Commission Agenda Report

To: Chair Jennings and Members of the Planning Commission

Prepared by: Adrian Fernandez, Principal Planner

Reviewed: Bonnie Blue, Planning Director

Date prepared: June 11, 2020  Meeting date: June 15, 2020

Subject: Coastal Development Permit No. 13-040, Conditional Use Permit No. 13-015, Variance Nos. 13-042, 13-043, 15-035 and 15-036, Minor Modification No. 13-011 and Demolition Permit No. 20-011 - An application for the replacement of an existing 300,000-gallon water tank with a new 385,000-gallon water tank to meet current domestic and fire protection standards and associated development (Continued from May 18, 2020)

Location: 5723 Busch Drive, not within the appealable jurisdiction of the coastal zone

APN: 4469-028-006

Owners: Serra Canyon Co. LTD

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 20-23 determining that the California Environmental Quality Act does not apply to the project and denying Coastal Development Permit No. 13-040 for the replacement of an existing 300,000-gallon water tank with a new 385,000-gallon water tank to meet current domestic and fire protection standards, generator, hardscape, gates and fencing, Conditional Use Permit No. 13-015 for a water tank on a rural residential parcel, Variance (VAR) No. 13-042 for the height of the water tank to exceed the maximum height up to 26 feet, VAR No. 13-043 for non-view permeable, eight in height fencing within the front yard setback, VAR No. 15-035 for the installation of an 7-foot, 8-inch in height back-up generator within the required rear yard setback from the required 15 feet to the proposed 5 feet, 3 inches, VAR No. 15-036 for impermeable coverage to exceed the maximum permitted for up to 9,219 square feet, Minor Modification No. 13-011 for the water tank to provide a 50 percent reduction of the required front yard setback from the required 20 feet to the proposed 10 feet, and Demolition Permit No. 20-011 for the full demolition of the existing water tank and other associated development located in the Rural Residential-Two (RR-2) Acre zoning district at 5723 Busch Drive (Serra Canyon Co., LTD).
DISCUSSION: On May 18, 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 voted to bring back as a consent item a revised resolution with a revised scope of work for the bathroom to remain provided compliance with City Environmental Health Division requirements is obtained, the addition of conditions for an automatic transfer switch and Dark Sky Ordinance compliance, and removal of the condition requiring landscaping. The revised resolution and City Environmental Health approval are attached for the Commission’s consideration.

ATTACHMENTS:

1. Planning Commission Resolution No. 20-23
2. Updated Environmental Health Review Sheet

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

SECTION 1. Recitals.

A. On October 11, 2005, the County of Los Angeles, Board of Supervisors adopted the Lower Busch Water Tank Replacement Negative Declaration pursuant to the California Environmental Quality Act (CEQA).

B. On August 29, 2013, an application for Coastal Development Permit (CDP) No. 13-040 for the replacement of the existing water tank was submitted to the Planning Department by the Los Angeles Waterworks District No. 29 (WD29). The application included Conditional Use Permit (CUP) No. 13-015, Variance (VAR) Nos. 13-042 and 13-043 to exceed the height and for a non-view permeable fencing eight feet in height within the required front yard setback and Minor Modification (MM) No. 13-011 for a 50 percent reduction to the required front yard setback. The application was routed for review to applicable City and County departments.

C. On August 29, 2013, the applicant submitted Addendum to the Lower Busch Tank 2005 Negative Declaration summarizing minor modifications made to the diameter, height and capacity of the proposed tank. These minor modifications resulted in an operational capacity of 5,000 gallons due to more accurate engineering assumptions. Other modifications include the replacement of the existing front yard fence, trees and possibly water lines and electrical conduits.
D. On August 13, 2015, the applicant submitted a story pole certification certifying that story poles had been installed on the subject property to depict the siting and height of the proposed water tank.

E. On September 16, 2015, VAR Nos. 15-035 and 15-036 were assigned for reduction of the required rear yard setback and impermeable coverage exceeding 4,500 square feet.

F. On September 17, 2015, a Courtesy Notice of Proposed CDP was mailed to all property owners and occupants within a 500-foot of the subject parcel.

