



Council Agenda Report

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

Prepared by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: June 30, 2022

Meeting date: July 11, 2022

Subject: Woolsey Fire Rebuild Option 4

RECOMMENDED ACTION: 1) Receive information regarding the history of the processing of fire rebuild applications and comments from the California Coastal Commission; 2) Review the options on how to process applications for fire affected properties that include new development and/or modifications/additions over a 10 percent of the fire damaged structure; and 3) Provide direction to staff.

FISCAL IMPACT: There is not fiscal impact associated with the recommended action.

WORK PLAN: This item was included as item 2.a. in the Adopted Work Plan for Fiscal Year 2021-2022.

ISSUE SUMMARY: Local California Coastal Commission (CCC) staff have advised City staff that they do not agree that the process locally known as “Option 4” complies with the City’s Local Coastal Program Implementation Plan (LIP). This process has been listed on the City’s website since March 31, 2019¹ as an option for homeowners who own a property that was damaged or destroyed in the Woolsey Fire to apply to rebuild. Currently, under Option 4, an applicant would apply for Planning Verification (PV) to allow for the replacement of the previously existing single-family residence (allows up to a 10 percent allowable increase in size) and once that application is approved, the property owner can apply for a subsequent application to allow for additional development, such as an addition, up to 50 percent of the pre-fire structure’s size, including for a larger water tank, landscaping, new pool or other accessory development that could would be exempt from the requirement of a Coastal Development Permit had

¹ Originally this option was presented and posted as Option 3, on August 15, 2019, this option was reclassified as Option 4 to provide more detail on rebuild scenarios as the result of questions received by staff.

the main residence not been destroyed by the disaster. This report will describe the history of Option 4, the dispute in interpretation, the impact of eliminating Option 4, and the options available to the City.

HISTORY: Immediately following the Woolsey Fire, the City was approached by a significant number of fire victims who sought help from the City in navigating the permitting process in the most time and cost efficient manner possible. Seeking to assist these victims of the Woolsey Fire, staff evaluated the existing City codes, including the LCP, MMC, building codes, and fire department requirements as they applied to fire rebuilds. At the November 20, 2018, Special City Council meeting, the City Attorney updated the Council and residents about staff's efforts to address the concerns raised by the public on fire rebuilds. This update included information about temporary housing, securing fire affected properties, and the rebuild process. City Staff conferred with Coastal Commission staff regarding ways to expedite the rebuild process for property owners and on December 4, 2018, presented an item to the City Council proposing a Zoning Text Amendment (ZTA) as well as a Local Coastal Program Amendment (LCPA) to implement changes to the Local Coastal Program (LCP) and Malibu Municipal Code (MMC) to streamline and expedite the rebuild process and related issues including the treatment of wastewater treatment systems and provisions for temporary housing. At that meeting staff was directed to process the proposed ZTA and LCPA.

At the January 10, 2019, Special Planning Commission meeting, staff presented a draft LCPA and ZTA. To reconcile the difference between the rebuilding exemption in the LCP and MMC, a ZTA was proposed that would amend the MMC Chapter 17.60.020 to address the following three areas:

- Clarification on how long a property is eligible for disaster rebuild status;
- Creation of an extension process, and
- Permit rebuild plus 10 percent provision for the Woolsey Fire affected properties, similar to that which was available for the 1993 Topanga Fire.

The first portion of the proposed ZTA provided more clarity to the section which requires the property owner to obtain a planning verification for reconstruction of a nonconforming structure in the same general location and at the same height as existed before the destruction and initiate an application for the reconstruction within two years of the date of damage or destruction. The proposed amendment indicated that in addition to obtaining a planning verification, a building permit must be obtained within four years from the date of damage or destruction and the building permit must not have expired.

In addition, the ZTA also addressed the concern related to extensions. A request for an extension of time beyond four years would now be considered by the Planning Commission. Lastly the ZTA extended the 10 percent addition beyond just homes that

were destroyed in the 1993 Topanga fire. The ZTA also included that an existing structure less than 18 feet in height may be increased to 18 feet in height even if the height increase exceeds 10 percent of the existing structure height.

In addition to the above provisions, code provisions to allow for temporary housing to address the needs of those displaced by the fire and an LCPA to allow the City to process de minimis waivers were discussed at the meeting. The goal of the LCPA was to address concerns regarding the replacement and upgrade of existing onsite wastewater treatment systems (OWTS) and fire access. OWTS and fire access requirements were major concerns expressed by the public because in some instances the required changes to meet the current building and fire code exceeded the in-kind replacement criteria of the LCP.

The Planning Commission recommendations were supported by a unanimous vote and the ZTA and LCPA were then presented to the City Council at its February 11, 2019 meeting. At that meeting, the Council discussed not only the proposed ZTA and LCPA but also discussed the subject of allowing additional development while the replacement structure was under construction. The City Council approved both the ZTA and LCPA and conducted a second reading of Ordinance No. 445 at its February 25, 2019 meeting.

On March 7, 2019, the California Coastal Commission (CCC) held a public hearing and certified the City's LCPA. Once the LCPA was certified, staff publicly noticed two public workshops to inform the public about the rebuild process. One of the major concerns voiced by members of the public was the lack of information and clarity about how to navigate the rebuild process. Prior to the workshops taking place, staff prepared fire rebuild specific forms, applications, and flow charts. The public workshops were noticed for March 28 and 31, 2019. The workshop that took place on March 28, 2019, targeted those assisting homeowners going through the rebuild process such as builders and architects. The second workshop was noticed as a Special City Council meeting and was intended for homeowners. The California Coastal Commission was included as a noticed party for that workshop; however, they provided no comment at that time. Staff has no evidence that they were in attendance.

