



Council Agenda Report

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

Prepared by: Jorge Rubalcava, Senior Civil Engineer

Reviewed by: Robert DuBoux, Public Works Director/City Engineer

Approved by: Steve McClary, City Manager

Date prepared: February 22, 2024 Meeting date: April 22, 2024

Subject: Floodplain Variance – 19750 Pacific Coast Highway

RECOMMENDED ACTION: Adopt Resolution No. 24-11 granting a variance from the floodplain coastal high hazard requirements for the construction of a bulkhead within a coastal floodplain at 19750 Pacific Coast Highway.

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

STRATEGIC PRIORITY: This item is part of the day-to-day operations identified in the Adopted FY 2023-24 Strategic Priority Project List.

DISCUSSION: An application for a Coastal Development Permit (CDP 15-050) at 19750 Pacific Coast Highway was approved by the Planning Commission on September 17, 2018, for the construction of a new 3,511 square foot two-story single-family residence with an attached two car garage, roof deck, hardscaping, and driveway. The new two-story single-family residence consists of shoreline protection, a new on-site wastewater treatment system (OWTS), and the construction of a new bulkhead (Coastal Development Permit Application No. 15-050). The Public Works Department reviewed the subject project and concluded that the proposed development did not conform to the City's floodplain management regulations.

The subject property is located in the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area (SFHA), as shown on the attached map. More specifically, the proposed development is to be located within a coastal high hazard area, Zone VE-22'. Developments within this flood zone must conform to the City's Floodplain

Management Ordinance (MMC Chapter 15.20) and FEMA Floodplain Regulations. MMC Section 15.20.150 (C) reads as follows:

“All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in Section 15.20.040 of this chapter. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.”

The development proposes a new bulkhead under the elevated building which will be used to protect the septic system. However, the proposed bulkhead does not meet the requirements of MCC Section 15.20.150 (C) because it would be considered an obstruction under an elevated building in a FEMA VE flood zone. Buildings in a FEMA VE Flood Zone must be free of obstructions below the lowest floor.

The applicant requested a variance (Attachment No. 4) from the requirements of MMC Section 15.20.150 (C) to build a bulkhead as protection for the OWTS disposal field. The applicant has considered all alternatives for the OWTS, including alternative locations, seepage pits, hauling of the waste off-site, none of which prove feasible. The OWTS as designed is the smallest possible development to meet the code requirements, including groundwater separation. The OWTS dispersal field was designed to be on the property as far landward as possible. Because of the size of the lot and the coastal floodplain delineation, there are no other feasible alternatives to place the OWTS outside the FEMA floodplain.

The City’s Floodplain Management Ordinance provides for a variance to be considered and granted in certain circumstances. The conditions for a variance are specified in Section 15.20.200 of the MMC. In accordance with the MMC, variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Findings

The determinations made for each condition for a variance as specified in Section 15.20.200 of the MMC are as follows:

A. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 15.20.060 to 15.20.090 and Sections 15.20.100 to 15.20.180 of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

The development includes the proposal of a new beachfront single-family residence on an existing vacant lot, a new OWTS, and a new bulkhead, bounded by residential properties on the east and vacant land to the west, the Pacific Ocean to the south, and Pacific Coast Highway to north. The buildings lowest horizontal member is at elevation 26' which is well above the FEMA requirement of elevation 22'. The provisions of MMC Sections 15.20.060 to 15.20.090 and Sections 15.20.100 to 15.20.180 have been considered. The proposed improvements for 19750 Pacific Coast Highway would otherwise comply with each of the requirements of the floodplain regulations other than for what is being considered for a bulkhead in the coastal high hazard area.

B. Variances may be issued for the repair or rehabilitation of "historic structures" (as defined in Section 15.20.040 of this chapter) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

The requested variance does not involve a historic building.

C. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.

The requested variance is for a structure located within a regulatory floodway. However, the proposed development would not increase the base flood discharge at this location. The bulkhead is located essentially in line with the bulkhead in the adjacent property to the east. There will be no impact or increased wave loading on the neighboring bulkhead as a result of the proposed bulkhead.

