



Supplemental Council Agenda Report

City Council Meeting
05-13-24

**Item
4.B.**

To: Mayor Uhring and Honorable Members of the City Council

Prepared by: Adrian Fernandez, Assistant Planning Director

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: May 6, 2024 Meeting date: May 13, 2024

Subject: Appeal No. 23-004 - Appeal of Planning Commission Resolution No. 23-24 (22959 Pacific Coast Highway; Appellant: Malibu Township Council; Applicant: Burdge and Associates Architects, Inc.; Property Owner: Surfrider Plaza, LLC) (Continued from the March 25, 2024 meeting)

RECOMMENDED ACTION: Adopt Resolution No. 24-19 (Exhibit A) pursuant to the California Environmental Quality Act, adopting Mitigated Negative Declaration No. 20-003 and Initial Study No. 20-003, denying Appeal No. 23-004 and approving Coastal Development Permit No. 09-067 for the construction of a new 7,693 square foot, 20-room motel above a new subterranean parking garage, surface parking lot, rooftop bar area, grading, retaining walls, landscaping, a new onsite wastewater treatment system and authorization for the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol; Conditional Use Permit No. 18-002 for a motel in the Commercial Visitor Serving-1 (CV-1) zoning district and sale of alcohol; including Variance (VAR) No. 18-030 for construction on slopes steeper than 3 to 1, VAR No. 18-031 for a retaining wall that is an integral part of the building in excess of 12 feet in height, VAR No. 20-035 for surface parking within the required front yard setback, and Site Plan Review No. 18-025 for a building height in excess of 18 feet, not to exceed 24 feet for a flat roof, located in the Commercial Visitor Serving-1 zoning district at 22959 Pacific Coast Highway (Surfrider Plaza, LLC).

DISCUSSION: The subject supplemental report includes City Council Resolution No. 24-19 (Exhibit 1) herein published separately from the item's Council Agenda Report which was published on Friday, May 3, 2023.

EXHIBIT:

1. City Council Resolution No. 24-19

RESOLUTION NO. 24-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING MITIGATED NEGATIVE DECLARATION NO. 20-003 AND INITIAL STUDY NO. 20-003, DENYING APPEAL NO. 23-004 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 09-067 FOR THE CONSTRUCTION OF A NEW 7,693 SQUARE FOOT, 20-ROOM MOTEL ABOVE A NEW SUBTERRANEAN PARKING GARAGE, SURFACE PARKING LOT, ROOFTOP DECK WITH SWIMMING POOL, SPA AND BAR AREA, GRADING, RETAINING WALLS, LANDSCAPING, A NEW ONSITE WASTEWATER TREATMENT SYSTEM AND AUTHORIZATION FOR THE PLANNING DIRECTOR TO SUBMIT A LETTER OF PUBLIC CONVENIENCE OR NECESSITY FOR THE SALE OF ALCOHOL; CONDITIONAL USE PERMIT NO. 18-002 FOR A MOTEL IN THE COMMERCIAL VISITOR-SERVING-1 ZONING DISTRICT AND SALE OF ALCOHOL; INCLUDING VARIANCE NO. 18-030 FOR CONSTRUCTION ON SLOPES STEEPER THAN 3 TO 1, VARIANCE NO. 18-031 FOR A RETAINING WALL THAT IS AN INTEGRAL PART OF THE BUILDING IN EXCESS OF 12 FEET IN HEIGHT, VARIANCE NO. 20-035 FOR SURFACE PARKING WITHIN THE REQUIRED FRONT YARD SETBACK, AND SITE PLAN REVIEW NO. 18-025 FOR A BUILDING HEIGHT IN EXCESS OF 18 FEET, NOT TO EXCEED 24 FEET FOR A FLAT ROOF, LOCATED IN THE COMMERCIAL VISITOR SERVING-1 ZONING DISTRICT AT 22959 PACIFIC COAST HIGHWAY(SURFRIDER PLAZA, LLC)

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

SECTION 1. Recitals.

A. On November 4, 2009, an application for Coastal Development Permit (CDP) No. 09-067, was submitted for the Malibu Surfrider Plaza Project (Former Project) consisting of a new commercial plaza providing 7,713 gross square feet of floor area between two buildings and 82 surface and subterranean parking spaces, located at 22959 Pacific Coast Highway (PCH) in the Commercial Visitor Serving-1 (CV-1) zoning district, by Surfrider Plaza, LLC. The application was routed to the City Geotechnical consultant reviewers, City Environmental Health Administrator, City Biologist, City Public Works Department, Los Angeles County Fire Department (LACFD), and Los Angeles County Waterworks District No. 29 (WD29).

B. On November 5, 2009, the Los Angeles Regional Water Quality Control Board (LARWQCB) approved Resolution No. R4-2009-007, banning the use of onsite wastewater treatment systems (OWTS) in the area. On September 21, 2010, the State Water Regional Control Board (SWRCB) approved that same resolution, thereby amending the State Basin Plan. The adopted plan for a specific Prohibition Area includes the Project Site. Since an application for the Project Site was submitted prior to the adoption of Resolution No. R4-2009-007, the application is listed on Table 4-zz as being eligible for a new OWTS.

C. On June 15, 2017, a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) for the Former Project was published in a newspaper of general circulation within the City of Malibu. The 30-day public review period ran from July 19, 2017.

D. On June 27, 2017, the Environmental Review Board (ERB) reviewed and considered the Former Project, written reports, Initial Study (IS) No. 16-003/MND No. 17-001 and provided recommendations to the Planning Commission.

E. On June 11, 2018, the applicant submitted revised plans for a new motel instead of the previously submitted commercial retail plaza. The revised project plans were then routed to all applicable City departments and County agencies for review. Conditional Use Permit (CUP) No. 18-002, Variance (VAR) Nos. 18-030, 18-031 and 20-035, Site Plan Review (SPR) No. 18-025, and Joint Use Parking Agreement (JUPA) No. 18-001 were added to the Malibu Inn Motel Project (Project).

F. On June 17, 2020, staff deemed the application complete.

G. On February 19, 2021, a Notice of Intent to Adopt a MND was published in a newspaper of general circulation within the City of Malibu. The 30-day public review period ran from February 19, 2021 to March 22, 2021. The Draft IS/MND No. 20-003 was circulated again for another 30-day review period, directed towards agencies due to a file discrepancy, that began on March 29, 2021 and ended on April 28, 2021.

H. On June 10, 2021, a Notice of Coastal Development Permit Application was posted on the subject property.

I. On June 24, 2021, Planning Department staff conducted a site visit to document site conditions, the property and surrounding area.

J. On August 5, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

K. On August 26, 2021, a Notice of Adjournment was issued for the August 26, 2021 Special Planning Commission meeting and adjourned to the September 8, 2021 Adjourned Regular meeting to allow staff additional time to gather additional information and for the applicant to install story poles to represent the proposed motel building.

L. On September 8, 2021, the Planning Commission continued the item to the November 1, 2021 Regular Planning Commission meeting.

M. On November 1, 2021, the Planning Commission continued the item to the December 6, 2021 Regular Planning Commission meeting.

N. On December 6, 2021, the Planning Commission continued the item to the January 11, 2022 Special Planning Commission meeting.

O. On January 11, 2022, the Planning Commission continued the item to the April 4, 2022 Regular Planning Commission meeting.

P. On April 4, 2022, the Planning Commission continued the item to a date uncertain.

Q. On March 23, 2023, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

R. On April 17, 2023, the Planning Commission continued the item to the May 31, 2023 Special Planning Commission meeting.

S. On May 31, 2023, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record. In a 3-2 vote, Commissioners Hill and Mazza dissenting, the Planning Commission directed staff to bring back as a consent item an updated resolution approving the proposed project with revisions to several of the required findings and conditions of approval.