After the public workshops, City staff continued to provide details on rebuilds to both the City Council and the Planning Commission at the beginning of each regular meeting. The reason for the ongoing reporting was to address the concerns that rebuilds would face too much red tape and would be held up during the review process. The reporting that was conducted by staff provided information on the total number of applications approved and pending approval as well information on building permit process. As part of that reporting, staff included information on not only the total number of applications reviewed, but also information on each of the different rebuild options that had been pursued by property owners. In addition, that information was also published on the

City's website. In addition, discussion also took place on this topic during Council meetings that addressed the Fire Fee Waiver Program.

DISCUSSION: Under the City's LCP, which implements the Coastal Act in the City, a coastal development permit must be obtained for any development in the City—unless the development is of a type that is exempt under the City's LCP. Pursuant to LIP section 13.4.6(A)[Exemption for Structures Destroyed by Natural Disaster], the replacement of a structure destroyed by natural disaster is exempt from the requirement to obtain a CDP so long as it does not exceed 110% of the size of the prior structure. Under Option 4, once a rebuild project obtained a planning verification (PV) to rebuild a home that was 110% or less the size of the prior structure, an application was then accepted for additional development. City staff reviewed the proposed additional scope of work to determine if a CDP was required or would the work qualify for an exemption from the requirement of a CDP pursuant to LIP section 13.4.1(A)[Exemption for Improvements to Single-Family Residences] had the structure not been destroyed. This exemption applies to "improvements to existing single-family residences."

On May 25, 2022, in response to an email sent by a member of the public, a CCC analyst emailed City staff (Attachment 1) stating that it was their position that Option 4 did not properly apply the exemptions in the City's LIP. In this email, and in a follow-up meeting, CCC staff informed the City that a fire rebuild project must be substantially complete before the exemption for improvements to existing single-family residences could be applied to an application to add to the project beyond 110% of the size of the home that was destroyed. Coastal Commission staff opined that while the term "existing" is not defined in the LIP, a project would either need to have a certificate of occupancy, or be close to obtaining one, to qualify as an "existing single-family residence."

The prior Planning Director implemented a practice that considered a fire rebuild project that had obtained a PV for a like-for-like plus 10% home to be "existing" under the LCP. This meant that a property owner could apply, immediately after obtaining a PV, for a APR to increase the size of the home up 50 percent its pre-fire size, add accessory development such as pools, spas, fencing, landscaping, and water tanks to meet Los Angeles County Fire Department requirements, and that application would be evaluated as if the home existed (pre-fire) and if qualified an exemption from the requirement to obtain a CDP pursuant to the exemption for improvements to existing single-family residences was granted.

This practice resulted from discussions that took place at the February 11, 2019, City Council meeting which considered the draft LCPA and ZTA. At that meeting, members of the public asked the Council for options that would allow fire-damaged property owners to complete additions, add accessory structures, or add a basement without taking on the time and expense required for a CDP had that work been previously exempt from the requirement of a CDP. During Council deliberations, the Council not only discussed the

proposed LCPA and ZTA, but also the request for the ability to complete additional development without a CDP. The Council adopted the LCPA and ZTA at this meeting, and also provided comments to staff and the former Planning Director to seek and evaluate ways to address the concerns raised by the fire-damaged property owners.

After the Council meeting, the Planning Director researched whether the exemption for improvements to existing single-family residences could be used to provide relief to the owners of fire-damaged properties. The initial guidance provided by CCC staff at the time was that multiple exemptions to the requirement to obtain a CDP could not be processed as one application, but that they could be processed sequentially. While preferred to the time and expense required for a CDP, this was not an optimal solution because fire victims would have to design two separate projects: a complete set of drawings for the house plus 10 percent additional and a separate set of drawings for an up to 50 percent addition, or swimming pool, landscape or accessory structure. This process required fire affected property owners to first file and receive approval for their PV application to replace the destroyed structure (plus up to 10 percent) and then apply for an APR for the addition/accessory structure.

The improvements beyond the initial house (plus up to 10 percent) were processed with an APR application and were required to comply with present standards, while the replacement house was allowed to maintain any legal, non-conformities. The APR application was evaluated as if the fire rebuild existed and site conditions such as Environmentally Sensitive Habitat Areas (ESHA) were evaluated in their pre-Woolsey fire state².

The primary goal of the Option 4 process was to treat fire victims equably and not limit their ability to process additional development because their home was destroyed by a wildfire. Had the property owner applied for these types of additions/accessory structures before their home was destroyed, they would only have to obtain an APR³, not a CDP: the same process required by Option 4. Requiring a CDP would effectively penalize these fire victims and add significant cost and expense, without any benefit to the City or negative impact to the environment—the additions/accessory structures were still subject to the same limitations and constraints whether approved as a CDP or APR. The only difference is that CDPs must be approved by the Planning Commission, and APRs can be approved by the Planning Director.

The Planning Department presented rebuild options, including Option 4, to the public at two publicly noticed workshops where both Councilmembers and Planning Commissioners were invited to attend. At those workshops, the various rebuild

² The City's Biologist's practice is to assume that ESHA affected by fire will rebound and is not eliminated.