The existing bulkhead located to the east of the subject property has had no observed or documented impact on the vacant site located to the west of the subject property.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter. For example, in the case of variances to an elevation requirement, this means the city council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the city council believes will both provide relief and preserve the integrity of this chapter.

The variance requested is the minimum necessary for the development of the property. The structure can comply with the Floodplain Management Ordinance in all other aspects. The bulkhead is needed to protect the OWTS. Without the bulkhead protection of the OWTS, the development of the property as proposed is not possible.

Based upon the location of the proposed development and the FEMA Floodplain boundaries, there are no feasible alternatives to locate the proposed OWTS outside the floodplain.

E. Variances shall only be issued upon a:

- 1. Showing of good and sufficient cause pertaining to unusual characteristics of the property.*
- 2. Determination that failure to grant the variance would result in exceptional "hardship" (as defined in Section 15.20.040 of this chapter) to the applicant; and*
- 3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 15.20.040, see "Public safety or nuisance"), cause fraud or victimization (as defined in Section 15.20.040) of the public, or conflict with existing local laws or ordinances.*

1. Approximately 90% of the property is located within a coastal high hazard zone (FEMA Flood Zone VE-22”) that leaves no area to construct the OWTS system to meet the City’s Floodplain Management Ordinance.

2. There are no feasible alternatives to locate the OWTS outside the FEMA Flood Zone or under the building. Even if the development’s footprint was reduced, the minimum size OWTS provided by the applicant would still be required to be located within the FEMA Floodplain.

3. The granting of the variance is not considered to create a significant increase in flood heights. The variance would not result in additional threats to public safety or create extraordinary public expense as the development is to occur on private property and the property owner would be fully responsible for the proposed improvements. The variance would not create a nuisance as the variance would not result in anything that is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin based on the design of the proposed bulkhead. The proposed bulkhead is to be constructed on a separate concrete pile foundation independent of the pile foundation for the residential structure. The proposed bulkhead is located essentially in line with the bulkhead on the adjacent property to the east of the subject site. There will be no impact or increased wave loading on the neighboring bulkhead as a result of the proposed bulkhead.

F. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of subsections A through E of this

section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

Subsections A through E have been considered and determinations made in regards to the bulkhead as indicated above. The single-family residence shall meet the requirements of the City's Floodplain Management Ordinance.

G. Upon consideration of the factors and purposes of this chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

The applicant will be required to submit detailed plans for the proposed bulkhead for the review and approval of staff prior to issuance of building permits. Staff recommends the following conditions be imposed:

1. The bulkhead shall be located no further seaward than deemed necessary. The bulkhead shall be designed where it is adjacent to the existing bulkhead to the east.
2. The bulkhead shall be designed on an independent foundation separate from the foundation of the residential structure.
3. The variance shall become effective only upon issuance of a Coastal Development Permit for the property at 19750 Pacific Coast Highway

The Council may wish to impose other specific conditions.

In granting a variance, from the terms of a floodplain management regulation, the Council should consider FEMA's policy that variances from flood elevation or other requirements in the Floodplain Management Ordinance should be rare because a variance can create an increased risk to life and property. FEMA's policy is that it may review a community's findings justifying the granting of variances, and, if that review indicates a pattern inconsistent with the objectives of sound floodplain management, FEMA may take appropriate action up to and including suspending the community from the National Flood Insurance Program.

ENVIRONMENTAL REVIEW: This item is not subject to environmental review under the California Environmental Quality Act (CEQA). Under CEQA Guidelines Section 15303 construction and location of limited numbers of new, small facilities or structures are exempt. The allowance of this bulkhead is an accessory structure designed to protect the OWTS system and thus exempt under subsection (e) of section 15303.

continued administrative activities and organization activities that will not result in a direct or indirect physical change in the environment are not CEQA projects. Additionally, pursuant to CEQA Guidelines Section 15061(b)(3), CEQA does not apply to this item because there is no potential for causing a significant effect on the environment. The City entering into a five-year contract for animal care and control services will not have a direct or indirect physical change in the environment. Therefore, no additional environmental review is needed at this time.