G. On December 4, 2015, staff visited the project area and photographed the story poles.

H. On December 17, 2015, a Notice of Application for a Pending CDP was posted at the subject parcel.

I. On September 23, 2015, the application was deemed complete.

J. On December 31, 2015, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the project area.

K. On January 27, 2016, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony and other information in the record. The Commission continued the item to a date uncertain and requested additional information.

L. During the ensuing years, the applicant has been working on modifying the project to address comments from the Planning Commission and neighbor concerns. Some of these changes include removing the onsite wastewater treatment system (OWTS) to permit a larger diameter tank in order to lower the height of the tank to less than 24 feet, relocating the tank two feet further away from the front yard setback to replace the required variance with a minor modification and add the permanent installation of a back-up generator.

M. On April 23, 2020, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the project area.

N. On May 18, 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 voted to bring back as a consent item a revised resolution with a revised scope of work for the bathroom to remain provided compliance with City Environmental Health Division requirements is obtained, the addition of conditions for an automatic transfer switch and Dark Sky Ordinance compliance, and removal of the condition requiring landscaping.

O. On June 15, 2020, the resolution approving the project with a revised scope of work and added conditions came back before the Planning Commission as a consent item.
SECTION 2. Adoption of the Addendum to the Lower Busch Tank 2003 Negative Declaration.

The initial study prepared by WD29 concluded the proposed project would not have a significant impact on the environment; subsequently, a negative declaration was prepared and circulated pursuant to CEQA Guidelines Section 15071. On August 28, 2003, the WD29 made the initial study and negative declaration available to the public for the required 30 day circulation period. The Governor’s Office of Planning and Research distributed the negative declaration to responsible agencies for a 30 day public review period, from August 22, 2003 and September 22, 2003 (SCH No. 2003081124).

In 2005, in compliance with CEQA, the Los Angeles County Board of Supervisors adopted the negative declaration based on preliminary conceptual designs. Based on site investigations, minor technical modifications to the tank design were made. Pursuant to CEQA Guidelines Sections 15164(b) and (d) an addendum to the adopted negative declaration was prepared in 2013 to make minor technical changes and additions to the negative declaration for the Planning Commission’s consideration prior to making a decision on the project.

The Planning Commission considered the Addendum and the Lower Busch Tank 2003 Negative Declaration and finds that together they are determined to adequately satisfy all the requirements of CEQA. The proposed project does not have the potential to significantly degrade the quality of the environment, nor does it have impacts which are individually limited but cumulatively considerable. The Planning Commission further finds that through feasible conditions placed on the project, any potentially significant impacts on the environment have been eliminated or mitigated to a level of less than significance. Based on the record as a whole, there is no substantial evidence that the project, as conditioned, will have a significant effect on the environment.

The documents and other materials which constitute the record of proceedings upon which this decision is based are in City Hall.

SECTION 3. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7.B and 13.9 and Malibu Municipal Code (MMC) Sections 17.66.080 and 17.70, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approved CDP No. 13-040 for the replacement of an existing 300,000-gallon water tank with a new 385,000-gallon water tank to meet current domestic and fire protection standards, CUP No. 13-040 for the replacement of an existing 300,000-gallon water tank with a new 385,000-gallon water tank to meet current domestic and fire protection standards, generator, hardscape, gates and fencing, CUP No. 13-015 for a water tank on a rural residential parcel, VAR No. 13-042 for the height of the water tank to exceed the maximum height up to 26 feet, VAR No. 13-043 for a non-view permeable, eight in height fencing within the front yard setback, VAR No. 15-035 for the installation of an 7-foot, 8-inch in height back-up generator within the required rear yard setback from the required 15 feet to the proposed 5 feet, 3 inches, VAR No. 15-036 for impermeable coverage to exceed the maximum permitted for up to 9,219 square feet, MM No. 13-011 for the water tank to provide a 50 percent reduction of the required front yard setback from the required 20 feet to the proposed 10 feet and Demolition Permit (DP) No. 20-011 for the full demolition of the existing water tank and other associated development located in the Rural Residential – Two Acre Zone District at 5723 Busch Drive.
The proposed project has been reviewed the Planning Department, City Biologist, City Environmental Health Review, City geotechnical staff, and City Public Works Department. The project is consistent with the LCP’s zoning, grading, cultural resources, water quality, and onsite wastewater treatment requirements. With the inclusion of the proposed conditional use permit and variances, 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. Based on submitted reports, project plans and other project information, visual analysis and detailed site investigation, the project, as conditioned and with the approval of the applicable discretionary requests, conforms to the LCP.