³ Option 4 also allowed property owners who already had applications in for an addition, before the Woolsey fire destroyed their home, to obtain an approval for that addition without starting over and needing a CDP.

applications and processing outlines were presented. Option 4 was also posted on the City's website, and discussed at both City Council and Planning Commission meetings.

Supporting the former Planning Director's determination is the fact that replacement structures are not considered to be new development under the City's LIP. Further, the impacts on development from the replacement home are already known because a fully constructed home formerly existed in the same location (otherwise the fire rebuild exemption would not apply). As a result, there will be no negative impacts on coastal resources due to the processing of an APR pursuant to Option 4.

CCC staff in fact acknowledges that the exact same project approved pursuant to Option 4 could be accomplished without a CDP, if the PV project obtains a certificate of occupancy before the APR is approved. The process advocated by CCC staff thus does not provide further review of a proposed project—unless an applicant voluntarily chooses to apply for a CDP instead of obtaining a PV, building the PV project, and then applying for the APR. The impact of CCC staff's approach will be to add time and expense to applicants, and to prolong construction because the PV house will have to be built, and then once an APR is obtained it will have to recommence (which may include demo of part of the structure approved by the PV).

CURRENT STATUS OF APPLICATIONS: As a result of the CCC communications on this matter, City staff has put all pending Option 4 projects on hold with the exception of those processing subsequent CDP applications. As previously discussed, City staff met with CCC staff on June 22, 2022, to better understand their concerns. The CCC staff indicated that they believe the Coastal Act requires the structure to be physically in existence in order for an exemption pursuant to LIP Section 13.4.1 to be issued. CCC staff did not provide a clear definition of when a structure is considered existing (stating only that there can be no debate when a certificate of occupancy is issued or when a project is near completion and awaiting final inspection).

The current hold on processing these types of projects affects approximately 31 applications for additions to destroyed homes and 30 applications for accessory development, for a total of 61 affected property owners. Option 4 was applied to the following types of applications:

- APRs that were under review and submitted prior to the fire and the home was now destroyed;
- Additions to homes (in some cases these were unpermitted additions that were constructed prior to the fire);
- Garages;
- Swimming pools and spas;
- Accessory buildings such as sheds or office/studio spaces;

- Landscaping;
- Fences and walls;
- Hardscaping;
- Decks;
- Fire Department required water tanks larger than 10 percent the size of the original tank;
- Solar power systems that do not meet the State exemption criteria;
- Basements; and
- Generators.

ALTERNATIVES: CCC staff has indicated it is unlikely to take action against projects that have already been approved pursuant to Option 4, but indicated that if the City does not bring an end to the process it may take action. In light of the current situation, staff has evaluated potential options for action by the City Council and seeks direction from the Council. These options include the following.

A. Require CDPs for all Option 4 applications currently pending, or received in the future:

Any development beyond the allowance of LIP Section 13.4.6 (i.e. 110% of prior home) will require a CDP until the PV project is built. Additional fees would be required from these applicants, but the Council could consider offering to waive or reduce such fees. It should also be noted that staff has observed in the majority of CDP's submitted for fire affected properties that when a CDP application is required, property owners tend to increase the scope of work and the resulting project does not resemble pre-fire development.

B. Process the Pending Option 4 Applications, but require a CDP for all future applications:

Staff would process all applications that were submitted by May 25, 2022, but no further applications will be accepted for Option 4 projects unless a CDP is processed. This would comport to the process used when a law is changed. Applicants would face some risk that their project, if approved, could be challenged. They would have to make an individual decision whether to proceed or instead process a CDP. If a court agrees with the CCC staff the approval could be overturned.

C. Process the Pending Option 4 Applications, allow additional applications to be received and processed pursuant to Option 4 for a short period of time (e.g. 1 month), and then require a CDP for future applications:

When a law is changed an amortization period is often provided before the new law comes into effect. While no new law has been implemented, this would be a change in the City's application of existing law. This would allow owners of fire-damaged properties one final opportunity to use Option 4 but would pose a greater risk of legal challenge.

D. Resume the Processing of Option 4 Applications with no termination date:

This option would carry the most significant risk of challenge and legal attention from the CCC. It would require applicants to take on significant legal risk. While fire rebuild projects are manifestly different from others, CCC staff's opinion may be given deference from a court. The CCC will likely argue that since the fire rebuild project does not physically exist at the time the APR is approved it does not qualify for the exemption for existing single family homes.

E. Process a Local Coastal Program Amendment:

CCC staff expressed a willingness to work with the City to process a LCPA that would allow for additional work beyond what is currently exempt for fire rebuilds through a de minimis waiver type approval. CCC staff acknowledged that some of the pending projects do not raise coastal resource concerns for them and were open to considering expanding the list for which a waiver could be issued. A LCPA would take time and would likely not be broad enough to include all projects currently eligible for Option 4, but it would provide legal certainty to applicants. This option can be pursued in conjunction with any of the above options.

ATTACHMENTS:

1. CCC staff email dated May 25, 2022
2. City of Malibu letter to CCC staff dated June 13, 2022
3. City Rebuild Options Handout Prior to May 25, 2022

From: [Patricia Salazar](#)
To: [Patricia Salazar](#)
Subject: FW: Second exemptions against codes for Malibu fire rebuilds above 10%.
Date: Thursday, June 2, 2022 6:05:28 PM
Importance: High

From: Gonzalez, Denise@Coastal <Denise.Gonzalez@coastal.ca.gov>
Sent: Wednesday, May 25, 2022 9:22 AM
To: Richard Mollica <rmollica@malibucity.org>
Cc: Christensen, Deanna@Coastal <Deanna.Christensen@coastal.ca.gov>; Carey, Barbara@Coastal <Barbara.Carey@coastal.ca.gov>; Hudson, Steve@Coastal <Steve.Hudson@coastal.ca.gov>; Segura, Tina@Coastal <tina.segura@coastal.ca.gov>
Subject: FW: Second exemptions against codes for Malibu fire rebuilds above 10%.

