uses. Further, the application does not propose any physical changes to the existing structure or new development that will generate a greater demand for parking. Therefore, the subject site is physically suitable for the proposed project.

4. The proposed wine tasting and wine sales would be compatible with the other approved uses in the shopping center that include retail stores, personal services, and restaurants. The surrounding neighborhood is composed of a mix of commercial development in the immediate vicinity, with residential uses further away. The onsite retail sale and wine tastings pursuant to an ABC License Type 2 are compatible with the visitor and resident-serving land uses approved on the site. Uses within the same shopping center and in neighboring parcels include restaurants, of which several serve alcohol.

5. The proposed wine tasting area with onsite retail sales is compatible with existing and future land uses allowed in the CV-1 zone. The zone allows for visitor serving commercial uses, such as the proposed retail use. There are existing approved off-sale alcohol outlets in the vicinity that include Shell Gas Station, Ralphs Fresh Fare, CVS Pharmacy, Whole Foods Market, Malibu Beach Wines, and Strange Family Vineyards. Of these, Malibu Beach Wines and Strange Family Vineyards are approved for in-store tastings. The proposed use will be compatible with other business operations surrounding the site.

6. The proposed project will not affect existing water, sanitation, and public utilities and services. No physical changes are proposed to the exterior of the existing building and minor changes are proposed to the interior. Therefore, the project will not affect solar access or adversely impact existing public or private views.

7. The proposed wine tasting venue will be located within an existing retail space. No changes to the site’s access or circulation, for pedestrians or vehicles, are proposed. The onsite sale and consumption of alcoholic beverages pursuant to an ABC License Type 2 is limited to tasting room patrons only and will not negatively affect parking demand, and is accommodated by the shopping center’s existing parking, which currently exceeds minimum requirements.

8. The subject CUP will allow a wine tasting area with the onsite sale and sampling of alcoholic beverages in an existing retail shopping center in the CV-1 zoning district, and as conditioned, is consistent with the goals, objectives, and policies of the General Plan.

The General Plan states that the CV zoning designation “provides for visitor-serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting.” The proposed wine tasting and retail sales of wine will complement the shopping experience at Fred Segal, which caters to local and visiting customers of the internationally recognized fashion and lifestyle brand.
The General Plan includes the following policy measures related to the sale of alcohol:

**Land Use (LU) Policy 4.1.5:** The City shall prohibit undue concentration of businesses which sell alcohol for off-site consumption.

**LU Implementation Measure 73:** Require a conditional use permit for sale of alcohol for off-site consumption and permit no more than 1 off-sale license per 2,500 residents.

The Malibu General Plan is a policy document that contains policy measures; the specific development standards for implementing these policy measures are in the MMC. Since LU Policy 4.1.5 and LU Measure 73 went into effect in 1995, the City has not incorporated an ordinance into the MMC restricting the number of off-sale licenses. To address this, Planning Department staff prepared a zoning code interpretation in 2005 to address the issue of overconcentration of off-site alcohol sales within the City.

Zoning Code Interpretation No. 5 states that “the sale of alcohol for off-site consumption may only be permitted in zones in which liquor stores are permitted, and only with a valid CUP.” The interpretation further justifies requiring a CUP as the appropriate mechanism to review uses to ensure orderly neighborhood development and to ensure that an undue concentration of businesses that sell alcohol does not develop, among other factors. Pursuant to MMC Section 17.66.010, one purpose of CUPs is to review uses that are regarded as compatible but have special impacts or characteristics from which their effect on the surrounding environment cannot be determined in advance of the particular use being proposed for a specific location. Since implementation of these policy measures, the Malibu City Council and Planning Commission have exercised their discretion in approving CUPs for alcohol sales for offsite consumption at businesses in the subject Census Tract No. 8005.04 that include Pacific Coast Greens, Malibu Shell Gas Station, Barrel, Malibu Village Wines, and Whole Foods Market. Within this area, the Planning Commission has also approved in-store tastings at Barrel, Malibu Village Wines, and Malibu Beach Wines, of which the first two businesses are no longer in operation.