2. For the reasons discussed in the agenda report, the no project and sunken in tank alternatives are not feasible. The existing tank has deteriorated and does not provide the required domestic day demand for the neighborhood. Also, partially sinking the tank below ground would be in conflict with State Water Board California Code setbacks to surrounding OWTSs. The proposed project, as designed and conditioned, will have less than significant environmental impacts and is the least environmentally damaging feasible alternative.

B. Variance for the Water Tank to Exceed a Height of 24 Feet for a Flat Roof (LIP Section 13.26.5)

VAR No. 13-042 is requested for the stair railing attached to the tank and the tank’s top of vent to reach a maximum height of 26 feet which is over the maximum allowable of 24 feet for a flat roof pursuant to LIP Section 3.6(E)(2).

1. There are special circumstances and exceptional physical characteristics applicable to the subject parcel such as the parcel’s size, existing utility facilities, deteriorated tank condition and an increased demand for water capacity. As a result, strict application of the ordinance would deprive the property of a replacement water tank necessary for the surrounding residences to enjoy the necessary water storage capacity to provide fire protection and domestic demand and would create an undue hardship on the community.

2. As designed and conditioned, the project will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone in which the property is located because the replacement tank would provide the necessary water storage capacity to provide fire protection and domestic demand in an area developed with single-family residences.

3. The variance will grant relief from a technical development standard which would otherwise preclude the replacement of the existing, deteriorated water tank with a larger water tank that can meet the water capacity and fire protection necessary for the area. The proposed variance does not grant a special privilege to the property owner in that there are engineering and design considerations that drive the design as well as existing onsite infrastructure, soil conditions and requirements that preclude sinking the tank into the ground.
4. The granting of the variance will not be contrary to or in conflict with the general purposes and intent of the zoning provisions nor contrary to or in conflict with the goals, objectives and policies of the LCP such as LIP Section 1.2(K) and LUP Policy 4.50. The provision of adequate public utilities and other facilities is one of the general purposes of the LIP; the proposed project furthers this purpose.

5. The water tank parcel is located in the Rural Residential (RR) zone which allows public utility facilities as a conditionally permitted use. CUP No. 13-015 is being processed as part of this application to permit the proposed public utility facility and includes conditions to avoid impacts to the surrounding residential uses. The proposed improvements will serve existing and planned rural residential development in the vicinity. The variance does not authorize a use not otherwise consistent with the purpose and intent of the RR zone.

6. The proposed water tank is sited in the approximate same footprint of the existing tank. The variance allows a vertical separation to the existing septic system and perched groundwater, and to increase water storage capacity for fire protection and to meet the community’s domestic demand. The Public Works Department and City geotechnical staff have approved the proposed project for conformance with LCP standards. All final recommendations of the project structural and geotechnical engineers, Building Safety Division, City geotechnical staff and City Public Works Department will be incorporated into the project.

7. The variance complies with all requirements of state and local law. Construction of the proposed improvements will comply with all building code requirements and will incorporate all recommendations from applicable City and County agencies.

C. Variance for a Solid, Eight-Foot Tall Fence within the Front Yard Setback (LIP Section 13.26.5)

VAR No. 13-043 is requested for the proposed non-view permeable, eight-foot in height fence to be located within the required front yard setback in conflict with LIP Section 3.5.3(A)(1).