Hi Richard –

After investigating Ms. Drummond’s inquiry below, we’ve determined that the fire rebuild development Option No. 4 (PV PLUS APR OR APR WITH SPR FOR PROJECTS ADDING MORE THAN 10% OUTSIDE OF THE APPEAL ZONE) listed on the City’s website [here](#), is not consistent with the City’s LCP exemption regulations, nor the Coastal Act. A property owner cannot apply for a fire rebuild exemption to replace the existing residence plus 10% and concurrently apply for a second exemption for an addition to an existing single-family residence because the residence is not yet built and not considered to be physically “existing” at the time of exemption approval.

We ask that the City delete fire rebuild development option no. 4 from the City’s “Malibu Rebuild” website and any fire rebuild forms and handouts. Please let me know if the City has any questions or would like to set up a time to discuss this matter further.

Thanks,
Denise

Denise Gonzalez
Coastal Program Analyst
California Coastal Commission
South Central Coast District
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Denise.Gonzalez@coastal.ca.gov | (805) 585-1800

From: Jo Drummond [REDACTED]
Sent: Wednesday, May 11, 2022 3:11 PM
To: Gonzalez, Denise@Coastal <Denise.Gonzalez@coastal.ca.gov>

Cc: Bruce Silverstein <BSilverstein@malibucity.org>; Richard Mollica <rmollica@malibucity.org>; K Hill <kraig.malibu@gmail.com>; John Mazza [REDACTED]; Steve McClary <smcclary@malibucity.org>; Segura, Tina@Coastal <tina.segura@coastal.ca.gov>; Planning Commission <planningcommission@malibucity.org>; Rebecca Evans <revans@malibucity.org>; Jefferson Wagner [REDACTED]; Patricia Salazar <psalazar@malibucity.org>; Patt Healy [REDACTED]; [REDACTED]; Jae Flora Katz [REDACTED]; Jennifer deNicola <jennifern@malibucity.org>; Bill Sampson [REDACTED]; sam hall kaplan [REDACTED]

Subject: Fwd: Second exemptions against codes for Malibu fire rebuilds above 10%.

Hi Denise,

I was just given your contact info from Joyce Parker-Bozylinski who said she worked with you regarding the fire rebuild codes for Malibu back in 2019 after they were approved by the city council.

It seems that there is one option in the fire rebuild model that does not follow the codes approved. It is fire rebuild option #4 where after one first applies for the like for like plus 10% CDP exemption they can apparently apply for another CDP exemption for anything above 10% up to 50% larger if not in the appeal zone. This actual interpretation of the code never came before council or your office I believe so we are checking the validity of this code and if it can still be applied for any fire rebuilds above 10% larger in size.

The strong argument against this application is that if there is no structure there after the first exemption how can anything larger be applied for? The first exempted structure would have to be built before applying for this next exemption.

We are mainly concerned with developers coming in and purchasing fire burn lots and developing them up to 60% larger without any CDP scrutiny and application.

Please advise and I will forward my previous correspondence to Tina Segura from your office who was originally going to research this. You can likely answer these questions more quickly and thoroughly.

More info below...

Thanks very much, Jo Drummond

Begin forwarded message:

From: Bruce Silverstein <bruce@brucesilverstein.org>
Date: April 19, 2022 at 8:32:28 PM PDT
To: Richard Mollica <rmollica@malibucity.org>
Cc: Jo Drummond [REDACTED], Steve McClary <smcclary@malibucity.org>, Peggy Hall Kaplan [REDACTED], Jae Flo [REDACTED], John Mazza [REDACTED]

[REDACTED] >, Kraig Hill <kraig.malibu@gmail.com>, Jennifer deNicola [REDACTED] >, Sam Hall Kaplan [REDACTED], Planning Commission <planningcommission@malibucity.org>, Rebecca Evans <revans@malibucity.org>, Jefferson Wagner [REDACTED], [REDACTED], [REDACTED] Patt Healy [REDACTED] Bill Sampson [REDACTED], "Tina@Coastal Segura" <Tina.Segura@coastal.ca.gov>, Patricia Salazar <psalazar@malibucity.org>

Subject: Re: Second exemptions against codes for Malibu fire rebuilds above 10%.

Richard:

Thanks for sticking with this and working with Jo and others to understand the process. It is commendable that you have done so.

I think the basement situation is a perfect example of the impropriety of using LIP 13.4.1 for a "not-yet-existing" single family residence. As I understand things, the rationale for considering an unbuilt rebuild to be "existing" for purposes of LIP 13.4.1 (despite the fact that the unbuilt structure plainly is not "existing") was to put the property owner in the same position as it would have been if the house had not been destroyed. Leaving aside the fact that there is no reason to apply that rationale to the purchaser of lot or even an unfinished rebuild who did not lose their home in the fire, the fact is that nobody who has a house that was not destroyed is in a position to add a basement to their "existing" single-family residence. The same may be true of adding a second floor and certain other so-called improvements -- depending on the structural circumstances of the existing property.

