To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: David Eng, Assistant Planner

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: July 30, 2020 Meeting date: August 10, 2020

Subject: Consolidated Coastal Development Permit for the Replacement of a Failed Onsite Wastewater Treatment System and New Seawall Improvements

RECOMMENDED ACTION: Adopt Resolution No. 20-42 (Attachment 1) authorizing the processing of a consolidated coastal development permit (CDP) by the California Coastal Commission (CCC) for the replacement of a failed onsite wastewater treatment system (OWTS) and associated development for an existing single-family residence at 19830 Pacific Coast Highway; and authorizing staff to prepare a letter addressed to the CCC to grant them the authority to process the consolidated CDP (H&E Holdings, LLC).

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item is not included in the Adopted Work Plan for Fiscal Year 2020-2021. Processing this application is part of normal staff operations.

DISCUSSION: In 2005, the City of Malibu recorded a Notice of Violation on the property for a failed OWTS. The current owners purchased the property in November 2018. Following an inspection of the property in June 2020, the Building Official determined it was necessary to immediately abate the hazardous sanitation issues. The proposed project will restore the dwelling’s habitability, and help prevent the intrusion of sea water under the dwelling and from the OWTS and leach fields. The failed OWTS is located in part seaward and in part landward of the mean high tide line (MHTL), as would the proposed replacement OWTS and associated work. As the City has jurisdiction landward of the MHTL and the CCC has jurisdiction seaward of the MHTL, the project site falls within the City and CCC jurisdictions. As the City cannot process CDPs for items seaward of the MHTL, the applicant has requested that the City Council authorize the CCC to process a
consolidated CDP to replace a failed OWTS and associated work rather than to have a dual processing situation in which CDPs would be processed separately by the City and the CCC. Should the City Council authorize the consolidated permit, the CCC would be solely responsible for the process and issuance of the project CDP, including the portion in the City. The Coastal Act does not allow a consolidation process in which the CCC yields its permitting authority to the City; it only allows for a jurisdiction to yield permitting authority to the CCC.

**Proposed Project**

The subject parcel is developed with a single-family residence with an attached two-car garage. The project will replace a failed OWTS with a new OWTS. The project as currently proposed involves underpinning of the north wall of the residence and garage in the sections that abut the new tank, distribution box, and leach field, waterproofing the existing garage and flooring in the sections that abut the proposed leachfield, and installing a new mechanical ventilation system for the garage. Additionally, the project proposes a new concrete bag slope protection wall\(^1\) below the residence to serve as a seawall for the existing dwelling, which is partially located seaward of the MHTL.

**Consolidated CDP**

Typically, the City would process an administrative CDP for replacement of a OWTS provided the work is located within its jurisdiction. However, because the project site extends seaward of the MHTL, the CCC and the California State Lands Commission (CSLC) hold jurisdiction that prevents the City from approving the seaward part of the project. Based on CSLC’s review of 1928 and 2015 MHTL surveys, approximately 475 square feet of the proposed concrete bag seawall appear to be located seaward of the 10-foot MHTL setback. The code requires that new development maintains a 10-foot setback from the most landward MHTL and encroachment into the 10-foot setback requires a variance (Figure 1).

\(^1\) Large bags filled with concrete and stacked to form a wall.
Approximately 189 square feet of the proposed concrete bag devices will be located seaward of the most landward MHTL to accommodate existing piles.

Pursuant to Section 30601.3 of the California Coastal Act, staff recommends the Council approve the submittal of a consolidated permit application to the CCC. Section 30601.3 provides as follows:

- Notwithstanding Section 30519, the Commission [California Coastal Commission] may process and act upon a consolidated coastal development permit application if both of the following criteria are satisfied:

  1. A proposed project requires a coastal development permit from both a local government with a certified local coastal program and the commission.

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2 Work depicted is located beneath the existing dwelling. Areas of work landward of the mean high tide line are within the permit jurisdiction of the City of Malibu. Areas of work seaward of the mean high tide line are within the permit jurisdiction of the California Coastal Commission.
2. The applicant, the appropriate local government and the commission, which may agree through its executive director, consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation.

b. The standard of review for a consolidated coastal development permit application submitted pursuant to subdivision (a) shall follow Chapter 3 (commencing with Section 30200), with the appropriate local coastal program used as guidance.