T. On July 17, 2023, the Planning Commission adopted revised Resolution No. 23-24 under the consent calendar.

U. On February 29, 2024, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

V. On March 25, 2024, the City Council continued the subject item to the May 13, 2024 Regular City Council meeting.

W. On May 13, 2024, the City Council held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Appeal of Action.

The appeal filed by the appellant contends the appeal should be granted and the project application denied based on following alleged issues with the project:

1. Violates zoning
2. Violates coastal bluff provisions
3. Excessive grading and violates related requirements
4. Violates building height restrictions
5. Violates retaining wall height restrictions
6. Violates rear yard and bluff setbacks
7. Requires traffic study
8. Violates parking provisions
9. Lack of EIR and general CEQA compliance
10. Requires noise study
11. Pool use is not permitted
12. Low cost accommodations mitigation is not addressed
13. Sale of alcohol is not permitted
14. Conditions do not protect cultural resources
15. Violates wastewater disposal requirements
16. Project is not consistent with the General Plan

17. Findings are not supported for two variances and other discretionary requests
18. Proposed project is not accurately reflected in the conditions of approval
19. Lack of impartial hearing
20. Planning Commission decision is contrary to law

In the associated Council Agenda Report, Planning Department staff analyzed and addressed appellant's contentions.

SECTION 3. Findings for Denying the Appeal.

Based on evidence contained within the record, including the content of the Council Agenda Report and Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and the City Council, the City Council hereby makes the following findings of fact, denies the appeal, and approves the project.

The appellant contends that the issues listed in Section 2, and as detailed in the appeal, provide grounds to deny the project. These issues, in summary, include that the findings were not supported by the evidence, the CEQA review as insufficient, the project was not consistent with the General Plan, the project does not conform to applicable regulations, certain additional technical studies were needed, lack of an impartial hearing, and the Planning Commission decision was contrary to law.

A. The appellant failed to demonstrate that the findings made in the Planning Commission's decision are not supported by the evidence. In summary, the appellant's objections to the findings for the variances for construction on slopes steeper than 3 to 1 and height of retaining wall, site plan review for height over 18 feet but not exceed 24 feet and conditional use permit. The objections to these findings are mostly due to the contention that the slope qualifies as a bluff, the retaining wall height is a special privilege not enjoyed by others in the vicinity, the height of the building exceeds 24 feet as measured from the grade at the surface parking lot and the rooftop deck and bar is not consistent with the adjacent religious facility and school. The Council Agenda Report elaborates that the slope does not qualify as a bluff because it was formed through natural geological processes, not associated with wave action and does not meet the related definitions for coastal bluff. The retaining wall is similar to other nearby development constructed with similar walls and is necessary to comply with building code requirements. The building height is consistent with the Code and does not exceed 24 feet in height as measured from natural or finished grade, whichever results in a lower building height. The proposed motel use is compatible with existing and future land uses in the vicinity. As a result, the findings for the proposed amendment can be made. Findings related to the variance for the retaining wall height are described in more detail in the Commission Agenda Report and summarized in *Staff Response to Appeal Item 17*. The appellant has not provided evidence that would require denial of the project. The findings for the project and discretionary requests are made in *Section 5* below.

B. City Council has considered IS/MND No. 20-003 together with the comments received during the public review process. IS/MND No. 20-003 reflects the independent judgment of the City Council, and has been completed in compliance with CEQA, and is adequate for the project. The proposed motel project is consistent with General Plan goals, policies and implementation measures as more fully described in the Commission Agenda Report and Council Agenda Report. The reports also describe in detail how the project complies with all applicable code requirements in addition to the requested discretionary requests. The noise and traffic

associated with the project are less than significant pursuant to CEQA and therefore, technical reports are not required.

C. The Council finds that the Planning Commission conducted the meeting in a manner consistent with the applicable rules of order and provided appellant both notice and an opportunity to be heard in conformance with those standards. The appellant's have not presented evidence of inappropriate bias, conflict of interest or an unfair or anything but an impartial hearing. In addition, any such violation would be cured by the *de novo* hearing held before the City Council. In conclusion, as detailed above and in the record, the evidence supports the required findings for approval of the proposed project and that it is consistent with the Malibu Municipal Code (MMC) standards. The evidence also demonstrates a fair and impartial hearing was provided. Additional evidence in the record supports the findings required for the project, as discussed below.

SECTION 4. Adoption of Mitigated Negative Declaration

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed Project. The Planning Department prepared an initial study (IS No. 20-003) pursuant to CEQA Guidelines Section 15305. The initial study analyzed the Project and determined that it will not have a significant impact on the environment with implementation of mitigation measures; subsequently, MND No. 20-003 was prepared and circulated pursuant to CEQA Guidelines Section 15070.

On February 19, 2021, the City made IS/MND No. 20-003 available to the public for the required 30-day circulation period, which concluded on March 22, 2021. The Draft IS/MND was circulated again for another 30-day review period, directed towards agencies due to a technical error in posting of the Draft IS/MND with the State Clearinghouse, the public review period began on March 29, 2021. The State Clearinghouse closed its review period on April 28, 2021. A total of twenty-seven pieces of correspondence were received during the public comment period, which are discussed in a Response to Comments (Section 2.0) added to the Final IS/MND.

The City Council has considered IS/MND No. 20-003 together with the comments received during the public review process. IS/MND No. 20-003 reflects the independent judgment of the City Council, and has been completed in compliance with CEQA, and is adequate for the project.

The City Council finds that the project does not have the potential to significantly degrade the quality of the environment, nor does it have impacts which are individually limited but cumulatively considerable.

The City Council further finds that less than significant impacts on the environment are expected from the project, with implementation of mitigation measures. Based on the record as a whole, there is no substantial evidence that the project, as conditioned, will have a significant effect on the environment.

SECTION 5. Coastal Development Permit Findings.

Based on the evidence contained within the record, including the agenda report for the project and the hearing on May 13, 2024, and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP), including Sections 13.7(B) and 13.9, and the Malibu Municipal Code (MMC), the City Council makes the findings of fact below, and approves CDP No. 09-067 for the construction

of a new 7,693 square foot, 20-room motel above a new subterranean parking garage, surface parking lot, rooftop deck with swimming pool, spa and bar area, grading, retaining walls, landscaping, a new OWTS and authorization for the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol; including CUP No. 18-002 for a motel in the CV-1 zoning district and sale of alcohol, VAR No. 18-030 construction on slopes steeper than 3 to 1, VAR No. 18-031 for a retaining wall that is an integral part of the building in excess of 12 feet in height, VAR No. 20-035 for surface parking within the required front yard setback, and SPR No. 18-025 for a building height in excess of 18 feet, not to exceed 24 feet for a flat roof, located in the CV-1 zoning district at 22959 PCH.

The project is consistent with the LCP's zoning, grading, cultural resources, water quality, and wastewater treatment system standards requirements. With the inclusion of the proposed discretionary requests, the project, as conditioned, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. General Coastal Development Permit (LIP Chapter 13)

1. Evidence in the record, including submitted reports, project plans, visual analysis and site investigation, demonstrates that the project, as conditioned, conforms to the LCP and MMC in that it meets all applicable development standards inclusive of the requested discretionary requests. The Project has been reviewed for conformance with the LCP by the Planning Department, City Biologist, City Environmental Health Administrator, City geotechnical consultant reviewers, City Public Works Department, WD29, and LACFD.

2. IS/MND No. 20-003 was prepared in accordance with CEQA and the CEQA Guidelines. Other alternatives were analyzed. This analysis assesses whether alternatives to the project would significantly lessen adverse impacts to coastal resources.