Additionally, I do not see how any type of increase in the

square footage of an existing structure so long as it does not exceed 49.9 percent of the existing square footage is an "improvement" within the meaning of LIP 13.4.1, and I would like to see a City Council approved interpretation of LIP 13.4.1 to that effect -- as contrasted with "that was a decision of the former Planning Director" (which I hear so often that it is reminiscent of "I was just following orders." As I see it, there are additions of substantially less than 49.9 percent that are not "improvements" and there are additions that exceed 49.9 percent that are "improvements." The test should be a qualitative one, and not a quantitative one -- or, at least, should include a qualitative component.

Consider, for example, a 1,000 square foot single family residence where the owner wants to build a 400 square foot pool (which I understand to be quite average), a 100 square cabana, and a 25 square foot gazebo. Maybe the owner also wants to add a 50 square foot sunroom to the house. To me, it could reasonably be said that the pool, cabana, gazebo qualify for authorization pursuant to LIP 13.4.1 despite the fact that the combined square footage is 57.5 percent of the "existing" single family residence.

By contrast, consider a 3,500 square foot ranch house, to which the owner wants to add a 1,749 square foot second floor. In that case, I can see a reasonable argument that the second floor is much more than a mere "improvement" and should require a CDP.

Either way, I don't see how an empty lot, or even a partially rebuild house, qualifies as an "existing" single family residence -- especially when that same interpretation would need to be applied to a brand new house that is not a rebuild. Can someone who buys a lot that has been empty for the past 100 years obtain a CDP to build a 3,500 square foot ranch house, and then immediately apply for an administrative approval for a 1,749 square foot second floor without going through the Planning Commission process? If so, something is seriously wrong with that scenario.

As you know, many months ago, I requested data about the use of the "2-step" process for evading the CDP process to obtain a new house that is up to 150% or more of the size of a burned structure (i.e., first 110 percent and then up to another 49% of the 110% "planned" structure). I also would like to see any written record of the City Council's approval of the stratagem -- or even a written record of the Coastal Commission approving the use of LIP 13.4.1 for substantial additions to an unbuilt structure.

I know you are extremely busy with many matters -- which is why I have not pressed for the information I have requested. At some point, however, this issue will need to be brought to a head and formally resolved one way or the other.

Relatedly, I am hopeful that we will find room in the coming budget to get you more staff to lighten your load.

Stay Well,

Bruce

On Tue, Apr 19, 2022 at 7:35 PM Richard Mollica <rmollica@malibucity.org> wrote:

Hi Jo,

As I mentioned previously, it is my understanding that the previous Planning Director had meetings with the Coastal Commission to discuss the processing of the City's ZTA, LCPA, and the general processing of applications. The result of those meetings formed the policy that was publicly presented and published on the City's webpage in March of 2019 after the February meetings where this item was discussed. The March workshops were publicly noticed meetings so that Council could be present.

With regards to Option 4, yes at the time we only had four options and not five. As the rebuild process got underway, staff received questions about properties that were located in the appeal and had burned. This included both non-beachfront and beachfront properties. The purpose of option 4 was to provide additional clarity to option 3 based on LIP Section 13.4.1(B)(4) because of the homes that burned within the appeal zone. Option 4 and Option 3 both fall under LIP Section 13.4.1 which is what the City has been applying to Administrative Plan Review applications since November of 2004. In retrospect we could have created an option 3a and 3b since they both fall in LIP Section 13.4.1 and left Option 4 as the CDP route.

13.4.1 Exemption for Improvements to Existing Single-Family Residences

A. Improvements to existing single-family residences except as noted below in (B). For purposes of this section, the terms "Improvements to existing single-family residences" includes all fixtures and structures directly attached to the residence and those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units.

B. The exemption in (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within fifty (50) feet of the edge of a coastal bluff.
2. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within fifty (50) feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas.
3. The expansion or construction of water wells or septic systems.
4. On property not included in subsection (B)(1) above that is located between the sea and the first public road paralleling the sea or within three hundred (300) feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the city or Coastal Commission, improvement that would result in an increase of ten (10) percent or more of internal floor area of an existing structure or an additional improvement of ten (10) percent or less where an improvement to the structure had previously been undertaken pursuant to this section or [Public Resources Code](#) section 30610(a), increase in height by more than ten (10) percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

In regards to basements and Commissioner Jennings's comments, if the basement square footage did not exceed 10 percent of the pre-fire house it can be included in the PV. However, many residents wanted basements larger than 10 percent allowance and therefore they were subsequently applied for under a separate permit. I believe that Commissioner Jennings's point was that it was not possible to build the house and then construct a basement.

Hope that helps and have a great evening,

Richard

Richard Mollica, AICP
Planning Director
City of Malibu
310-456-2489 Ext. 346

From: Jo Drummond [REDACTED]
Sent: Tuesday, April 19, 2022 6:16 PM
To: Steve McClary <SMcClary@malibucity.org>; Richard Mollica <rmollica@malibucity.org>
Cc: Peggy Hall Kaplan [REDACTED]; Jae Flo [REDACTED]; John Mazza [REDACTED]; Bruce Silverstein [REDACTED]; Kraig Hill [REDACTED]; Jennifer deNicola [REDACTED]; Sam Hall Kaplan [REDACTED]; Planning Commission <planningcommission@malibucity.org>; Rebecca Evans <revans@malibucity.org>; Jefferson Wagner [REDACTED]; [REDACTED]; Patt Healy [REDACTED]; Bill Sampson [REDACTED];

Tina@Coastal Segura <Tina.Segura@coastal.ca.gov>; Patricia Salazar <psalazar@malibucity.org>

Subject: Re: Second exemptions against codes for Malibu fire rebuilds above 10%.