Per subsection (a)1 above, the City must determine that the proposed project requires a CDP from the City and the CCC. Staff has determined that is a CDP is required from both the City and CCC considering the project site spans landward and seaward of the most landward MHTL.

Per subsection (a)2 above, the City must find that public participation will not be substantially impaired by the decision to consolidate the permit review. Applications to replace failed OWTSs are traditionally approved under administrative CDP applications and rarely draw public participation. It is not expected that a consolidated action would impair public participation. The applicant has submitted to the City an application and other documents and plans for the proposed project which are available for public review at the City. Furthermore, during the CCC’s processing of the CDP application, members of the public may participate in the CCC’s decision-making process by attending public hearings or by making their views known to the CCC prior to public hearings. The CCC will mail notices of public hearings to the owners and occupants of properties within 100 feet of the proposed development and other persons and agencies with interest in the project, and require a notice of application to be posted at the development site. Prior to each meeting, CCC staff collects and analyzes information pertinent to meeting agenda items and prepares written staff reports with recommendations for CCC action. These staff reports are available for public review by contacting the South Central Coast CCC office in Ventura. The CCC meetings provide an opportunity for the Commissioners to take public testimony and to make permit, planning, and other policy decisions.

As a result, the proposed consolidated CDP to the CCC is consistent with Section 30601.3 of the California Coastal Act.

OUTCOME: If the City Council consents to a consolidated CDP, staff will prepare a letter to the CCC authorizing the applicant to submit for a consolidated CDP. If City Council denies the request, staff will require the submittal and processing of a CDP for City approval and a separate CDP to be processed by the CCC.
ATTACHMENTS:

1. Resolution No. 20-42
2. Applicant Letter Requesting Consolidated CDP
3. Project Plans
4. Applicant Correspondence to City Council
5. Public Hearing Notice
RESOLUTION NO. 20-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU AUTHORIZING THE PROCESSING OF A CONSOLIDATED COASTAL DEVELOPMENT PERMIT BY THE CALIFORNIA COASTAL COMMISSION FOR THE REPLACEMENT OF A FAILED ONSITE WASTEWATER TREATMENT SYSTEM AND ASSOCIATED DEVELOPMENT FOR AN EXISTING SINGLE-FAMILY RESIDENCE AT 19830 PACIFIC COAST HIGHWAY; AND AUTHORIZING STAFF TO PREPARE A LETTER ADDRESSED TO THE CALIFORNIA COASTAL COMMISSION TO GRANT THEM THE AUTHORITY TO PROCESS THE CONSOLIDATED COASTAL DEVELOPMENT (H&E HOLDINGS, LLC)

SECTION 1. Recitals.

A. On October 23, 2014, an application for Coastal Development Permit (CDP) No. 14-062 was submitted to the Planning Department by applicant Rob Brown, on behalf of property owner Mike Ferrone. Since November 2018, the property is owned by H&E Holdings, LLC. The project proposes replacing a failed onsite wastewater treatment system (OWTS) with a new OWTS and related construction. A portion of the subject property, between Pacific Coast Highway and the mean high tide line (MHTL), is within the City’s jurisdiction. A portion of the project is located seaward of the MHTL with the California State Lands Commission (CSLC) jurisdiction and California Coastal Commission (CCC) permitting jurisdiction.

B. In July 2020, the applicant submitted a written request for the City’s consent to have the CCC process a consolidated CDP for the entire project to be processed in a single application under the authority of the CCC.

C. On July 30, 2020, a Notice of City Council Public Hearing for the City Council’s consideration of authorization of a consolidated CDP was mailed to interested parties and all property owners and occupants within a 500-foot radius of the proposed project area.

D. On August 10, 2020, the City Council reviewed the submitted request and materials, reviewed and considered the agenda report, public testimony, and all related information.

SECTION 2. City Council Findings.

A. A consolidated CDP would avoid unnecessary and duplicative processing as a substantial portion of the project will occur within the jurisdiction of the CCC.

B. Public participation will not be substantially impaired by a consolidated review because: 1) the CCC will hold a noticed public hearing on the CDP application; and 2) the CCC will provide public notification of the public hearing when the CDP for the proposed project will be considered.

SECTION 3. Consent for Consolidated Coastal Development Permit.

Pursuant to Public Resources Code Section 30601.3, the City Council hereby consents to the processing of a consolidated CDP for the replacement of a failed OWTS and new concrete bag seawall and associated development.
SECTION 4. The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED, AND ADOPTED this 10th day of August 2020.