ATTACHMENTS:

1. Resolution No. 24-11 - Grant of Floodplain Variance
2. FEMA Flood Map
3. Site Plan
4. Request for Variance - Letter dated January 11, 2024

RESOLUTION NO. 24-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU GRANTING A VARIANCE FROM THE FLOODPLAIN COASTAL HIGH HAZARD REQUIREMENTS FOR THE CONSTRUCTION OF A BULKHEAD WITHIN A COASTAL FLOODPLAIN AT 19750 PACIFIC COAST HIGHWAY AND FINDING THE SAME EXEMPT FROM CEQA

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

SECTION 1. Recitals.

A. An application for a coastal development permit (CDP 15-050) at 19750 Pacific Coast Highway was approved by the Planning Commission on September 17, 2018 for the construction of a new 3,511 square foot two story single family residence with an attached two car garage, roof deck, hardscaping, and driveway. The new two-story single-family residence consists of shoreline protection, a new on-site wastewater treatment system (OWTS), and the construction of a new bulkhead (Coastal Development Permit Application No. 15-050).

B. The development as proposed includes a bulkhead within a coastal floodplain as delineated in the preliminary Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps.

C. The project applicants have requested a variance for the construction of a bulkhead within a coastal floodplain.

D. The conditions for a granting of a floodplain variance are specified in Section 15.20.200 of the Malibu Municipal Code (M.M.C.)

E. The conditions for a variance as specified in Section 15.20.200 of the M.M.C. has been considered. The required determinations are made as follows:

A. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 15.20.060 to 15.20.090 and Sections 15.20.100 to 15.20.180 of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

The development includes the proposal of a new beachfront single-family residence on an existing vacant lot, a new OWTS, and a new bulkhead, bounded by residential properties on the east and west, the Pacific Ocean to the south, and Pacific Coast Highway to north. The provisions of MMC Sections 15.20.060 to 15.20.090 and Sections 15.20.100 to 15.20.180 have been considered. The proposed improvements for 19750 Pacific Coast Highway would otherwise comply with each of the requirements of the floodplain regulations other than for what is being considered for a bulkhead in the coastal high hazard area.

B. Variances may be issued for the repair or rehabilitation of "historic structures" (as defined in Section 15.20.040 of this chapter) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

The requested variance does not involve a historic building.

C. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.

The requested variance is for a structure that would not be located within a regulatory floodway.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter. For example, in the case of variances to an elevation requirement, this means the city council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the city council believes will both provide relief and preserve the integrity of this chapter.

The variance requested is the minimum necessary for development of the property. The structure can comply with the Floodplain Management Ordinance in all other aspects. Without protection for the OWTS, the development of the property as proposed is not possible.

E. Variances shall only be issued upon a:

1. Showing of good and sufficient cause pertaining to unusual characteristics of the property;
2. Determination that failure to grant the variance would result in exceptional "hardship" (as defined in Section 15.20.040 of this chapter) to the applicant; and
3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 15.20.040, see "Public safety or nuisance"), cause fraud or victimization (as defined in Section 15.20.040) of the public, or conflict with existing local laws or ordinances.

1. Approximately 90% of the property is located within a coastal high hazard zone (FEMA Flood Zone VE-22'+1'=23') that leaves no area to construct the OWTS system to meet the City's Floodplain Management Ordinance.

2. Hardship applies as there are no other alternatives that would allow the OWTS without protection from a bulkhead.

3. The granting of the variance is considered to not create a significant increase in flood heights. The variance would not result in additional threats to public safety or create extraordinary public expense as the development is to occur on private property and the property owner would be fully responsible for the proposed improvements. The variance would not create a nuisance as

the variance would not result in anything that is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin based on the design of the proposed bulkhead. The proposed bulkhead is to be constructed on a separate concrete pile foundation independent of the pile foundation for the residential structure.

F. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of subsections A through E of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

Subsections A through E have been considered and determinations made in regards to the bulkhead as indicated above. The single-family residence shall meet the requirements of the City's Floodplain Management Ordinance.

G. Upon consideration of the factors and purposes of this chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

The applicant will be required to submit detailed plans for the proposed bulkhead for the review and approval of staff prior to issuance of building permits. Staff recommends the following conditions be imposed:

1. The bulkhead shall be located no further seaward than deemed necessary.
2. The bulkhead shall be designed on an independent foundation separate from the foundation of the residential structure.
3. The variance shall become effective only upon issuance of a Coastal Development Permit for the property at 19750 Pacific Coast Highway

The Council may wish to impose other specific conditions.

In granting a variance, from the terms of a floodplain management regulation, the Council should consider FEMA's policy that variances from flood elevation or other requirements in the Floodplain Management Ordinance should be rare because a variance can create an increased risk to life and property. FEMA's policy is that it may review a community's findings justifying the granting of variances, and, if that review indicates a pattern inconsistent with the objectives of sound floodplain management, FEMA may take appropriate action up to and including suspending the community from the National Flood Insurance Program.

SECTION 2. The City Council does hereby grant a variance for the construction of a bulkhead at 19750 Pacific Coast Highway within a coastal floodplain subject to the following conditions:

- A. The bulkhead shall be located no further seaward than deemed necessary.
- B. The bulkhead shall be designed on an independent foundation separate from the foundation of the residential structure.
- C. The variance shall become effective only upon issuance of a Coastal Development Permit for the property at 19750 Pacific Coast Highway.

SECTION 3. ENVIRONMENTAL REVIEW: This item is not subject to environmental review under the California Environmental Quality Act (CEQA). Under CEQA Guidelines Section 15303 construction and location of limited numbers of new, small facilities or structures are exempt. The allowance of this bulkhead is an accessory structure designed to protect the OWTS system and thus exempt under subsection (e) of section 15303.

SECTION 4. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this ___th day of _____ 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSSIN, City Attorney