Hi Richard,

To follow up on your response to my public comment during the planning commission meeting yesterday I wanted to ask you when and how did your dept “vet” the fire rebuild exemptions over 10% up to 50% with the coastal commission, planning commission and/or city council? Again, I heard basements, temporary mobile homes and temporary power discussed but never formally heard a proposal for fire rebuild option #4 in the amendments? This was never discussed or allowed public comment.

I understand Jeff Jennings comment was made to say basements cannot be completed after a structure is already there. But the coastal commission was given the option for basements to be a part of the first exemption and wouldn't allow it but I assume are allowing it with the second exemption up to 1000 sq ft. Yes no structure is required should a basement be added as it's the first thing that is built so this does make sense. But for an addition to be added onto a structure that is not there is impossible.

Please advise, thanks very much, Jo

On Apr 13, 2022, at 5:02 PM, Jo Drummond <[REDACTED]> wrote:

Hi Steve!

Also I received the following information from one of our planning commissioners:

“Here's a specific example that highlights the differential interpretation of what constitutes an *existing* house. Last year, the Planning Commission heard an application at 24266 Malibu Rd in which the stringline was in issue. The adjacent lot (24300) contained a recently completed residence, which if considered, would affect the stringline determination for the current application. However, that completed house did not yet have a Certificate of Occupancy issued, so was deemed by Planning to be not-yet-existing for stringline purposes.

That building was basically finished. Nothing about any final details (e.g., interior light fixtures maybe?) could conceivably affect where the corner of the building would be that would affect the stringline. Its existence was in no way hypothetical. The determination that it could not be counted was expressly tied to the lack of COO, not to any rationale that the applicant was entitled to the (prior) stringline in effect at the time their application was deemed complete.”

So it also seems we have a precedent for having a certificate of occupancy to be considered an existing home on more than one occasion within planning commission and city council hearings.

So if you could also follow up with the coastal commission on this with regards to fire rebuild

second exemptions that would be great.

Thanks for your help!

Jo

On Apr 13, 2022, at 1:10 PM, Jo Drummond [REDACTED] > wrote:

Hi Steve,

As in the email to Karen Farrer I forwarded you yesterday it seems we are waiting for the Coastal Commission to weigh in on how the codes are being interpreted. The planning dept has been allowing rebuilds as a second exemption from CDP application for anything over 10% in increased square footage (not in ESHA or appealable zone which Ms. Farrer's property technically is in) however that would planning wise be impossible because there is no existing structure to add to in a second application. The first exemption plus 10% would apply for any fire rebuild that was once there as per section 13.4.6 of the MMC below:

"13.4.6 Exemption for Structures Destroyed by Natural Disaster

A. The replacement of any structure, other than a public works facility, destroyed by a disaster provided that the replacement structure meets all the of the following criteria:

1. It is for the same use as the destroyed structure;
2. It does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and
3. It is sited in the same location on the affected property as the destroyed structure.

As used in this section, "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

B. An onsite wastewater treatment system (OWTS) that was damaged or destroyed by a disaster may be replaced provided that the replacement OWTS does not exceed the capacity of the damaged or destroyed OWTS by more than 10 percent. For purposes of this section, if the existing tank is less than 1500 gallons the proposed new tank shall be allowed to increase in capacity to 1500 gallons only to meet the minimum code requirement of the City under this exemption."

If an applicant wishes to rebuild larger than this he must therefore go through the normal CDP process rather than attempt a further exemption for a property that is currently not there. They would need to rebuild first in kind plus 10% and have it completed before taking a second exemption to add to the finished structure.

Planning has been using the following exemption to complete these second exemption applications:

"13.4.1 Exemption for Improvements to Existing Single-Family Residences

A. Improvements to existing single-family residences except as noted below in (B). For purposes of this section, the terms “Improvements to existing single-family residences” includes all fixtures and structures directly attached to the residence and those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units.

B. The exemption in (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within fifty (50) feet of the edge of a coastal bluff.
2. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within fifty (50) feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas.
3. The expansion or construction of water wells or septic systems.
4. On property not included in subsection (B)(1) above that is located between the sea and the first public road paralleling the sea or within three hundred (300) feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the city or Coastal Commission, improvement that would result in an increase of ten (10) percent or more of internal floor area of an existing structure or an additional improvement of ten (10) percent or less where an improvement to the structure had previously been undertaken pursuant to this section or [Public Resources Code](#) section 30610(a), increase in height by more than ten (10) percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.
5. In areas which the city or Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.
6. Any improvement to a single-family residence where the development permit issued for the original structure by the Coastal Commission, regional Coastal Commission, or city indicated that any future improvements would require a development permit.

This all discusses attaching to an “existing structure”

but there is no structure to attach to with a burnout. Therefore this second exemption cannot apply. This could just be an honest misinterpretation of the planning codes - it does happen.

Again, given the property at 6244 Busch Drive is in an appealable ESHA zone it shouldn't have even been offered the exemption from CDP in the first place although I understand, as Sam pointed out, the city biologist said that because it was in the same footprint it didn't apply. However, the septic system has increased and is going through a CDP this way so it should have also applied to this rebuild greater than 10% application.