A reduced project, alternate location and commercial shopping center project alternatives were analyzed. Due to required parking, a reduced project alternative does not provide a considerable improvement. One parking space is required for each keyed room. Reducing the number of keyed rooms would reduce the same number of required parking spaces. A reduction of five rooms for example would reduce five required parking spaces, which could not result in a considerable change to the project. There are no alternative locations for the development, placing the development further north would result in an increased development on the slope. Placing the building along the parcel's frontage would result in a multi-story parking structure along the back with a similar height retaining wall. A commercial shopping center project was previously proposed. The applicant abandoned the commercial shopping center because it required more parking spaces compared to the motel and resulted in a taller retaining wall. Evidence in the record demonstrates alternative projects will not have a significant environmental or visual advantage as compared to the project; the development is sited within the property dimensions of legal lots and the footprint of existing and is mostly within the previously existing development. As a result, the project, as proposed and conditioned, is the least environmentally damaging alternative.

3. As a matter of policy and not a code requirement, ERB reviewed the former project for a commercial shopping center and associated IS/MND and it recommended approval with one condition. The ERB recommendation and comment were addressed in IS/MND No. 20-003 and a condition has been added requiring a rootball barrier for the Sycamore trees to minimize potential root damage to the adjacent sidewalk and parking lot. ERB did not review the project and IS/MND

No. 20-003 because the potential environmental impacts of the project were found to be less significant in the environmental documents compared to the former project.

B. Variance for Retaining Wall in Excess of 12 Feet in Height (LIP Section 13.26)

The variance findings related to ESHA, stringline and public parking are not applicable because the project site does not have any ESHA, is not a beachfront so stringline rules do not apply and the proposed variances will not adversely affect public parking.

1. There are special circumstances and exceptional characteristics applicable to the subject property. The site's topography is primarily a steep slope. In order to place a building on the Project Site, the northern slope must be stabilized, and a structural setback is required from the slope to the proposed motel building. The retaining wall would be constructed to secure the graded slope following the excavation and to provide a 15-foot structural setback from the slope. The retaining wall is 21 feet, 10 inches in height above finished grade. The retaining wall would extend below finished grade to accommodate the subterranean parking level and provide for an adequate foundation. The applicant provided evidence showing other nearby commercial developments were constructed with similar retaining walls, and that the variance requested is the minimal required. Therefore, the strict application of the zoning ordinance would deprive the subject property owner of privileges enjoyed by other properties in the vicinity under similar zoning and site constraints.

2. The proposed variance will allow construction of a motel. The Project has been evaluated for impacts on environmental factors pursuant to CEQA. Based on the IS/MND and LCP conformance review, the Project as conditioned will not result in any significant adverse impacts, and will not be detrimental to the public interest, health, safety, convenience or welfare.

3. Other nearby commercial development has been constructed with similar retaining walls, which support the toe of the slope. The site's topography is predominantly characterized by a steep slope. The proposed development is consistent with surrounding properties and in the CV-1 zoning district. The proposed variance would not constitute a special privilege to the applicant or property owner in that there are other examples of similar retaining walls constructed for nearby development and, without the variance, commercial development on the property would not be feasible.

4. The granting of the proposed variance will not be contrary to or in conflict with the LCP as the improvements, consisting of a motel and associated development, are conditionally permitted in the CV-1 zoning district.

5. The variance request does not authorize a use or activity that is not expressly authorized by the zoning regulations for the Project Site. The variance request is to allow for the construction of a retaining wall that exceeds 12 feet in height to allow for the development of the proposed motel in the CV-1 zoning district.

6. The subject site is physically suitable for the proposed variance. The proposed development is primarily sited on the disturbed portion of the subject site; however, given that the site is predominantly on a slope, the proposed retaining wall in excess of 12 feet in height cannot be avoided. The proposed retaining is a building code requirement to maintain a horizontal

structural setback to the toe of the slope. The proposed retaining wall is necessary for any new building on the subject parcel.

7. The Project complies with all applicable requirements of State and local law, and is conditioned to comply with any relevant approvals and permits. Construction of the motel and associated development are conditioned to comply with all building code requirements and will incorporate all recommendations from applicable City agencies and Project consultants.

C. Variance for Construction for Surface Parking within the Required Front Yard Setback (LIP Section 13.26)

1. There are special circumstances and exceptional characteristics applicable to the subject property. The site's topography is primarily a steep slope. Without locating the required parking within the front yard setback, there would not be sufficient space to site for the required parking. The proposed variance would allow for the parking required for the use to be provided onsite as required by the LCP.

2. The proposed variance will allow construction of the proposed motel in compliance with the minimum required parking spaces. The Project has been evaluated for impacts on environmental factors pursuant to CEQA. Based on the IS/MND and LCP conformance review, the Project as conditioned will not result in any significant adverse impacts to the environment, and will not be detrimental to the public interest, health, safety, convenience or welfare.

3. Almost all other commercial development on this stretch of PCH is developed with parking within the required front yard setback. There is no alternative development pad on the property that would avoid encroachment of the required parking in the front yard setback. The proposed development is consistent with surrounding properties and in the CV-1 zoning district. Therefore, the granting of the variance will not constitute a special privilege to the applicant or the property owner as it is consistent with other surrounding development subject to similar site constraints.

4. The granting of the proposed variance will not be contrary to or in conflict with the LCP as the improvements, consisting of a motel and associated development, are conditionally permitted in the CV-1 zoning district.

5. The variance request does not authorize a use or activity that is not expressly authorized by the zoning regulations for the Project Site. The proposed uses are consistent with the allowed uses in the applicable CV-1 zoning district.

6. The subject site is physically suitable for the proposed variance. The proposed development is utilizing the disturbed portion of the subject site, and there is an existing surface parking lot located within the front yard setback. Locating the surface parking lot within the front yard setback cannot be avoided due to the steep slope to the north of the parking lot.

7. The project complies with all applicable requirements of State and local law, and is conditioned to comply with any relevant approvals and permits. Construction of the motel and associated development is conditioned to comply with all building code requirements and will incorporate all recommendations from applicable City agencies and Project consultants.

D. Site Plan Review for Construction in Excess of 18 Feet in Height (LIP Section 13.27.5)

1. Evidence in the record, including submitted reports, project plans, visual analysis and site investigation, demonstrates that the Project, as conditioned, conforms to the LCP and MMC in that it meets all applicable development standards inclusive of the requested discretionary requests. The Project has been reviewed for conformance with the LCP by the Planning Department, City Biologist, City Environmental Health Administrator, City geotechnical consultant reviewers, City Public Works Department, WD29, and LACFD.

2. The project would alter the visual appearance of the project site, but would not substantially degrade the visual character or quality of the project site or introduce any aesthetic elements incompatible with the surrounding land uses, and the height of the proposed building has been limited to minimize impacts to visual character. The project site is buffered from surrounding residential areas by open space and the incorporation of additional landscaping. The design of the proposed building would also serve as a barrier that reduces noise transmission, as patios would face away from residential areas and the building would contain some vehicle noise within the subterranean parking garage. The Project does not propose amplified sound (music, concerts, etc.) and would be subject to the City's noise ordinance limitations.

3. Story poles were erected, and photo simulations show the design and scale of the proposed development. The photo simulations provide a view of the proposed development from three vantage points. As demonstrated the story pole inspection and in the photo simulations, due to the size, shape, and topography of the lot, the proposed development will blend into the hillside, will be minimally visible from public viewing areas or scenic roads, and is not located within primary views of neighboring properties.

4. The project complies with all applicable requirements of State and local law, and is conditioned to comply with any relevant approvals and permits. Construction of the motel and associated development is conditioned to comply with all building code requirements and will incorporate all recommendations from applicable City agencies and Project consultants.

5. The Project has been reviewed for conformance with the LCP by the Planning Department, City Biologist, City Environmental Health Administrator, City Public Works Department, City geotechnical consultant reviewers, WD29, and LACFD. As discussed herein, based on submitted reports, Project plans, visual analysis and site investigation, the Project, as conditioned, complies with all applicable provisions of the MMC and the LCP, inclusive of the VARs and SPR.