____________________________________
MIKKE PIERSON, Mayor

ATTEST:

____________________________________
HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEYS OFFICE
CHRISTI HOGIN, City Attorney
ATTACHMENT 2

Applicant Letter Requesting Consolidated Coastal Development Permit

Will be distributed under separate cover.
ONSITE WASTEWATER TREATMENT SYSTEM WITH LEACH FIELD DISPERAL
FOR
19830 PACIFIC COAST HIGHWAY
MALIBU, CA 90265

PREPARED BY:
EPD CONSULTANTS, INC.
20722, MAIN STREET
CARSON, CA 90745
TEL. (310) 241-6565

PREPARED FOR:
ELIZABETH BOYAJIAN
1720 E. WASHINGTON BOULEVARD
PASADENA, CA 91104

GENERAL NOTES

1. WASTE TREATMENT SYSTEM IS TO BE LOCATED AND INSTALLED, AS BASED ON THE INDUSTRY STANDARDS; AS SAGAN OR CODE (UBC) AS TO DESIGN AND CONSTRUCTION, AND THE CURRENT CRC AND ADA REQUIREMENTS. AND WITH ALL LOCAL REGULATIONS AND ORDINANCES. ALL APPLICABLE CURRENT BUILDING CODES. PLUMBING CODES. ELECTRICAL CODES, FLAMMABLE CODES, AIR CONDITIONING AND VENTILATION CODES. AS WELL AS THE CURRENT RECOMMENDATIONS OF PUBLIC HEALTH ENGINEERS AND LOCAL EARTHQUAKE ENGINEERS. THE REQUIREMENTS OF THE RELEVANT LOCAL AUTHORITY. ALL PLANS SHALL BE REVIEWED WITH SPECIAL ATTENTION TO THE DESIGN OF THE SYSTEM TO ASSURE THAT IT MEETS THE REQUIREMENTS OF THE RELEVANT LOCAL AUTHORITY. ALL PLANS SHALL BE REVIEWED WITH SPECIAL ATTENTION TO THE DESIGN OF THE SYSTEM TO ASSURE THAT IT MEETS THE REQUIREMENTS OF THE RELEVANT LOCAL AUTHORITY. ALL PLANS SHALL BE REVIEWED WITH SPECIAL ATTENTION TO THE DESIGN OF THE SYSTEM TO ASSURE THAT IT MEETS THE REQUIREMENTS OF THE RELEVANT LOCAL AUTHORITY.

2. THE ENGINEER PREPARING THESE PLANS WILL NOT BE RESPONSIBLE FOR, OR THE CONTRACTOR SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR, THE DESIGN OF THE SYSTEM TO ASSURE THAT IT MEETS THE REQUIREMENTS OF THE RELEVANT LOCAL AUTHORITY. ALL PLANS SHALL BE REVIEWED WITH SPECIAL ATTENTION TO THE DESIGN OF THE SYSTEM TO ASSURE THAT IT MEETS THE REQUIREMENTS OF THE RELEVANT LOCAL AUTHORITY. ALL PLANS SHALL BE REVIEWED WITH SPECIAL ATTENTION TO THE DESIGN OF THE SYSTEM TO ASSURE THAT IT MEETS THE REQUIREMENTS OF THE RELEVANT LOCAL AUTHORITY.

3. THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT, AT (BOX) 29, PIPING SHALL BE INSTALLED IN TRENCHES IN THE MOST UNIFORM GRADE AS IS POSSIBLE FOR THE SAKE OF CLARITY IN THESE DESIGN PLANS. AS—BUILT CONDITIONS SHALL BE MAINTAINED ON THE JOB SITE, AND SHALL BE SUBJECT TO APPROVAL OF THE ENGINEER. AS—BUILT CONDITIONS SHALL BE MAINTAINED ON THE JOB SITE, AND SHALL BE SUBJECT TO APPROVAL OF THE ENGINEER. AS—BUILT CONDITIONS SHALL BE MAINTAINED ON THE JOB SITE, AND SHALL BE SUBJECT TO APPROVAL OF THE ENGINEER.


TANKS AND EQUIPMENT SHALL BE INSTALLED IN ACCORDANCE WITH MANUFACTURER’S CONSTRUCTION SPECIFICATIONS, INSTALLATION DRAWINGS, AND IN THE PRESENCE OF ENGINEER, OWNER, OR OWNER’S AGENT. LIDS SHALL BE SECURED TO DETERMINE IF MACHINES ARE ON OR ABOVE TANK. Sheet note shall have a location of tank.