1. Special circumstances and exceptional physical characteristics apply to the subject parcel, including the parcel’s small size, deteriorated tank condition and an increased demand for water capacity, which result in the front yard setback reduction and height over the maximum allowed. A water tank of this scale is not typical in a residential neighborhood, but is necessary, and these special circumstances justify the modification of development standards to help make the project be more compatible with its surroundings. The proposed fencing will help screen the potential visual impacts of the replacement tank from the neighbors’ views. As a result, strict application of the code would deprive the neighbors across the street necessary visual screening of the proposed replacement tank similar to the existing fencing that currently helps screen the existing tank.

2. As conditioned and proposed, the proposed project will not be detrimental to the public interest, safety, health or welfare, or injurious to the property or improvements in the same vicinity and zone. The potential visual impacts will be addressed with the proposed fence which will help screen the proposed tank and make it more compatible with the surrounding area.

3. The granting of the variance would allow the water tank to maintain a solid eight foot high fence similar to the fence that is currently there. The neighbors across the street voiced concerns about the potential visual impacts of the replacement tank and the proposed fencing will help visually
screen the replacement tank from neighbors’ views and Busch Drive, and will not grant a special privilege to the property owner.

4. The granting of the proposed variance will allow a replacement water tank to provide fire protection and domestic demand for the neighborhood and will not be in conflict with the general purposes and intent of the LCP.

5. Based on evidence in the record, the variance is consistent with the intent of the RR zone and would not authorize a use not otherwise conditionally permitted.

6. Based on evidence in the record, the subject site is physically suitable for the proposed variance.

7. The variance complies with all requirements of State and local law. Construction of the proposed improvements will comply with all building code requirements and will incorporate all recommendations from applicable City and County agencies.

D. Variance for the Reduction of the Required Rear Yard Setback (LIP Section 13.26.5)

VAR No. 15.035 is requested for the proposed 7-foot, 8-inch high backup generator to be located 5 feet, 3 inches from the rear lot line in conflict with LIP Section 3.6(F)(1).

1. The constrained size of the parcel limits options for siting the backup generator outside of required setbacks such that strict application of the site of construction limitation would deprive the property of a backup generator to provide water resources during power shut offs and outages to provide adequate fire protection and domestic demand to the neighborhood, and would create an undue hardship on the community.

2. Based on evidence in the record, the backup generator will only be in use during a power shut off or outage and therefore, noise is not expected to be an issue. The perimeter fencing and mature trees all around the subject parcel help visually screen the proposed 7-foot, 8-inch tall generator from surrounding neighbors and it is not expected to have a significant visual impact. As designed and conditioned, the proposed project will not be detrimental to the public interest, safety, health or welfare, or injurious to the property or improvements in the same vicinity and zone.

3. Based on evidence in the record, approval of a rear yard setback reduction will provide a safe location for a backup generator that will provide power during power shut offs and outages for the pump to continue to fill the water tank. Some of the surrounding neighbors requested the proposed generator due to a concern that water would not otherwise be pumped to the proposed tank during a power outage. The 7-foot, 8-inch tall generator will be visually screened from surrounding neighbors and it is not expected to have a significant visual impact nor to grant a special privilege to the property owner.

4. The variance will allow a backup generator and will not be contrary to or in conflict with the LCP. The benefits of having the proposed generator onsite and the ability to match the fleet model outweigh any potential adverse impacts that may result from the proposed variance. The site is surrounding by a fence and mature trees which help visually screen the proposed generator from the neighbor who shares the property line from which the proposed rear yard setback reduction is being proposed. No significant visual impacts are expected as a result of the proposed variance.
5. Based on evidence in the record, the variance is consistent with the intent of the RR zone and would not authorize a use not otherwise conditionally permitted.

6. Based on evidence in the record, the subject site is physically suitable for the proposed variance.

7. The variance complies with all requirements of State and local law. Construction of the proposed improvements will comply with all building code requirements and will incorporate all recommendations from applicable City and County agencies.

E. Variance for Impermeable Coverage in Excess of 4,500 Square Feet (LIP Section 13.26.5)

VAR No. 13-043 is requested for 9,219 square feet of impermeable coverage, which is more than the 4,500 square feet permitted pursuant to LIP Section 3.6(I).