E. Hazards (LIP Chapter 9)

1. Evidence in the record demonstrates that the Project, as conditioned, will incorporate all recommendations contained in the above cited geotechnical report and conditions required by the City geotechnical consultant reviewers, City Public Works Department, and the LACFD, including foundations, OWTS, and drainage. As such, the proposed Project will not increase instability of the site or structural integrity from geologic, flood, or any other hazards.

2. The Project, as designed, conditioned and approved by the applicable departments and agencies, will not have any significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to Project modifications, landscaping or other conditions.

3. Evidence in the record demonstrates that the Project, as designed and conditioned, is the least environmentally damaging alternative.

4. Evidence in the record demonstrates that there are no feasible alternatives to the proposed development that would avoid or substantially lessen any adverse impacts on site stability or structural integrity as none are expected as a result of the Project.

5. Evidence in the record demonstrates that the Project, as designed and conditioned, is the least environmentally damaging alternative and no adverse impacts to sensitive resources are anticipated.

F. Conditional Use Permit for New Motel Use and Sale of Alcohol (MMC Section 17.66.080)

1. The Project Site is zoned for commercial use, and the proposed motel use is conditionally permitted in the CV-1 zoning district and is consistent with existing land uses in the vicinity.

2. The proposed motel use is consistent with the commercial zoning designation and consistent with existing commercial land uses in the vicinity. The Project is located within the commercial corridor of the City and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. The intensity and density of the proposed use is commensurate with that of the surrounding development and will not impair the integrity and character of the zoning district.

3. The subject site is physically suitable for the proposed motel land use. The Project is located within the developed commercial corridor of the City and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. The intensity and density of the proposed use is commensurate with that of the surrounding development and will not impair the integrity and character of the zoning district.

4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood. The existing legal non-conforming commercial parking lot as a stand-alone use is being replaced with a commercial use that in contrast is authorized with a conditional use permit in the CV-1 zoning designation.

5. The proposed use will be compatible with the existing and future land uses within the zoning district and surrounding area, as it is a commercial use contemplated by the zoning district. The Project is located within the commercial corridor of the City and the proposed motel is a conditionally permitted use in the CV-1 zoning district, which is compatible with the commercial zoning in the general area.

6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety. Adequate public services and utilities are available to serve the Project. The Project does not affect solar access or adversely impact existing public and private views.

7. Adequate public access is available to serve the Project. Access to the Project is from PCH, an existing public highway. The public, as well as emergency vehicles, would enter and exit the Project Site via PCH. The Project Site is designed with throughput access from PCH to the Aviation Nation Site parking lot, negating any need for vehicles to turnaround. The modified driveways would require review and approval of an Encroachment Permit by Caltrans. During its review of the permit, Caltrans would ensure the driveways are properly designed to ensure adequate emergency access. All roadway connections would be constructed in conformance with City and Caltrans standards, and would be consistent with LACFD access requirements.

8. Evidence in the record demonstrates the proposed use is consistent with the goals, objectives and policies of the General Plan.

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

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

11. There is clear and compelling evidence that the Project is not located in an area determined by the City to be at risk from earth movement, flooding or liquefaction. With the implementation of the recommendations of the Project geotechnical engineer and City geotechnical consultant reviewers, less than significant impacts on structural integrity from geologic or flood hazards are expected. The Project, as conditioned, will not increase instability of the site or structural integrity from geologic, flood, fire or any other hazards.

G. Variance for Construction on Slopes Steeper than 3 to 1 (MMC Section 17.72.060)

1. There are special circumstances and exceptional characteristics applicable to the subject property. The site's topography is primarily a steep slope. The proposed development requires grading and excavation of approximately 0.77 acre of the Project Site, which includes a portion of the slope that is steeper than 3 to 1, to accommodate a subterranean garage and structural setback to the proposed motel building.

2. The proposed variance will allow construction of the proposed motel. The Project has been evaluated for impacts on environmental factors pursuant to CEQA. Based on the IS/MND and LCP conformance review, the Project, as conditioned, will not result in any significant adverse impacts to the environment, and will not be detrimental to the public interest, health, safety, convenience or welfare.

3. The granting of the variance will not constitute a special privilege to the applicant or the property owner. The required grading and excavation of the lower portion of the 3 to 1 slope within the site boundary and adjacent to the existing parking lot is necessary to provide a level building area for the motel building, subterranean parking level, and at-grade surface parking lot adjacent to PCH.

4. The granting of the proposed variance will not be contrary to or in conflict with the LCP as the improvements, consisting of a motel and associated development, are conditionally permitted in the CV-1 zoning district.

5. The variance request does not authorize a use or activity that is not expressly authorized by the zoning regulations for the Project Site. The variance request is consistent with the intent and purpose of the CV-1 zoning district. The motel is a conditionally permitted use in the CV-1 zoning district and development on slopes steeper than 3 to 1 is necessary so that the motel development can be constructed in the CV-1 zoning district.

6. The subject site is physically suitable for the proposed variance. The proposed development is primarily sited on the disturbed portion of the subject site.

7. The Project complies with all applicable requirements of State and local law, and is conditioned to comply with any relevant approvals and permits. Construction of the motel and associated development is conditioned to comply with all building code requirements and will incorporate all recommendations from applicable City agencies and Project consultants.

8. The Project is conditioned for all recommendations of the project engineering geologist or geotechnical engineer, and the City geotechnical consultant reviewers to be incorporated into the final design. Among other conditions, the project was also conditioned to provide a construction staging plan, adhere to limited construction hours, construction management techniques, and dark sky lighting requirements, fuel modification plans, and grading and water quality provisions. With these conditions, the requested variance will not be detrimental to health, safety and welfare of the City.

SECTION 6. Determination of Public Convenience or Necessity.

According to the State Department of Alcoholic Beverage Control, a Letter of Public Convenience or Necessity may be required for the overconcentration of licenses. Based on CUP findings in Section 3(G) of this resolution, the City Council finds that the proposed use will not be detrimental to the public health, safety, or general welfare and is compatible with the land uses presently on the subject property and in the surrounding neighborhood. The City Council hereby recommends that the City Council authorizes the Planning Director to prepare and submit a Letter of Public Convenience or Necessity for the proposed use to the State Alcoholic Beverage Control Department.

SECTION 7. City Council Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby adopts IS-MND No. 20-003 and approves CDP No. 09-067, CUP No. 18-002, VAR Nos. 18-030, 18-031, and 20-035, and SPR No. 18-025, subject to the following conditions.

SECTION 8. Conditions of Approval.

Standard Conditions

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this Project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this Project. The City shall have the sole right to choose its counsel and property owners shall reimburse the

City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this Project.

2. Approval of this application is to allow for the Project described herein. The scope of work approved includes:
 - a. Construction of a new, 2-story, 7,693 square foot, 20-room motel above a new subterranean parking garage (0.15 FAR);
 - b. Rooftop deck with a swimming pool, spa and bar;
 - c. Surface parking lot;
 - d. Hardscape and landscaping;
 - e. Grading and retaining wall;
 - f. Onsite wastewater treatment system; and
 - g. Discretionary Requests:
 - i. CUP No. 18-002 for a new motel in the CV-1 zoning district and sale of alcohol;
 - ii. VAR No. 18-030 for construction on slopes steeper than 3 to 1;
 - iii. VAR No. 18-031 for a retaining wall that is an integral part of the building in excess of 12 feet in height;
 - iv. VAR No. 20-035 for surface parking within the required front yard setback; and
 - v. SPR No. 18-025 for a building height in excess of 18 feet not to exceed 24 feet for a flat roof.
3. Except as specifically changed by conditions of approval, the proposed development shall be constructed in substantial compliance with plans on-file with the Planning Department, date-stamped **May 18, 2020** and **March 20, 2023**. The proposed development shall further comply with all conditions of approval stipulated in this resolution and Department Review Sheets attached hereto. In the event the Project plans conflict with any condition of approval, the condition shall take precedence.
4. This conditional use permit and rights conferred in this approval shall not be effective until all appeals are exhausted, and the property owner executes the Affidavit of the Acceptance of Conditions. Said documents shall be recorded with the Los Angeles County Recorder and a certified copy of said recordation shall be filed with the Planning Department within 10 days of the effective date of the approval.
5. The applicant shall digitally submit a complete set of plans to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
6. This CDP shall expire if the Project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request. In the event of an appeal, the CDP shall expire if the Project has not commenced within three years from the date the appeal is decided by the decision-making body or withdrawn by the appellant.

7. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
8. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Biologist, City Environmental Health Administrator, City geotechnical consultant reviewers, City Public Works Department, Los Angeles County Sheriff's Department, WD29, and LACFD, as applicable. Notwithstanding this review, all required permits shall be secured. Notwithstanding this review, all required permits shall be secured.
9. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the Project is still in compliance with the MMC and the LCP. Revised plans reflecting the minor changes and additional fees shall be required.
10. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the CCC, have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the CDP approved by the City is void.
11. The applicant must submit payment for any outstanding fees payable to the City prior to issuance of any building or grading permit.

Lighting

12. Exterior lighting must comply with the Dark Sky Ordinance and shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view. Permitted lighting shall conform to the following standards:
 - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height and are directed downward, and limited to 850 lumens (equivalent to a 60-watt incandescent bulb);
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 850 lumens;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 850 lumens;
 - d. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 850 lumens;
 - e. Site perimeter lighting shall be prohibited; and
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
13. Night lighting for sports courts or other private recreational facilities shall be prohibited. Pool lighting may be permitted provided such lighting is the minimum necessary to comply with applicable safety regulations.
14. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property(ies) shall not produce an illumination level greater than one foot candle.

15. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded directed downward and inward so there is no offsite glare or lighting of natural habitat areas.
16. String lights are allowed in occupied dining and entertainment areas only and must not exceed 3,000 Kelvin.
17. Motion sensor lights shall be programmed to extinguish ten minutes after activation.
18. Three sequential violations of the conditions by the same property owner will result in a requirement to permanently remove the outdoor light fixture(s) from the site.

Construction / Framing

19. A construction staging plan shall be reviewed and approved by the Planning Director prior to plan check submittal.
20. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.
21. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.
22. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning Department for review and sign off on framing.
23. Prior to issuance of a building/demolition permit, an Affidavit and Certification to implement a Waste Reduction and Recycling Plan (WRRP) shall be signed by the Owner or Contractor and submitted to the Environmental Sustainability Department. The WRRP shall indicate the agreement of the applicant to divert at least 50 percent of all construction generated by the Project.
24. For the transportation of heavy construction equipment and/or material, which requires the use of oversized-transport vehicles on State highways, the applicant / property owner is required to obtain a transportation permit from the California Department of Transportation.

Cultural Resources

25. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the

Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in MMC Section 17.54.040(D)(4)(b) shall be followed.

26. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Site-Specific Conditions

27. No off-site sale of alcohol shall be permitted. Alcohol shall only be served for room service and within the rooftop deck for motel guests.
28. This CUP permits the sale and consumption of alcoholic beverages. The property owner / motel operator shall obtain all necessary approvals from ABC. Once obtained, the applicant is required to provide the Planning Department a copy of the issued ABC license.
29. A copy of the current ABC license shall be kept on the premises of the establishment and be presented to City staff, including the City's Planning Director and Code Enforcement staff, law enforcement officers or their duly authorized representatives, upon request.
30. At all times during the conduct of the permitted use, the permittee shall maintain and keep in effect valid licensing approval from ABC. Should such licensing be denied, expire or lapse at any time in the future, the approval of alcohol sale pursuant to this permit is subject to modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).
31. Prior to the commencement of alcohol service, the property owner / operator shall install small signs in the interior of the business, as depicted on the project plans, requesting that patrons be courteous and quiet when occupying outdoor areas and stating that alcohol may only be consumed in compliance with the motel's ABC license.
32. The approved hours of operation for the sale or serving of alcoholic beverages are limited to 10:00 a.m. to 10:00 p.m., Sunday through Thursday, and 10:00 a.m. to 11:00 p.m., Friday and Saturday.
33. No live entertainment is permitted on the property except in compliance with an approved temporary use permit provided it can be demonstrated that the noise generated from the event would be in compliance with Condition No. 35 and off-street parking spaces can be secured to accommodate the number of people expected in the event. Amplified sound may be permitted provide it is consistent with Condition Nos. 35 and 126.
34. The property owner / operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking

regulations and all conditions of approval for the subject use relating to parking, smoking, litter, noise, loitering, etc.

35. Noise emanating from the premises shall not be plainly audible at a distance of five feet of any residential unit between the hours of 10:00 p.m. and 7:00 a.m., as required by MMC Section 8.24.050(L).
36. The onsite kitchen may only serve food and beverages to motel guests.
37. The motel operator must adhere to all laws related to the sale of alcohol. Violations of such laws may be cause for modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).
38. No other new signage is permitted under this application; a sign permit shall be submitted and approved by the Planning Department prior to installation of any new sign.
39. The landscaping plan must be revised to include a detail depicting a barrier encircling root balls to be used for all the California Sycamore trees in order to minimize potential root damage to the sidewalk and parking lot. The planting of the California Sycamore trees must be in compliance with this detail.
40. The swimming pool may only be used by motel guests no later than 10 pm. All pool lights must be turned off for the night no later than 10 pm.
41. Prior to Building Safety Division plan check submittal, the applicant / property owners must revise the project plans so that the soil abutting the subterranean garage does not daylight more than three vertical feet as measured from the bottom of the first floor.
42. The third driveway curb cut on the Aviation Nation Site from west to east must be removed.
43. Prior to the issuance of a development permit, the property owner must pay the in-lieu fee for the lower cost overnight accommodations in compliance with LIP Section 12.10.
44. Prior to the issuance of a development permit, the property owner / applicant must provide a rooftop floor plan showing the location of the umbrellas in compliance with the height limit.
45. Vehicle lifts are allowed, but not to satisfy required parking, and only if backup power sufficient to operate lifts is provided to the satisfaction of the Building Official.
46. No more than eight employees can be at the site at any one shift.
47. Special events involving non-guests shall require a temporary use permit.
48. Pursuant to MMC Section 17.49, the property owner or applicant must record a covenant agreement requiring a covenant of easement to be recorded immediately after any of the two properties is sold to a different buyer in a form and manner approved by the City Attorney (based upon advice of the City Engineer and Planning Director) to provide egress

at the property located at 22969 PCH (Malibu Inn) to benefit the property located at 22959 PCH (Malibu Inn Motel).

49. The exposed portion of the retaining wall must be treated with realistic faux-rock cladding.
50. Giant Bird of Paradise as shown on the landscaping plans shall be planted in front of the retaining wall to visually screen the portions of the retaining wall above the roofline of the motel building.

Mitigation Monitoring and Reporting Program

51. The Project shall comply with all the mitigation measures included in the MMRP of IS/MND No. 20-003.

Colors and Materials

52. The Project is visible from scenic roads or public viewing areas and shall incorporate colors and materials that are compatible with the surrounding landscape.
 - a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones. Colors shall be reviewed and approved by the Planning Director and clearly indicated on the building plans.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
53. Retaining walls visible from beaches or public viewing areas shall incorporate veneers, texturing and/or colors to blend with the surrounding earth materials. The colors shall be reviewed and approved by the Planning Director and clearly indicated on the grading and building plans.
54. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The colors shall be reviewed and approved by the Planning Director and clearly indicated on the grading and building plans.