We are just trying to get the planning department to follow the codes to preserve our neighborhoods and not to overbuild yet they are still stopping people like myself from adding small improvements to their properties. This is a good case of something huge getting easily approved and fast tracked while other smaller projects must sit and wait for years,

The codes definitely need to be looked at and fixed for smaller projects if large ones like this can get by so easily. But this practice of adding a second exemption on a first for a fire rebuild larger than 10% really needs to stop.

Please advise on next steps...Jo



City of Malibu

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June 13, 2022

California Coastal Commission
South Central Coast District
89 South California Street, Suite 200
Ventura, CA 93001
Attention: Denise Gonzalez

Reference: Issuance of exemptions to fire affected parcels

Dear Ms. Gonzalez:

City staff received your email, dated May 25, 2022, in regard to the City's published practice of processing a subsequent application for development on properties (what we all refer to as "Option 4") after the in-kind replacement of a structure pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.4.6(A) has been processed.

We note at the outset that we were surprised and disappointed to receive your May 25th email nearly three years after the City publicly launched its Fire Rebuild Program, which as you know included the opportunity for property owners to file a subsequent application after the replacement of the fire destroyed structure had been approved. The California Coastal Commission (CCC) was notified about the January 10, 2019 Planning Commission hearing where the Local Coastal Program Amendments (LCPA) to address the fire rebuild program, including what eventually became termed as Option 4, were discussed, and the subsequent Council hearing that took place on February 11, 2019. During those LCPA hearings, there were specific discussions regarding the processing of additions such as accessory structures, basements, additions, and legalization of construction that had taken place without appropriate permits. In particular, at the February 11, 2019 City Council meeting, as a result of interest in this matter by both the Council and residents who spoke at the hearing, the Council by consensus provided direction to the City's Planning Director to evaluate how this could be addressed.

While the LCPA process was proceeding and within the first few months after the Woolsey Fire, the Planning Director inquired of your office about the review of these additions. These additions for fire rebuilds were considered to be no different from situations where, had the structure not burned, the proposed development would qualify for an exemption from the requirement of CDP pursuant to LIP Section 13.4.1(A). The City's concern was not just property owners who as a result of the Woolsey Fire were now contemplating an addition or accessory development, but also those property owners who had submitted applications prior to the Woolsey Fire and the scope of work was consistent with LIP Section 13.4.1(A) and had now lost their homes.

As a result of those discussions, the Planning Director was specifically advised by CCC staff that the two exemptions (LIP Section 13.4.6(A) and LIP Section 13.4.1(A)) could not be processed concurrently under one application and that exemptions had to be processed separately. As a result, the City held two publicly noticed workshops during March of 2019 where the public was informed on various rebuild options which include the processing of subsequent applications for development that is exempt from the requirement of a CDP pursuant to LIP Section 13.4.1(A). Shortly afterwards, this option was made public both in print and on the City's website. Since then, to date, 45 properties have used this option to reconstruct their homes lost to the Woolsey Fire.

As you know, Option 4 is only available to those who had an existing developed pad and processed a Planning Verification application through the Planning Department that was consistent with LIP Section 13.4.6(A). Once the Planning Verification application is completed and the file closed, the property owner is able to submit an application for further development. If that development is consistent with LIP Section 13.4.1(A), a CDP exemption may be issued. If the development is not, we require a CDP. While the City did not want to have two applications open simultaneously, it also did not want to penalize someone from future development that was consistent with LIP Section 13.4.1(A) because they lost their home due to a circumstance beyond their control. Furthermore, the issue of prolonged construction and noise impacts to neighboring properties were also considerations.

The conclusion in your May 25th email that Option 4 is not consistent with the City's LCP exemption regulations or the Coastal Act rests on the conclusion that:

A property owner cannot apply for a fire rebuild exemption to replace the existing residence plus 10% and concurrently apply for a second exemption for an addition to an existing single-family residence because the residence is not yet built and not considered to be physically "existing" at the time of exemption approval.

There is no definition of "existing" in either the Coastal Act or the City's LCP. We note, however, that your conclusion seemingly contradicts with the definition of "new development", which excludes the replacement of a structure destroyed by fire (or other natural disaster) plus ten percent. We note also that none of the Option 4 exemptions that were issued involved a scope of work that was inconsistent with LIP Section 13.4.1 or LUP Policies 5.20, 5.21, and 5.54.

Thank you again for your May 25th email. In response, City staff would like to schedule a meeting with CCC staff to discuss the Option 4 program generally and the content of your May 25th email specifically. Please advise at your earliest convenience as to your availability.