1. Perched groundwater, poor percolation, and small lot size are special circumstances and exceptional characteristics applicable to the property such that strict application of the code would increase potential for liquefaction and does not meet the intent of improving water quality by reducing stormwater runoff as the site’s soil conditions permits minimal percolation and would deprive the owner of property rights enjoyed by others in the vicinity with the same zoning.

2. Based on evidence in the record, the variance for the proposed hardscape will improve site safety and thus, the public safety of the surrounding neighborhood which relies on the proposed water tank to provide adequate fire protection and domestic demand. As designed and conditioned, the proposed project will not be detrimental to the public interest, safety, health or welfare, or injurious to the property or improvements in the same vicinity and zone.

3. Based on evidence in the record, the granting of the proposed variance to preserve the existing hardscape is necessary to reduce potential liquefaction hazard given that the site’s soil conditions are not optimal for groundwater infiltration. Therefore, the granting of the variance will not constitute a special privilege to the applicant or property owner.

4. The proposed variance will allow existing impermeable surface to remain for the reasons described in the record and will not be contrary to or in conflict with the LCP.

5. Based on evidence in the record, the variance is consistent with the intent of the RR zone and would not authorize a use not otherwise conditionally permitted.

6. Based on evidence in the record, the subject site is physically suitable for the proposed variance.

7. The variance complies with all requirements of State and local law. Construction of the proposed improvements will comply with all building code requirements and will incorporate all recommendations from applicable City and County agencies.
F. Minor Modification for Reduction of Front Yard Setback (LIP Section 13.27)

MM No. 13-011 is requested for a 50 percent reduction of the required front yard setback, from the required 20 feet to the proposed 10 feet pursuant to LIP Section 3.6(F)(1) for the proposed tank.

1. The proposed minor modification is necessary for the installation of the replacement tank in order for the surrounding residences to enjoy the necessary water storage capacity to provide fire protection and domestic demand. The proposed water tank furthers LIP Section 1.2(K) and LUP Policy 4.50 which require adequate public facilities and improvements and for development to provide fire-flow water supply in accordance with applicable fire safety regulations. The proposed minor modification is necessary for the installation of the replacement tank in order for the surrounding residences to enjoy the necessary water storage capacity to provide fire protection and domestic demand and would create an undue hardship on the community.

2. The subject lot is not large enough to accommodate the required standard setbacks and the alternatives analysis demonstrates there are no feasible alternatives that meet the engineering requirements for the project. Based on evidence in the record, the neighborhood consists of a broad range of setbacks with several adjacent residences relatively close to the front property line and with the incorporation of the proposed solid front yard fencing within the public right-of-way, as conditioned, the proposed front yard setback reduction will not adversely affect neighborhood character.

3. As demonstrated in the record, the proposed project complies with all applicable requirements of State and local law.

G. Hazards (LIP Chapter 9)

1. According to the geotechnical reports, the subject parcel is not located within a mapped fault zone or landslides. Perched groundwater was encountered at 17 feet and wet sediment at 12.5 feet; however, potential for groundwater to rise to significantly higher levels and liquefaction was determined to be low. The geotechnical reports conclude that a shallow foundation system supported on compacted fill is suitable for the proposed water tank. The project will incorporate all recommendations contained in the geotechnical reports; as such, the proposed project, as conditioned, will not increase instability of the site or structural integrity from geologic, flood, fire or any other hazards.

2. The proposed project, as designed, conditioned, and approved by City geotechnical staff and City Public Works Department, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards.

3. The proposed project is the least environmentally damaging feasible alternative.

4. The proposed project, as designed and conditioned, will not have any significant adverse impacts on the site stability or structural integrity.

5. The proposed project, as conditioned, will not have any significant adverse impacts on site stability or structural integrity with the incorporation of all recommendations, and is the least environmentally damaging feasible alternative.
H. Conditional Use Permit for a Public Facility in a Rural Residential Zone (MMC Section 17.66.080)

1. The proposed water tank is a conditionally permitted use in the RR zoning district. The project has been conditioned to comply with all applicable provisions of the MMC.

2. The proposed replacement tank, as designed and conditioned, will have no significant adverse visual impacts and will not impair the integrity and character of the zoning district.