2. Tank Notes

- Tank shall be installed with a minimum of 12” of compacted sand, gravel, or other approved material, with a minimum of 24” of compacted sand, gravel, or other approved material, with a minimum of 48” of compacted sand, gravel, or other approved material. Tank shall be installed in accordance with the manufacturer’s recommendations and instructions. Tank shall be installed in accordance with the manufacturer’s recommendations and instructions.

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City of Malibu  
23825 Stuart Ranch Road  
Malibu, Ca 90265  

July 21, 2020

Re: New AWTS, Concrete Bag Bulkhead,  
Pile Repair & Storm Drain Repair  
19830 Pacific Coast Hwy  
Malibu, Ca 90265  
APN: 4449-008-007

To Whom It May Concern:

On November 1, 2018, my clients Mr. & Mrs. Joe Boyajian purchased the above-referenced property. Shortly thereafter, it came to their attention that there were outstanding items to be completed on the proposed new AWTS, bulkhead, pile repair and storm drain repair. There was a temporary tank on the front deck of the structure. They were led to believe by the sellers’ Estate they had approvals and could move forward with the construction. They were new to our community and had no knowledge of the City requirements or process.

My clients had received limited information from the seller’s Estate regarding the property. After their review and with what they received, they reached out to the professionals who had worked on the project in the past. They found that the previous owner had not completed the review and approval process. Mr. Ferrone had put the process on hold with the design consultants. Mr. David Weiss (David Weiss and Associates) provided the coastal engineering design, bulkhead and shoring while Kevin Poffenbarger (EPD) provided the design of the system.

Mr & Mrs. Boyajian reached out to those consultants to attempt to complete the reviews & approvals. I was brought in to the project to provide assistance at the end of 2018. At the beginning of 2019, I began working with the two consultants and the City of Malibu and Waterworks 29 to make sure the project design was current and was in conformance with the previous submittals and the compliance with the regulations.
We discussed and reviewed any possible options for the bulkhead design (the only portion in State Lands area). After intensive meetings and discussions with Mr. Weiss it was determined that the proposed project is the best environmental alternative based on the underlying physical reality of the beach and parcel and that there were no feasible alternatives. We concur that had there been any viable other ways to proceed we would have modified the design. We also did not want to impact any Coastal resources which would be part of an alternative if one had existed. The City staff critically looks at all submittals and this was no different. To propose any other option who have detrimental impacts on coastal resources even if they could physical be accomplished. The proposed system is on the most landward side of the parcel and the design and location of the bulkhead is to protect that system.

To continue, I also reached out to Kelly Connor of the State Lands Commission. Through numerous conversations and correspondence, it was determined that only a “portion” of the bulkhead as proposed encroaches into the State Lands area and has been approved by the SLC and he sent me a copy of the map (attached hereto). The approval of the bulkhead location had been approved under previous property ownership but the lease fees to the State had never been paid.

After explaining this to the new owners, they immediately paid the past due to fees to the State. I was in process to convert the lease title. The property is bound by the lease. Attached as an exhibit is an email from Kelly Connor of SLC dated of Feb 2020 (email SLC attached) clearing indicating construction could begin from their standpoint. I was waiting for further instruction of Kelly Connor (SLC) went Covid 19 struck and will be prepared to complete the name change upon his request and instruction.

To address the current ownership concerns, based on what they found out after our investigation and subsequent reviews and approvals, they have provided and our paying for a maintenance and pumping schedule and inspection of the tank which had not been done under previous ownership. The temporary tank sits on the landward side deck near the entry to the residence.

Since the full review and approvals by the City, the new owners have also completed an Operating Permit Application, the City has required (and has it its’ custody) all necessary signed documents by the current owners and check for fees for recording of the Maintenance Covenant and Future Field Expansion Covenant. They had previously recorded a Compliance Agreement.

After the delays which emanated under previous ownership, I met with our engineers at the site to review the current circumstances impacting the health and safety of the site and residence. I contacted the City of Malibu Department of Building and Safety who inspected the site and agreed that there is an
July 21, 2020

New AWTS, Concrete Bag Bulkhead,
Pile Repair & Storm Drain Repair
19830 Pacific Coast Hwy
Malibu, Ca 90265
APN: 4449-008-007

immediate and imperative need for the installation of the approved system, bulkhead and all repairs from a Health and Safety standpoint. There is no way to bifurcate the bulkhead installation (SLC approved location) from the installation of the new septic system.