National Flood Hazard Layer FIRMette



118°36'40"W 34°2'34"N



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D

OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall

OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature

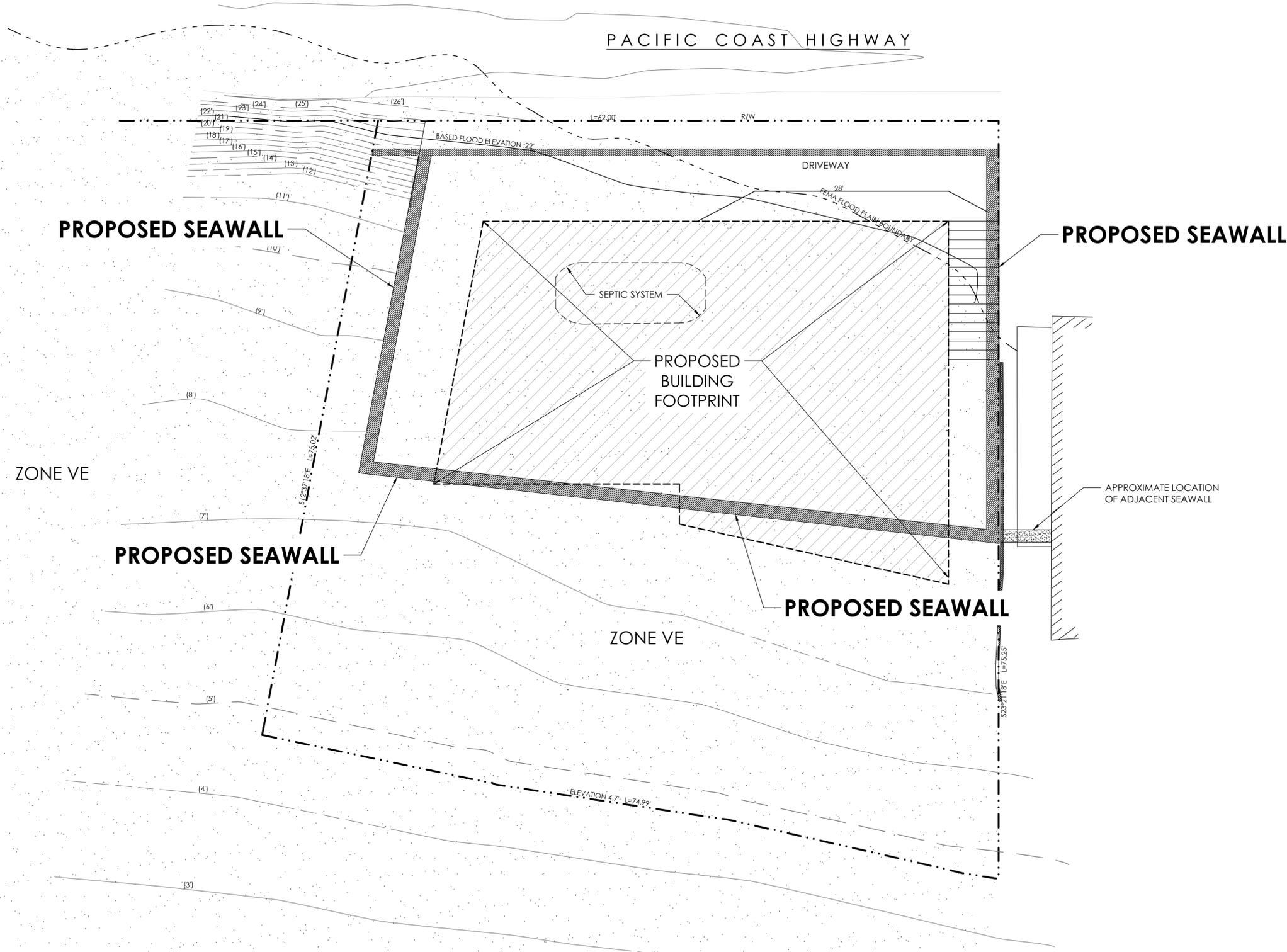
MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped
		The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.



This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 1/22/2024 at 4:57 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



ATTACHMENT 3

SITE MAP

SCALE: 3/16" = 1'-0"

TUCHSCHER ENGINEERING GROUP, INC.
 5318 E. Second Street #539
 Long Beach, CA 90803
 310.613.9980
 www.TEGLosAngeles.com



STAMP

STAMP DATE

DRAWING
 SITE MAP

PROJECT
 BIG ROCK BEACH HOUSE
 19750 PACIFIC COAST HIGHWAY
 MALIBU, CA 90265

REVISIONS	BY
△	
△	
△	
△	

PROJECT #: 7-22-2339
 DATE: 1/11/2024
 SCALE: 3/16" = 1'-0"

SM

SHEET 1 OF 1

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Long Beach, CA 90802
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p: 310.613.9980

January 11, 2024

Jorge Rubalcava

Senior Civil Engineer Public Works

23825 Stuart Ranch Road

Malibu, Ca 90265

SUBJECT: Seawall construction request

Dear Jorge,

We request to construct the seawall at 19750 Pacific Coast Highway in Malibu. The single-family residence, originally designed by Vitus Matare and Associates, Inc. requires an OWTS and leach field, designed by EPD consultants, and the seawall is designed to protect the system.

There are limited alternative options that would allow the OWTS system to be located onsite without the protection of a seawall, as much of the lot is located within the FEMA flood zone.

This project meets the BFE requirement: the BFE on this project is 22', as recently revised on 10/20/2023, and the lowest horizontal member is 26'.

We have attached a report by the Coastal Engineer per your request, along with a site map of the project and the FEMA boundaries.

Sincerely,



James Tuchscher, P.E.
Principal Engineer