3. Since circa 1947, the existing water tank has been on the subject parcel. The parcel’s public facility use was first established then. The public facility use is conditionally permitted in the subject RR zoning district. The replacement tank has been designed and engineered by the WD29 for this specific site and has been approved for LCP conformance by City geotechnical staff and Public Works Department. The site is suitable for the proposed use.

4. The water tank has been sensitively designed and sited to be compatible with the surrounding rural residential, single-family land uses.

5. The site and surrounding area are located in the RR zone. The proposed use will be compatible with the existing and future land uses within the zone district and surrounding area.

6. The water facility is unmanned, but will be fully monitored and maintained by WD29 personnel. All necessary utilities will be safely designed to meet all applicable codes and will not negatively impact public health or safety, as discussed throughout this report. The subject property is surrounded by mature trees much taller than the proposed water tank to the north, south and west, and is bordered by Busch Drive to the east; therefore, no solar access impacts or public or private view impacts are expected.

7. For security purposes and to ensure a safe water supply, no public access to the proposed water tank is provided. Access is limited to authorized WD29 personnel and other emergency personnel. The facility will be enclosed with an eight foot in height fence along Busch Drive and an existing six foot in height fence along the sides and rear property lines.

8. The proposed use furthers the purpose of the General Plan to ensure adequate public infrastructure and utilities and fire protection.

9. The proposed water system will be in full compliance with all applicable State, County and City of Malibu ordinances and laws.

10. As designed and conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare, and will provide the public benefit of a potable water supply for domestic use and fire protection.

11. With the implementation of the recommendations of the project geotechnical engineer and City geotechnical staff, less than significant impacts on structural integrity from geologic or flood hazards are expected. The proposed project, as conditioned, will not increase instability of the site or structural integrity from geologic, flood, fire or any other hazards. City geotechnical staff has approved the water tank for conformance with all LCP standards, subject to the incorporation of the project geotechnical consultant’s recommendations.
I. Demolition Permit (MMC Section 17.70)

1. Conditions of approval included in Planning Commission Resolution No. 20-023 ensure that the project will not create significant adverse environmental impacts.

2. This CDP application is being processed concurrently with DP No. 20-011, and subject to approval of CDP No. 13-040.


Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CDP No. 13-040, CUP 13-015, VAR Nos. 13-042, 13-043, 15-035 and 15-036, MM No. 13-011, and DP No. 20-011, 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:

   a. Removal of the existing 300,000-gallon concrete water tank and other associated development;
   b. Installation of a new 385,000-gallon steel water tank;
   c. 9,219 square feet of impermeable coverage;
   d. Non-view permeable, security fencing eight feet in height along the front property line; and
   e. Eight-foot in height backup generator.

Discretionary Entitlements:

   f. CUP No. 13-015 is required to allow a public utility facility (water storage tank) to be constructed on a rural residential parcel;
   g. VAR No. 13-042 for the height of the water tank to exceed 24 feet in height to a height of 26 feet at the vent and railing;
   h. VAR No. 13-043 for non-view permeable fencing within the front yard setback up to eight feet in height;
   i. VAR No. 15-035 to allow a 7-foot, 8-inch in height generator to encroach into the required rear yard setback from the required 15 feet to the proposed 5 feet, 3 inches;
   j. VAR No.15-036 for impermeable coverage to exceed the maximum permitted of 4,500 square feet with the proposed 9,219 square feet;
   k. MM No. 13-011 for the water tank to provide a 50 percent reduction of the required front yard setback from the required 20 feet to the proposed 10 feet; and
1. DP No. 20-011 for the full demolition of the existing water tank and other associated development.

3. Except as specifically changed by conditions of approval, the proposed development shall be constructed in substantial conformance with the approved scope of work, as described in Condition No. 2 and depicted on plans on file with the Planning Department date stamped December 12, 2019. The proposed development shall further comply with all conditions of approval stipulated in this Resolution and Department Review Sheets attached hereto. In the event 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, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions of approval set forth herein. The applicant shall file this form with the Planning Department prior to the issuance of any development permits.

