



Supplemental Council Agenda Report

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

Prepared by: Aakash Shah, Contract Planner

Reviewed by: Yolanda Bundy, Community Development Director
Tyler Eaton, Assistant Community Development Director

Approved by: Rob Duboux, Interim City Manager
Trevor Rusin, Interim City Attorney

Date prepared: February 17, 2026 Meeting date: February 18, 2026

Subject: Appeal of Planning Commission Resolution No. 24-39 Regarding Coastal Development Permit No. 23-004 (29738 Cuthbert Road, APN 4469-041-011, Owner Malibo LLC, Appellant Charlotte Frieze Jones, for Malibu Park Neighbors Group)

RECOMMENDED ACTION: Either: 1) Adopt Resolution No. 26-05 denying Appeal No. 24-010, determining the project is categorically exempt from the California Environmental Quality Act, and approving Coastal Development Permit-Woolsey Fire No. 23-004, Site Plan Review No. 23-026 and Demolition Permit No. 24-020, an application to allow for the construction of a 4,620 square-foot addition to a like-for like rebuild of a destroyed single-family residence approved under Planning Verification-Woolsey Fire No. 21-034, enlargement of the existing swimming pool and spa, reconfiguration of the existing driveway, hardscape, landscape, grading, improvements to the existing tennis court; demolition of existing hardscape and landscape, and installation of a new onsite wastewater treatment system; including a site plan review for construction of the residence over 18 feet in height not to exceed 24 feet in height located in the Rural Residential-Two acre (RR-2) zoning district at 29738 Cuthbert Road (Malibo LLC); or 2) Direct staff to bring back a resolution consistent with the City Council's decision.

DISCUSSION: After the distribution of the agenda report, it has come to staff's attention that correspondence submitted by the applicant on July 11, 2025, was inadvertently excluded from the agenda report. The correspondence is attached hereto.

ATTACHMENTS: Correspondence submitted by Applicant, dated July 11, 2025

From: Arsineh Baghoomian [REDACTED]
Sent: Friday, July 11, 2025 3:14 PM
To: Aakash Shah <ashah@malibucity.org>
Cc: Janek - Public [REDACTED]; Michael Bolour <[REDACTED]>; Michel Bolour <[REDACTED]>
Subject: Re: 29738 Cuthbert -Reasons for Appeal Applicant Response

Hi Aakash,
Please see the link below for the final draft of our response to the appeal.

<https://www.dropbox.com/scl/fo/xcwvmaybirqjabgg04wbl/AEnxs2mAnpaQZiIZFNGtCfQ?rlkey=v4s31my9wylruwzxdv51mrezo&st=229oiiqw&dl=0>

Please disregard previous email.

Best regards,
Arsineh

Applicant Response to Appeal

Project: 29738 Cuthbert Road - PVWF 21-034 & CDP 23-004

Text Key:

Appellant's Submitted Appeal

Applicant Comments/Response

PART ONE

Project Being Appealed

Coastal Development Permit-Woolsey Fire No. 23-004, An application to allow for the construction of a (1)4,620 square-foot addition to a destroyed single-family residence approved under Planning Verification-Woolsey Fire No. 21-034, (2)extension of the existing swimming pool and spa, (3)reconfiguration of the existing driveway, hardscape, (4)landscape, grading, (5)improvements to the existing tennis court; (6)tennis pavilion; demolition of existing hardscape and landscape, (7)and installation of a new onsite wastewater treatment system; including a site plan (8)Review for construction of the residence over 18 feet in height not to exceed 24 feet in height.

Applicant Response:

The introduction of the project by Charlotte shows she did not study the project well, and she made assumptions based on her provision and preferences.

- (1) The project follows the 10% addition per code
- (2) Not an extension of the pool, but changing its shape to stay 100 feet away from the water stream
- (3) Not a reconfiguration of the driveway, but a replacement and comply with the fire codes
- (4) The landscape stays the same except for removing the cypress trees in front to provide a view corridor from Cuthbert to the ocean
- (5) The surface cracks are being repaired, surrounding landscape screening burnt by fire being replaced, and permitted lighting being removed to comply with the dark sky ordinance
- (6) The tennis pavilion was an existing structure

- (7) The existing septic system adjacent to water course abandoned and removed, new planned septic system is moved away from water course
- (8) The project follows all the required height limits

Background Summary

The owner's 2,276sf residence, garage 484sf, guest house 484sf and pool house 276sf and barn 1,500sf were destroyed in the Woolsey Fire. Owner applied for a Planning Verification to build 3,872sf (3,520sf plus 10%) which was approved on 9-28-2021. A 1,520sf portion of the main house - the proposed kitchen - was located in the ESHA buffer of a mapped blue line stream. See Planning Verification Plans AO.0 (8492sf residence); A0.00 Portion in red is 1520 sf kitchen area portion in ESHA buffer) and A0.8 (Open roof deck and raised kitchen roof in ESHA buffer).