Conditional Use Permit

55. This conditional use permit may be reviewed by the Planning Director (predecessor and/or designee) and/or Planning Commission on an as-needed basis at the discretion of the Planning Director (predecessor and/or designee) or Planning Commission. Should it be determined that a review is required, the applicant shall pay the Planning Department staff site inspection fee in effect at the time of request for a site inspection. A staff planner will conduct a site visit to verify compliance with the provisions set forth in this resolution. If necessary, the Planning Director will determine whether the conditional use permit may be brought back to the Planning Commission for additional conditions to mitigate and/or prevent nuisances that were identified during the site inspection or made aware of by members of the public. Possible mitigation measures can include:
 - a. Modifying the hours of operation;

- b. Incorporating noise mitigating measures/devices;
 - c. Traffic safety measures;
 - d. Land use intensification or reconfiguration of shared parking that would result in a parking demand greater than approved under this application; or
 - e. Other measures deemed necessary by the Planning Commission.
56. The property owner / tenant shall not use the parking lot for any use other than the uses and activities explicitly permitted for the subject parcel or as permitted by a temporary use permit or filming permit.
57. The property owner and operator must secure an off-site parking area to accommodate vehicles for all events that overlap with other uses that will generate a parking demand in excess of the proposed parking spaces. A shuttle service must be provided between the off-site parking area and the subject property.
58. The conditional use permit may be modified by the Planning Commission and/or City Council pursuant to the procedures designated in the Malibu Municipal Code.
59. A conditional use permit that is valid and in effect, and was granted pursuant to the provisions of the MMC, shall run with the land and continue to be valid upon change of ownership of the land or any lawfully existing building or structure on the land.
60. This conditional use permit shall no longer be valid and in effect with the demolition of all buildings, including a major remodel constituting new development requiring a new CDP.
61. The conditional use permit may be revoked if the Planning Commission finds that one or more of the following conditions exists:
- a. The conditional use permit was obtained in a fraudulent manner;
 - b. One or more of the conditions found within this resolution have not been substantially met; or
 - c. The use for which the CUP was granted ceased for six successive calendar months after the start of operations, except in the case of natural disaster.
62. The Planning Commission may revoke the conditional use permit should the conditionally permitted use cease for six successive calendar months, except in the case of a natural disaster.

Building Plan Check/Department Conditions

Water Quality/Water Service

63. Prior to the issuance of a building permit, the applicant shall submit a Will Serve Letter from WD29 to the Planning Department indicating the ability of the property to receive adequate water service.

Biology/Landscaping

64. The use of pesticides, including insecticides, herbicides, rodenticides or any toxic chemical substance which has the potential to degrade biological resources shall prohibited

- throughout the City of Malibu. The eradication of invasive plant species or habitat restoration shall consider first the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls. Herbicides may be selected only after all other non-chemical methods have been exhausted. Herbicides shall be restricted to the least toxic product and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and use for a limited time.
65. Prior to final Planning inspection or other final Project sign off (as applicable), the applicant shall submit to the Planning Director for review and approval a certificate of completion in accordance with the Landscape Water Conservation Ordinance (MMC Chapter 9.22). The certificate shall include the property owner's signed acceptance of responsibility for maintaining the landscaping and irrigation in accordance with the approved plans and MMC Chapter 9.22.
 66. Invasive plant species, as determined by the City of Malibu, are prohibited.
 67. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
 68. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as creosote or copper arsenate.
 69. Prior to installation of any landscaping, the applicant shall obtain a plumbing permit for the proposed irrigation system from the Building Safety Division.
 70. Prior to a final plan check approval, the property owner /applicant must provide a landscape water use approval from the WD29.
 71. Vegetation forming a view impermeable condition serving the same function as a fence or wall (also known as a hedge) located within the side or rear yard setback shall be maintained at or below a height of six feet. A hedge located within the front yard setback shall be maintained at or below a height of 42 inches. Three sequential violations of this condition will result in a requirement to permanently remove the vegetation from the site.
 72. Vegetation in excess of six feet in height shall not obstruct the primary view of existing residences located within a 1,000-foot radius at any given time (given consideration of its future growth).
 73. Plantings required for fuel modification must be native, drought-tolerant species and shall blend with the existing natural vegetation and natural habitats on the site.
 74. Use of wood chips and shredded rubber is prohibited anywhere on the site. Flammable mulch material, including shredded bark, pine needles, and artificial turf, are prohibited between zero and five feet of a structure. Non-continuous use of flammable mulch (excluding wood chips and shredded rubber) is allowed between 5 and 30 feet from the eave/overhang of a structure with limited application areas. Any mulch materials (excluding wood chips and shredded rubber) are allowed 30 feet or more from a structure with no limitation on application area.

75. Delete Dragon tree (*Dracaena draco*) from the planting plan along the PH frontage. All street frontage trees are limited to species natives to the Santa Monica Mountains.

Environmental Health

76. Prior to the issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's onsite wastewater treatment regulations including provisions of MMC Chapters 15.40, 15.42, 15.44, and LIP Chapter 18 related to continued operation, maintenance and monitoring of the OWTS.
77. Prior to final Environmental Health approval, a final OWTS plot plan shall be submitted showing an OWTS design meeting the minimum requirements of the MMC and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The OWTS plot plan shall show essential features of the OWTS and must fit onto an 11-inch by 17-inch sheet leaving a five-inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
78. A final design and system specifications shall be submitted as to all components (i.e., alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of the proposed OWTS. For all OWTS, final design drawings and calculations must be signed by a California registered civil engineer, a registered environmental health specialist or a professional geologist who is responsible for the design. The final OWTS design drawings shall be submitted to the City Environmental Health Administrator with the designer's wet signature, professional registration number and stamp (if applicable).
79. Any above-ground equipment associated with the installation of the OWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
80. The final design report shall contain the following information (in addition to the items listed above).
- a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;
 - b. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;

- c. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the Projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The Projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak OWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of fixture units and building occupancy characteristics; and
 - d. All final design drawings shall be submitted with the wet signature and typed name of the OWTS designer. If the scale of the plan is such that more space is needed to clearly show construction details, larger sheets may also be provided (up to a maximum size of 18 inch by 22 inch, for review by Environmental Health). Note: For OWTS final designs, full-size plans are required for review by the Building Safety Division and/or the Planning Department.
81. Prior to final Environmental Health approval, the construction plans for all structures and/or buildings with reduced setbacks must be approved by the City Building Safety Division. The architectural and/or structural plans submitted to Building and Safety plan check must detail methods of construction that will compensate for the reduction in setback (e.g., waterproofing, concrete additives, etc.). For complex waterproofing installations, submittal of a separate waterproofing plan may be required. The architectural/structural/waterproofing plans must show the location of OWTS components in relation to those structures from which the setback is reduced, and the plans must be signed and stamped by the architect, structural engineer, and geotechnical consultants (as applicable).
82. Prior to final Environmental Health approval, the applicant shall provide engineer's certification for reduction in setbacks to buildings or structures: All proposed reductions in setback from the OWTS to structures (i.e., setbacks less than those shown in MMC Table 15.42.030(E)) must be supported by a letter from the project structural engineer and a letter from the project soils engineer (i.e., a geotechnical engineer or civil engineer practicing in the area of soils engineering). Both engineers must certify unequivocally that the proposed reduction in setbacks from the treatment tank and effluent dispersal area will not adversely affect the structural integrity of the OWTS, and will not adversely affect the structural integrity of the structures for which the Table 15.42.030(E) setback is reduced. Construction drawings submitted for plan check must show OWTS components in relation to those structures from which the setback is reduced. All proposed reductions in setback from the OWTS to buildings (i.e., setbacks less than those shown in Table 15.42.030(E)) also must be supported by a letter from the project architect, who must certify unequivocally that the proposed reduction in setbacks will not produce a moisture intrusion problem for the proposed building(s). If the building designer is not a California-licensed architect, then the required architect's certification may be supplied by an engineer who is responsible for the building design with respect to mitigation of potential moisture