5. The applicant shall submit a complete set of plans, including the items required in Condition No. 6 to the Planning Department for consistency review and approval prior to the commencement of construction to be used by the contractor during construction.

6. This resolution, signed and notarized Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans used on the construction site.

7. The CDP shall expire if the project has not commenced within three (3) years after issuance of the permit, unless a time extension has been granted. 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.

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 Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals have been exhausted.

12. The property owner must submit payment for all outstanding fees payable to the City prior to issuance of any building permit, including grading or demolition.

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

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

Project-Specific Conditions

15. The water tank shall be painted a dark green color with a matte finish to be approved by the Planning Director.

16. A non-view permeable, eight foot high fence along the front property line must be installed and maintained to screen the proposed water tank.

17. Transportation of heavy construction equipment and/or materials, which requires the use of oversized transport vehicles on State highways will require a transportation permit from Caltrans. The applicant shall coordinate with and obtain necessary approvals from Caltrans pertaining to oversized vehicles, off-peak trip scheduling and any other applicable Caltrans approvals for construction traffic management.

18. The property owner / applicant shall obtain encroachment permits from the City of Malibu Public Works Department prior to the commencement of any work with the public right of way.

19. Prior to the issuance of any development permits, the applicant shall submit for review and approval a traffic control plan. The traffic control plan shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).
20. Two weeks prior to any construction work, the applicant shall send a construction notice to all residences within a 500-foot radius of the subject parcel. The notice shall contain the project schedule, description of work, a statement that traffic will be interrupted, and a direct contact with the contractor and a representative from the applicant. The notice shall be reviewed and approved by the Public Works Department.

21. The project must be equipped with an automatic transfer switch that would switch the power to the generator should a power outage be detected.

22. Exterior lighting must comply with the Dark Sky Ordinance and shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view.

**Building Plan Check**

**Demolition/Solid Waste**

23. 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.

24. Prior to the issuance of a building/demolition permit, an Affidavit and Certification to implement waste reduction and recycling shall be signed by the Owner or Contractor and submitted to the Environmental Sustainability Department. The Affidavit shall indicate the agreement of the applicant to divert at least 65 percent (in accordance with CalGreen) of all construction waste from the landfill.

25. Upon plan check approval of demolition plans, the applicant shall secure a demolition permit from the City. The applicant shall comply with all conditions related to demolition imposed by the Building Official.

26. No demolition permit shall be issued until building permits are approved for issuance. Demolition of the existing structure and initiation of reconstruction must take place within a six-month period. Dust control measures must be in place if construction does not commence within 30 days.

27. The project developer shall utilize licensed subcontractors and ensure that all asbestos-containing materials and lead-based paints encountered during demolition activities are removed, transported, and disposed of in full compliance with all applicable federal, state and local regulations.

28. Upon completion of demolition activities, the applicant shall request a final inspection by the Building Safety Division.
**Geology**

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

30. Final plans approved by City geotechnical staff 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.

**OWTS**

31. Prior to the issuance of a building permit, the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu’s Onsite Wastewater Treatment regulations including provisions of LIP Section 18.9 related to continued operation, maintenance and monitoring of the onsite wastewater treatment facilities and bathroom.

32. The City geotechnical staff final approval shall be submitted to the City Environmental Health Reviewer.

**Grading/Drainage/Hydrology**

33. Exported soil from a site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with the City's LIP Section 8.3. A note shall be placed on the project that addresses this condition.

34. 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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<th>Erosion Controls</th>
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<td>Preservation of Existing Vegetation</td>
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<td>Sediment Controls</td>
<td>Silt Fence</td>
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<td>Sand Bag Barrier</td>
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<td>Stabilized Construction Entrance</td>
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<td>Sanitary/Septic Waste Management</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.

35. The developer’s consulting engineer shall sign the final plans prior to the issuance of permits.

**Construction / Framing**

36. A construction staging plan shall be reviewed and approved by the Building Official prior to plan check submittal.

37. 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.

38. 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 rinsed prior to leaving the property.

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

40. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest structural member elevation. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning department for review and sign off on framing.