As discussed in Findings 3 and 4, Wine Apothecary is proposed to operate within an existing retail store in a shopping center located in the Civic Center District, where several of the City’s largest retail centers are clustered. In order to be consistent with these specific policies of the General Plan, the Planning Commission need only find that approval of the CUP will not create an undue concentration of businesses which sell alcohol for off-site consumption.

In addition, the General Plan includes the following policy measures related to local businesses:

**LU Policy 4.4.1:** The City shall encourage establish and continued operation of small neighborhood and community serving businesses.

**LU Implementation Measure 85:** Support the Chamber of Commerce’s Shop Malibu campaign and other public information programs designed to support local businesses and contractors.

Wine Apothecary is owned and operated by Malibu residents. Its wines are marketed as a specialty product that is not produced at a scale to be widely available at general alcohol sales outlets. Locating within the Fred Segal affords Wine Apothecary the opportunity market and sell their
products in a smaller footprint than a standalone wine store would require. Furthermore, no other brands of alcoholic beverages will be sold. Subject to conditions, the CUP will be consistent with the goals, objectives, and policies of the General Plan.

9. The proposed use complies with all applicable requirements of state and local law and is conditioned to comply with any relevant approvals, permits, and licenses from the City of Malibu and other related agencies, such as ABC and the Los Angeles County Sheriff’s Department. Conditions of approval have been added to require the wine tasting room to comply with all state licensing regulations and to maintain a valid ABC License Type 2 for the onsite sale and consumption of alcoholic beverages.

10. The wine tasting room is a permitted use in the CV-1 zoning district, and the proposed use to sell and consume alcoholic beverages onsite pursuant to an ABC license Type 2 would not be detrimental to the public interest, health, safety, convenience, or welfare because the use complies with applicable requirements of state and local law. A Letter of Public Convenience or Necessity will be provided to the ABC.

11. No new development or changes to the existing building footprint are proposed. Therefore, there is no new impact related to earth movement, flooding, or liquefaction.

SECTION 4. Determination of Public Convenience or Necessity.

According to the State Department of Alcoholic Beverage Control, the project site is located within a census tract that has an over-concentration of licenses; therefore, a Letter of Public Convenience or Necessity is required. Based on CUP findings in Section 3 of this resolution, the Planning Commission finds that the proposed use will not be detrimental to the public health, safety, or general welfare and is compatible with the land uses presently on the subject property and in the surrounding neighborhood. The Planning Commission hereby authorizes the Planning Director to prepare and submit a Letter of Public Convenience or Necessity for the proposed use to the State Alcoholic Beverage Control Department.

SECTION 5. Planning Commission Approval.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CUP No. 19-008, subject to the following conditions.

SECTION 6. Conditions of Approval.

Standard Conditions

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. This approval is the operation of Apothecary Wines, a retail business with onsite wine tasting, located in 190 square feet of “shop-in shop” space within the existing Fred Segal retail store. Apothecary Wines will sell their own branded wines and also a variety of related gift items for home use. The hours of operation will be 12:00 PM to 8:00 PM, daily, with an extended closing time of 9:00 PM should Fred Segal opt to extend its store hours during holidays and the holiday shopping season. The tasting room will have seating for nine patrons and be staffed by one to two employees at any one time. The operation will not include amplified or live music.

3. This conditional use permit shall not be effective until all appeals are exhausted and the property owner, applicant, and the business operator execute the Affidavit of the Acceptance of Conditions. Said documents shall be recorded with the Los Angeles County Recorder and a certified copy of said recordation shall be filed with the Planning Department within 10 days of the effective date of the approval.

4. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, dated, September 30, 2019. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

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

6. 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. Revised plans reflecting the minor changes and additional fees shall be required.

7. The property owner shall comply with all provisions of the MMC.

 Operations

8. This CUP permits the sale and consumption of alcoholic beverages with an ABC Type 2 license. The property owner / tenant shall obtain all necessary approvals from ABC. Once obtained, the applicant is required to provide the Planning Department a copy of the issued ABC license.

9. No live entertainment or amplified music is approved under this permit except low-level, ambient music not audible outside the tenant space.

10. A copy of the current ABC license shall be kept on the premises of the establishment and be presented to City staff, including the City’s Planning Director and Code enforcement staff, law enforcement officers or their duly authorized representatives, upon request.
11. At all times during the conduct of the permitted use, the permittee shall maintain and keep in effect valid licensing approval from ABC. Should such licensing be denied, expire, or lapse at any time in the future, the approval of alcohol sale pursuant to this permit is subject to modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).