- intrusion from reduced setbacks to the wastewater system. In this case, the engineer must include in his/her letter an explicit statement of responsibility for mitigation of potential moisture intrusion. If any specific construction features are proposed as part of a moisture intrusion mitigation system in connection with the reduced setback, then the architect or engineer must provide associated construction documents for review and approval during Building Safety Division plan check. The wastewater plans and the construction plans must be specifically referenced in all certification letters.
83. All project architectural plans and grading/drainage plans shall be submitted for Environmental Health review and approval. The floor plans must show all drainage fixtures, including in the kitchen and laundry areas. These plans must be approved by the Building Safety Division prior to receiving Environmental Health final approval.
 84. A covenant running with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the City of Malibu Recorder's Office. Said covenant shall serve as constructive notice to any future purchaser for value that the onsite wastewater treatment system serving subject property is an advanced method of sewage disposal pursuant to the MMC. Said covenant shall be provided by the City of Malibu Environmental Health Administrator. Submit a certified copy issued by the City of Malibu Recorder.
 85. A covenant running with the land shall be executed by the property owner and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive notice to any successors in interest that: 1) the private sewage disposal system serving the development on the property does not have a 100 percent expansion effluent dispersal area (i.e., replacement disposal field(s) or seepage pit(s)), and 2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures including, but not limited to, limitations on water use enforced through operating permit and/or repairs, upgrades or modifications to the private sewage disposal system. The recorded covenant shall state and acknowledge that future maintenance and/or repair of the private sewage disposal system may necessitate interruption in the use of the private sewage disposal system and, therefore, any building(s) served by the private sewage disposal system may become non-habitable during any required future maintenance and/or repair. Said covenant shall be in a form acceptable to the City Attorney and approved by the City Environmental Sustainability Department.
 86. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
 87. An operations and maintenance manual specified by the OWTS designer shall be submitted to the property owner and maintenance provider of the proposed OWTS.
 88. Prior to final Environmental Health approval, a maintenance contract executed between the owner of the subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed OWTS after construction shall be submitted. Only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.

89. Prior to final Environmental Health approval, a covenant running with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the City of Malibu Recorder's Office. Said covenant shall serve as constructive notice to any future purchaser for value that the onsite wastewater treatment system serving subject property is an advanced method of sewage disposal pursuant to the MMC. Said covenant shall be provided by the City of Malibu Environmental Health Administrator.
90. The City geotechnical consultant reviewer's final approval shall be submitted to the City Environmental Health Administrator.
91. The City Biologist's final approval shall be submitted to the City Environmental Health Administrator. The City Biologist shall review the OWTS design to determine any impact on Environmentally Sensitive Habitat Area if applicable.
92. In accordance with MMC Chapter 15.44, prior to Environmental Health approval, an application shall be made to the Environmental Sustainability Department for an OWTS operating permit.
93. The applicant/property owner must submit wastewater plans, and all necessary supporting forms and reports to the Los Angeles Regional Water Quality Control Board (RWQCB) to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). Prior to the issuance of any City-issued development permits, RWQCB Waste Discharge Requirements shall be obtained and submitted to the City of Malibu Environmental Health Administrator.

Geology

94. All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
95. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment of the CDP or a new CDP.

Public Works

Street Improvements

96. The Project proposes to construct a new driveway and other improvements within Caltrans' right-of-way. Prior to the Public Works Department approval of the grading or building permit, the applicant shall obtain encroachment permits from Caltrans for the proposed improvements.
97. The Project must comply with all applicable Caltrans requirements.

Grading/Drainage

98. Exported soil from the site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3. A note shall be placed on the project plans that addresses this condition.
99. A grading and drainage plan containing the following information shall be submitted to the Public Works Department for approval, prior to the issuance of grading permits for the Project:
- a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. The limits to land to be disturbed during project development shall be delineated and a total area of disturbance should be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading shall be included within the area delineated;
 - e. If the property contains rare, endangered or special status species as identified in the Biological Assessment, this plan shall contain a prominent note identifying the areas to be protected (to be left undisturbed). Fencing of these areas shall be delineated on this plan is required by the City Biologist;
 - f. The grading limits shall include the temporary cuts made for retaining walls, buttresses and over excavations for fill slopes;
 - g. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan; and
 - h. Public storm drain modifications shown on the grading plan shall be approved by the Public Works Department prior to the issuance of the grading permit.
100. Clearing and grading during the rainy season (extending from November 1 to March 31) shall be prohibited for development that:
- a. Is located within or adjacent to ESHA, or
 - b. Includes grading on slopes greater than 4 to 1.

Approved grading for development that is located within or adjacent to ESHA or on slopes greater than 4 to 1 shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the City determines that completion of grading would be more protective of resources.

101. A digital drawing (AutoCAD) of the Project's private storm drain system, public storm drain system within 250 feet of the property limits and post-construction BMPs shall be submitted to the Public Works Department prior to grading or building permit issuance.

The digital drawing shall adequately show all storm drain lines, inlets, outlet, post-construction BMPs and other applicable facilities. The digital drawing shall also show the subject property, public street and any drainage easements.

Stormwater

102. A Local Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the Grading/Building permits for the Project. This plan shall include an Erosion and Sediment Control Plan (ESCP) that includes, but not limited to:

Erosion Controls	Scheduling
	Preservation of Existing Vegetation
Sediment Controls	Silt Fence
	Sandbag Barrier
	Stabilized Construction Entrance
Non-Storm Water Management	Water Conservation Practices
	Dewatering Operations
Waste Management	Material Delivery and Storage
	Stockpile Management
	Spill Prevention and Control
	Solid Waste Management
	Concrete Waste Management
	Sanitary/Septic Waste Management

All Best Management Practices (BMP) shall be in accordance with the latest version of the California Stormwater Quality Association (CASQA) BMP Handbook. Designated areas for the storage of construction materials, solid waste management, and portable toilets must not disrupt drainage patterns or subject the material to erosion by site runoff.

103. A Storm Water Management Plan (SWMP) shall be submitted for review and approval of the Public Works Director. The SWMP shall be prepared in accordance with the LIP Section 17.3.2 and all other applicable ordinances and regulations. The SWMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the pre-development and post-development drainage of the site. The SWMP shall identify the site design and source control BMPs that have been implemented in the design of the project. The SWMP shall be reviewed and approved by the Public Works Department prior to the issuance of the grading or building permit for this project.
104. A Water Quality Mitigation Plan (WQMP) shall be submitted for review and approval of the Public Works Director. The WQMP shall be prepared in accordance with the LIP Section 17.3.3 and all other applicable ordinances and regulations. The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage on the site. The following elements shall be included within the WQMP:
- a. Site Design Best Management Practices (BMPs);
 - b. Source Control BMPs;
 - c. Treatment Control BMPs;

- d. Drainage improvements;
- e. Methods for onsite percolation, site re-vegetation and an analysis for off-site Project impacts;
- f. Measures to treat and infiltrate runoff from impervious areas;
- g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
- h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
- i. The WQMP shall be submitted to the Building Safety Division and the fee applicable at the time of submittal for review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted prior to the Public Works Department approval of building plans for the Project.

Miscellaneous

105. The developer's consulting engineer shall sign the final plans prior to the issuance of permits.
106. Prior to the commencement of work, the applicant shall submit a copy of their Construction Management Plan. The Construction Management Plan shall include a dedicated parking location for construction workers, not within the public right-of-way.
107. Prior to the approval of any grading and drainage permit, the applicant shall submit a PDF of the final plans. If there are further modifications to the plans, the applicant shall provide the City with an updated PDF.