**Biology/Landscaping**

41. Invasive plant species, as determined by the City of Malibu, are prohibited.

42. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
43. The use of building materials treated with toxic compounds (such as copper arsenate) shall be prohibited on a landscaping plan.

**Deed Restriction**

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

**Prior to Final Sign Off**

45. Prior to a final Building inspection, the applicant shall provide a Recycling Summary Report (Summary Report) and obtain the approval from the Environmental Sustainability Department. Applicant must provide haul tickets and diversion information. The final Summary Report shall designate the specific materials that were land filled or recycled, and state the facilities where all materials were taken.

46. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. Final project sign-off shall not be issued by the Environmental Sustainability Department until the Planning Department has determined that the project complies with this CDP.

**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.** The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 15th day of June 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. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-23 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting held on the 15th day of June 2020, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

______________________________
KATHLEEN STECKO, Recording Secretary
GEOTECHNICAL REVIEW SHEET

Project Information

Date: July 7, 2014
Site Address: 5723 Busch Drive
Lot/Tract/PM #: 
Applicant/Contact: Philip Psiongco, psiongco@dpw.lacounty.gov
Contact Phone #: 626-300-4685
Fax #: 626-300-3385
Project Type: Demolish the existing 300,000 gallon water tank and construct a new 385,000 gallon water tank in the same location

Review Log #: 3516
Planning #: CDP 13-040
BPC/GPC #: 
Planner: Adrian Fernandez

Submittal Information

Consultant(s)/Report Date(s): Ninyo & Moore (Jansen, CEG 1196; Chu, GE 2096): 2-18-14 (2 reports), 4-25-12
County of Los Angeles (Steuer, RGE 2563): 5-13-03

Water tank plans prepared by the Los Angeles County Department of Public Works dated November 27, 2012.

Previous Reviews: 9-26-13, Geotechnical Review Referral Sheet dated 9-5-13

Review Findings

Coastal Development Permit Review

☐ APPROVED from a geotechnical perspective. The applicant needs to implement the following conditions during the plan check phase of the project.

☐ NOT APPROVED from a geotechnical perspective. The listed ‘Review Comments’ shall be addressed prior to approval of the new water tank.

Remarks

The referenced response report and the referenced revised geotechnical report were reviewed by the City from a geotechnical perspective. The project comprises replacing the existing 300,000 gallon concrete water tank with a 385,000 gallon steel water tank. The increased volume is necessary in order to meet the current domestic and fire protection standards. R & R grading will be performed to prepare the subgrade for the tank installation.

Review Comments:

1. Please include a note on the plans stating that a pre-construction condition survey needs to be performed on neighboring properties to document existing cracks or other distress features and existing conditions.

2. Two sets of final water tank plans must be reviewed and wet stamped and manually signed by the Project Engineering Geologist and Project Geotechnical Engineer.

3. An as-built compaction report prepared by the Project Geotechnical Consultant that documents the grading and site preparation for the water tank must be submitted to the City for project files. The report must include the results of all density tests as well as a map depicting the limits of fill, locations of all density
tests, locations and elevations of all removal bottoms, locations and elevations of all keyways and back drains, and locations and elevations of all retaining wall backdrains and outlets, as appropriate. Geologic conditions exposed during grading must be depicted on an as-built geologic map.

Please direct questions regarding this review sheet to City Geotechnical staff listed below.

**Engineering Geology Review by:**

Christopher Dean, C.E.G. #1751, Exp. 9-30-14  
Engineering Geology Reviewer (310-456-2489, x306)  
Email: cdean@malibucity.org

**Date: 7/14/14**

**Geotechnical Engineering Review by:**

Kenneth Clements, G. E. # 2010, Exp. 6-30-16  
Geotechnical Engineering Reviewer (805-563-8909)  
Email: kclements@fugro.com

**Date: July 7, 2014**

*This review sheet was prepared by City Geotechnical Staff contracted with Fugro as an agent of the City of Malibu.*

FUGRO CONSULTANTS, INC.  
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Ventura, California 93003-7778  
(805) 650-7000 (Ventura office)  
(310) 456-2489, x306 (City of Malibu)