Sincerely,



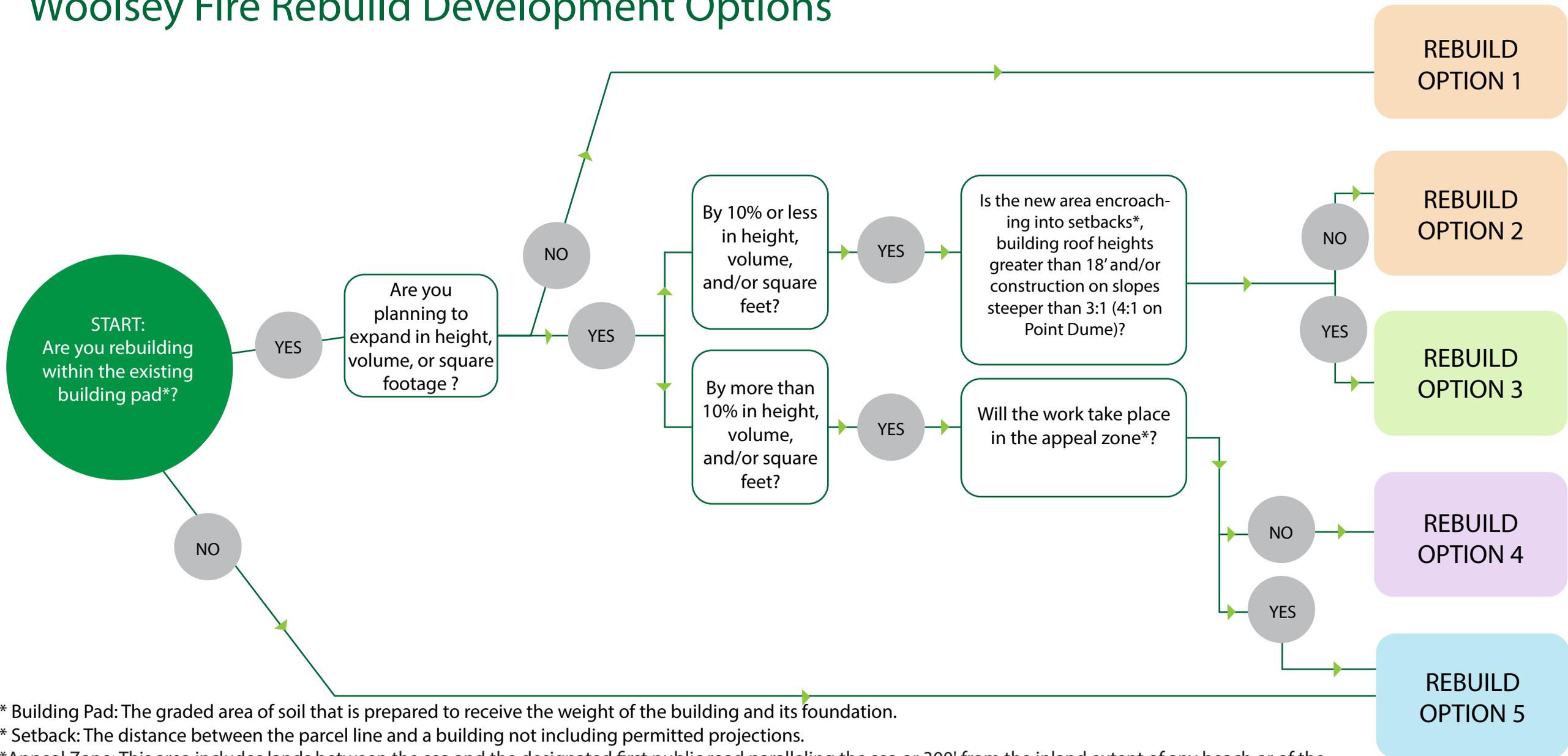
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Richard Mollica
Planning Director

CITY OF MALIBU

MALIBU REBUILDS

Woolsey Fire Rebuild Development Options



* Building Pad: The graded area of soil that is prepared to receive the weight of the building and its foundation.

* Setback: The distance between the parcel line and a building not including permitted projections.

*Appeal Zone: This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal bluff.

MALIBU REBUILDS

	REBUILD OPTION 1	REBUILD OPTION 2	REBUILD OPTION 3	REBUILD OPTION 4	REBUILD OPTION 5
APPLICATION:	Planning Verification (PV)	Planning Verification (PV)	Administrative Plan Review (APR) with Site Plan Review (SPR)	Option 1 + Option 3	Coastal Development Permit (CDP)
PLANNING DEPT FEES:	\$169	\$169	APR: \$1,349 SPR: \$2,968 (height) AND/OR \$2,529 (steep slopes or setbacks)	See Option 1 + Option 3	\$9,822 base, fees for *discretionary requests may be required
TIMELINE:	Same day, pre-design meetings encouraged	Same day, pre-design meetings encouraged	± 3-6 months, depending on the project	± 3- 6 months, depending on the project	± 12-18 months, depending on the project
USE IF:	Rebuilding same location, same size	Rebuilding same location + up to 10% more square footage and/or height increase (conforming)	Rebuilding same place + up to 10% more square footage or height and new area is greater than 18 feet in height, within a required yard setback, and/or built on slopes between 3:1 and 2.5:1	Rebuilding same place + over 10% more square footage or height (must be outside appeal zone). If new area is greater than 18 feet in height, within a required yard setback, and/or built on slopes between 3:1 and 2.5:1, an SPR is required.	Rebuilding outside the building pad OR Option 4 and are inside the *appeal zone
DECISION:	Decision Making Body: Planning Director	Decision Making Body: Planning Director	Decision Making Body: Planning Director	Decision Making Body: Planning Director	Decision Making Body: Planning Commission
NOTICE:	None	None	APR: None SPR: 21-Day notice required	PV: None APR: None SPR: 21-Day notice required	10-Day notice 21-Day notice required for discretionary requests (VAR, MM, SPR)
APPEALABILITY:	Not appealable	Not appealable	APR: Not appealable SPR: Appealable to Planning Commission	PV: Not appealable APR: Not appealable SPR: Appealable to Planning Commission	Appealable to City Council. If project is within the appeal zone, project is appealable to California Coastal Commission

*Appeal Zone: This area includes lands between the sea and the designated first public road paralleling the sea, or 300' from the inland extent of any beach or from the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal bluff.

*Discretionary Request: A request to exceed development standards (e.g. height over 18 feet; encroachments into setbacks; grading that exceeds permitted quantities; development on steep slopes; or new development or fuel modification clearance into environmentally sensitive habitat area).