Swimming Pool and Spa

108. The discharge of swimming pool, spa and decorative fountain water and filter backwash, including water containing bacteria, detergents, wastes, algaecides or other chemicals is prohibited. Swimming pool, spa, and decorative fountain water may be used as landscape irrigation only if the following items are met:
 - a. The discharge water is dechlorinated, debrominated or if the water is disinfected using ozonation;
 - b. There are sufficient BMPs in place to prevent soil erosion; and
 - c. The discharge does not reach into the MS4 (including tributaries).

Discharges not meeting the above-mentioned methods must be trucked to a Publicly Owned Wastewater Treatment Works.

109. The applicant shall also provide a construction note on the plans that directs the contractor to install a new sign stating "It is illegal to discharge pool, spa or water feature waters to a street, drainage course or storm drain per MMC 13.04.060(D)(5)." The new sign shall be

posted in the filtration and/or pumping equipment area for the property: Prior to the issuance of any permits; the applicant shall indicate the method of disinfection and the method of discharging.

Commercial Development

110. All commercial developments shall be designed to control the runoff of pollutants from structures, parking and loading docks. The following minimum measures shall be implemented to minimize the impacts of commercial developments on water quality:
- a. Proper design of loading and unloading docks.
 - i. Cover loading/unloading dock areas or design drainage to minimize run-on and runoff of storm water.
 - ii. Direct connections to storm drains from depressed loading/unloading docks are prohibited.
 - b. Properly design Repair/Maintenance Bays
 - i. Repair/maintenance bays must be indoors or designed to prohibit storm water runoff or contact with storm water runoff.
 - ii. Repair/maintenance bays shall be designed to capture all wash water, leaks, and spills. Connect drains to a sump for collection and disposal: Direct connection of the repair/maintenance bays to the storm drain is prohibited. Obtain an Industrial waste discharge permit if required.
 - c. Properly Design Vehicle/Equipment Wash Areas
 - i. Self-contained and/or covered wash areas shall be equipped with a clarifier or other pretreatment facility and properly connected to a sanitary sewer.
 - d. Properly designed Parking Lots (5,000 square feet of impervious surface or 25 parking spaces.)
 - i. Minimize impervious surfacing for parking area.
 - ii. Infiltrate runoff before it reaches a storm drain system.
 - iii. Treat to remove oil and petroleum hydrocarbons at parking lots that are heavily used.
 - iv. Ensure adequate operation and maintenance of treatment systems particularly sludge and oil removal system fouling and plugging prevention control.

Restaurants

111. Properly design equipment/accessory wash areas:
- a. Install self-contained wash area, equipped with grease trap, and properly connected to Sanitary Sewer.
 - b. If the Wash area is located outdoors, it must be covered, paved, have secondary containment and shall be connected to the sanitary sewer.

Trash Storage Areas

112. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
113. Trash container areas must be screened or walled to prevent off-site transport of trash.

Outdoor Material Storage

114. Materials with the potential to contaminate storm water must be: (1) placed in an enclosure such as a cabinet shed or similar structure that prevents contact with runoff or spillage to the storm water conveyance system; or (2) protected by secondary containment structures such as berms, dikes or curbs.
115. The storage areas must be paved and sufficiently impervious to contain leaks and spills.
116. The storage area must have a roof or awning to minimize collection of storm water within the secondary containment area.

Prior to Final Sign-Off/Prior to Occupancy

117. Prior to the issuance of a Certificate of Occupancy, the City Biologist shall inspect the Project site and determine that all planning conditions have been implemented to protect natural resources in compliance with approved plans and this resolution.
118. Prior to a final Building inspection, the applicant shall provide the Environmental Sustainability Department a final Waste Reduction and Recycling Summary Report (WRRP Summary Report). The final Summary Report shall designate all materials that were land filled or recycled, broken down by material types. The Environmental Sustainability Department shall approve the Final Summary Report.
119. Prior to, or at the time of a Planning final inspection, the property owner / applicant shall submit to the Planning Department the plumbing permit for the irrigation system installation signed off by the Building Safety Division.
120. The applicant shall request a final Planning Department inspection prior to final inspection by the City of Malibu Environmental and Sustainability Department. A final approval and Certificate of Occupancy shall not be issued until the Planning Department has determined that the Project complies with this CDP. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
121. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval, and if applicable, the issuance of the certificate of occupancy.

Deed Restrictions

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

123. Prior to final Planning Department approval, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 13-19. The property owner shall provide a copy of the recorded document to the Planning Department prior to final Planning Department approval.

Fixed Conditions

124. This coastal development permit shall run with the land and bind all future owners of the property.
125. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

Mitigation Measures

126. Worker Education and Unanticipated Discovery Response. A qualified paleontologist as approved by the City of Malibu and the Los Angeles County Natural History Museum Vertebrate Paleontology Department shall be retained prior to ground-disturbing activities associated with construction of any individual project phase. Prior to ground-disturbance, the qualified paleontologist shall provide the construction crew(s) a brief summary of the paleontological potential of the underlying geology, the rationale behind the need for protection of paleontological resources, information on the initial identification of paleontological resources, and procedures to implement in the event paleontological resources are discovered.

In the event paleontological resources are uncovered at any point during construction activities, the Construction Contractor shall halt ground-disturbing activities and notify the Paleontologist and City, at which time the Paleontologist shall conduct an on-site inspection of the discovery, make a preliminary taxonomic identification, determine whether further action is required, and recommend measures for further evaluation, and/or collection of the resource as appropriate.

- a. Ground-disturbance shall not resume in the vicinity of the of the discovery until the Paleontologist has assessed the resource.
 - b. The Paleontologist shall have the authority to halt and/or redirect construction activities to allow a reasonable amount of space and time to evaluate potential resources.
 - c. Significant resources shall be collected, prepared, and curated with an accredited institution as determined necessary by the Paleontologist.
127. Construction Noise Control. All construction machinery and delivery trucks shall be maintained to the highest level of performance, and shall be outfitted with all noise reduction accessories, e.g., mufflers, enclosures, etc., that are offered by the equipment manufacturers. The construction site shall be laid out such that materials are stored and staged near the southwestern edge of the site to maximize the distance from the residence and daycare. A temporary barrier capable of reducing the intensity of sound shall be erected between the project site and the school during the construction period. Prior to construction, all residences within 500 feet of the property line shall be individually notified of the project's construction schedule. Prior to construction, a sign shall be posted on the site that

is legible from at least 50 feet off-site. The sign shall include a telephone number that residents can call to inquire about the construction process and to register complaints. The project applicant shall designate a “noise control coordinator” who will reply to all construction noise-related questions and complaints. Pile driving shall not be conducted on-site unless approved by the City.

128. Prohibition of Amplified Sound. Amplified sound outdoors is prohibited, except that ambient music is allowed in the swimming pool and hallway areas, as long as it is not audible within five feet of any neighboring building, and the applicant prepares a noise study.
129. In the event that Tribal Cultural Resources are discovered during Project activities, all work in the immediate vicinity of the find (within a 75-foot buffer) shall cease and a qualified archaeologist meeting Secretary of Interior standards shall assess the find. The Lead Agency or Project manager shall contact the Fernandeano Tataviam Band of Mission Indians and Kizh Nation Gabrieleno Band of Mission Indians to consult if any such find occurs within areas culturally and traditionally affiliated with the Fernandeano Tataviam Band of Mission Indians and Kizh Nation Gabrieleno Band of Mission Indians.

SECTION 9. The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 13th of May 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 RUSIN, Interim City Attorney

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission's approval to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the MMC and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.