Ownership and their consultants have worked aggressively and diligently within less than one and a half years to review, discuss and complete the process to provide the all necessary work for permit issuance on the proposed development so the owners can legally and comfortably use their residence. Their only wish since the status discovery is to quickly correct any issues, comply with with the applicable Codes and Regulations so they can safely and happily occupy the home they are occupying and paying for.

Sincerely,

Marissa M. Coughlan Consultants, Inc.

[Signature]

Marissa M. Coughlan

Attachment: 2
Cc: David C. Weiss
  Kevin Poffenbarger (EPD
  Mark Barrett (Geoconcepts)
Hi Marissa,

I am glad to see that the Boyajians have paid the rent, however, we will need to get a new lease under their name. To do this, we require the Boyajian's to submit an application. Typically, I would say we could do an assignment of the existing lease, but the Ferrone Trustees (previous owners) are unlikely to respond to sign it over. Hence, a new lease would most likely be the best and easiest way forward. I am still waiting on Brian to wrap up the execution of the existing lease, as I hope that this could be proof enough for the City to issue the required permits without further delay. Then the application for the new lease could be worked on concurrently with the project.

Thank you,
Kelly

ATTACHMENT 1
This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.
NOTICE OF PUBLIC HEARING  
CITY OF MALIBU  
CITY COUNCIL

The Malibu City Council will hold a public hearing on **MONDAY, August 10, 2020, at 6:30 p.m.** on the project identified below. **This meeting will be held via teleconference only in order to reduce the risk of spreading COVID-19 and pursuant to the Governor’s Executive Orders N-25-20 and N-29-20 and the County of Los Angeles Public Health Officer’s Safer at Home Order (revised July 14, 2020).** All votes taken during this teleconference meeting will be by roll call vote, and the vote will be publicly reported.

**How to View the Meeting:** No physical location from which members of the public may observe the meeting and offer public comment will be provided. Please view the meeting, which will be live streamed at [https://malibucity.org/video](https://malibucity.org/video) and [https://malibucity.org/VirtualMeeting](https://malibucity.org/VirtualMeeting).

**How to Participate Before the Meeting:** Members of the public are encouraged to submit email correspondence to citycouncil@malibucity.org before the meeting begins.

**How To Participate During The Meeting:** Members of the public may also speak during the meeting through the Zoom application. You must first sign up to speak before the item you would like to speak on has been called by the Mayor and then you must be present in the Zoom conference to be recognized.

Please visit [https://malibucity.org/VirtualMeeting](https://malibucity.org/VirtualMeeting) and follow the directions for signing up to speak and downloading the Zoom application.

**REQUEST TO CONSOLIDATE COASTAL DEVELOPMENT PERMIT** – The Council will consider adopting a resolution to consent to the processing of a consolidated coastal development permit by the California Coastal Commission for the replacement of a failed onsite wastewater treatment system and associated development for an existing single-family residence

| Location:   | 19830 Pacific Coast Highway |
| APN:        | 4449-008-007               |
| Zoning:     | Single-Family Medium Density |
| Applicant:  | Marissa M. Coughlan Consultants, Inc. |
| Owner:      | H and E Holdings, LLC      |
| Application Filed: | October 23, 2014 |
| Case Planner: | David Eng, Assistant Planner |
|             | (310) 456-2489, extension 372 |
|             | deng@malibucity.org        |

The applicant submitted a written request for the City’s consent to have the California Coastal Commission process a consolidated coastal development permit for the entire project to be processed in a single application under the authority of the California Coastal Commission. A portion of the subject property, between Pacific Coast Highway and the mean high tide line is within the City’s jurisdiction. A portion of the project is located seaward of the mean high tide line with the California State Lands Commission jurisdiction and California Coastal Commission permitting jurisdiction.
A written staff report will be available at or before the hearing for the projects. All persons wishing to address the Council regarding these matters will be afforded an opportunity in accordance with the Council’s procedures.

Copies of all related documents can be reviewed by any interested person by contacting the Case Planner during regular business hours. Oral and written comments may be presented to the City Council at any time prior to the beginning of the public hearing.

IF YOU CHALLENGE THE CITY’S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

Bonnie Blue, Planning Director

Publish Date: July 30, 2020