12. Prior to the commencement of alcohol service, the property owner/operator shall install small signs in the interior of the business, in a location and form approved by the Planning Director, on or near the exit doors stating that alcohol may only be consumed in compliance with the tasting room’s ABC license.

13. The sale of alcoholic beverages shall be limited to wine tasting room patrons only.

14. A physical boundary shall be located on all sides of the use.

15. Violation of any of the conditions of approval shall be cause for revocation of the conditional use permit and termination of all rights contained therein.

16. The approved hours of operation for the sale of alcoholic beverages are limited to 12:00 PM to 8:00 PM daily, with an extended closing time of 9:00 PM, should Fred Segal opt to extend its store hours during holidays and the holiday shopping season.

17. The property owner/operator shall adhere to a “good neighbor” policy, meaning that the operator and employees must respect the rights of neighboring properties, and to the best of their ability, shall ensure their patrons’ compliance with the City’s noise and smoking regulations and all conditions of approval for the subject use relating to parking, smoking, litter, noise, loitering, etc.

18. Noise emanating from the premises shall not be audible at a distance of five feet of any residential unit between the hours of 10:00 PM and 7:00 AM, as required by MMC Section 8.24.050(L).

19. The property owner/tenant shall comply with the requirements set forth in MMC Chapter 9.28 (Plastic Bag Ban). No retail establishment, restaurant, vendor, or nonprofit vendor shall provide plastic bags or compostable bags to customers. This requirement applies to plastic or compostable bags provided at the point of sale for the purpose of carrying away goods.

20. No restaurant, food packager, retail food vendor, or nonprofit food provider shall provide prepared food to its customers in any food packaging that utilizes expanded polystyrene. “Expanded polystyrene” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.
20.21. The property owner/tenant shall comply with the requirements set forth in MMC Chapter 9.24 (Ban on Plastic Food Packaging and Other Plasticware). No retail establishment, restaurant, vendor or nonprofit shall provide plastic beverage straws, plastic stirrers, or plastic cutlery to customers.

24.22. Staff shall inspect the property as needed after approval of the CUP to verify compliance with the conditions of approval.

22.23. The Planning Department shall conduct a review of tasting room operations and compliance with conditions of approval. The report shall be presented to the Planning Commission five years after CUP approval.

23.24. One onsite restroom shall be provided within 250 feet of the wine tasting area.

Sheriff’s Department

24.25. The tenant must adhere to all laws related to the sale of alcohol. Violations of such laws may be cause for modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).

Signs

25.26. No new signage is permitted under this application; a sign permit shall be submitted and approved by the Planning Department prior to installation of any new sign.

27. No signage of any kind for this use shall be located on the Cross Creek Road side of the building. Signage for this use shall be allowed only on the south side of the building facing the parking lot, immediately adjacent to the main entrance. This restriction does not affect the signage for the retail store use.

Fixed Conditions

26.28. The conditions under which this conditional use permit was approved may be modified by the City without the consent of the property owner, tenant or operator if the Planning Commission finds that the use is creating a nuisance.

27.29. A conditional use permit that is valid and in effect, and was granted pursuant to the provisions of the MMC, shall run with the land and continue to be valid upon change of ownership of the land or lawfully existing structure.

28.30. Violation of any of the conditions of approval shall be cause for revocation of the conditional use permit and termination of all rights contained therein.

29.31. This conditional use permit shall become subject to revocation should the use for which the conditional use permit was granted cease for six successive calendar months after the start of operations, except in the case of natural disaster.
30.32. If it has cause to believe that grounds for modification or revocation may exist, the Planning Commission shall hold a public hearing upon the question of modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C). The conditional use permit may be revoked if the Planning Commission finds that one or more of the following conditions exists:

a. The conditional use permit was obtained in a fraudulent manner.
b. The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.
c. One or more of the conditions found within this resolution have not been substantially met.

SECTION 7. The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 18th 2nd day of February 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. 374.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-08 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 18th 2nd day of February March 2020 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

KATHLEEN STECKO, Recording Secretary