Planning Verifications are granted if an Owner is rebuilding their new home in the same location as the destroyed home plus 10%. In this instance the original home was located in the ESHA buffer. The Planning Commission and Public were under the impression that this was a fire rebuild and the only reason it was allowed in the ESHA buffer was because the new residence was grandfathered.

What was never revealed to the Commissioners and the Public was that the Planning Verification was not for a new "like for like" residence but rather for the kitchen area of a new 8,492sf residence which is what the Owner always planned to build. The Owner never intended to rebuild the former residence plus 10%.

Applicant Response:

Per the description of the CDP No. 23-004, the application was for an addition and not a new residence. As described in the project overview section of Page 2 of the July 15, 2024 and Page 2 of the February 21, 2023 Planning Agenda reports, the project was for additions to a previously approved residence that was approved under PVWF No. 21-034. The addition was processed as a coastal development permit application because the proposed addition did not qualify for an exemption from the Coastal Act based on the criteria contained in Chapter 13 of the City's Local Implementation Plan (LIP), specifically sections 13.4.1 and 13.4.6. LIP Section 13.4.1 could not be applied because the project was not an addition to an existing structure and the project was also adjacent to environmentally sensitive habitat area. Furthermore, the addition did not meet the criteria listed in LIP Section 13.4.6. Consistent with the requirements of LIP Section 13.3(A) the property owner filed a coastal development permit application consistent with LIP Section 13.6.1.

Additionally, it should be noted that the scope of work approved under PVWF No. 21-034 satisfied the criteria contained in LIP Section 13.4.6. Specifically, consistent with LIP Section 13.4.6(A)(1), the PVWF approved a replacement structure that met the LIP's definition of a dwelling including the required parking which was consistent with the previously existing use prior to the fire.

Consistent with LIP 13.4.6(A)(2), the approved replacement dwelling did not exceed either the floor area, height, or bulk of the destroyed structure by more than ten (10) percent. Lastly, the replacement dwelling was generally sited in the same location on the affected property as the destroyed structure and did not reduce any required ESHA or structure setbacks. It should be noted that development approved under the PVWF application met the definition of a dwelling and included the required offsite parking and did not rely on proposed addition to be built. The CDP application and the PVWF application were not functionally related.

In addition, as discussed throughout the July 15, 2023 staff report, the development that was proposed as part of the CDP application was considered and reviewed as new development per the definitions section of the LIP. Consistent with the LIP ESHA requirements for new development, the scope of work that was approved provided the required 100-foot setback buffer as required by LIP Section 4.6.1(A) and no work was approved to take place within that buffer.

The development taking place within the 100-foot riparian buffer was approved through the PVWF application and consists of the replacement of development that previously was previously approved and existed in that area. That development is not part of the CDP application.

After the Planning Commission approval, the Appellant, when prepping for this appeal, discovered the Planning Verification was not for a fire rebuild but for the kitchen area of a much larger 8,492sf structure.

This was never a fire rebuild. Nothing should have been grandfathered. This is a new house and cannot be built in ESHA buffer per code.

Applicant Response:

The subject property is a Woolsey Fire affected parcel and the owner did obtain a PV approval for the main residence. The application that is the subject of this appeal was reviewed as new development and was not grandfathered.

The scope of work proposed under CDP No. 23-004 is considered new development and therefore is being treated as such and is being processed as a CDP application. The development is required to comply with LIP Section 4.6.1(A). Consistent with LIP Section 4.6.1(A) the scope of work proposed under the CDP application maintains the required 100 foot buffer and no work is proposed in that area.

If this information had been known to the Planning Commission, they would have most likely denied this Addition and the project as a whole. We are asking the Council to deny this Addition and uphold this appeal.

Applicant Response:

This project involves an addition. The original 2,276 sq. ft. main house remains entirely in its original pre-fire location. No variance is requested for this project. The entire building complies with PV requirements, and the new addition fully meets all current code standards.

As discussed throughout both Planning Commission Agenda reports, the project was for an addition to a previously approved Planning Verification. LIP Section 13.4.6 defines the criteria a rebuild application must meet to qualify for an exemption from the requirement of a CDP. The PVWF application did qualify for an exemption from 13.4.6, was processed pursuant to Malibu Municipal Code (MMC) Section 17.60.020, and that scope of work did not require review by the Planning Commission, nor was it included in the subject CDP.

PART TWO

Denial Required

A denial of this so-called Addition is required for the following reasons:

1. This is Not a Fire Rebuild

Rebuilds must meet all the requirements described in the City of Malibu LCP Local Implementation Plan 13.4.6 Structures Destroyed by Natural Disaster.

Applicant Response:

This rebuild satisfies all the requirements of LCP and Malibu Municipal Code.

As described in both the February 2023 and July 2024 applications the scope of work is for an addition to a previously approved PVWF application. Furthermore, should this application be denied it will not affect the status of PVWF No. 21-034 and the residence could commence construction.

The subject CDP is for an addition to the previously approved replacement structure and therefore not subject to LIP Section 13.4.6. LIP Section 13.4.6 is an exemption from the requirement of a CDP and therefore an exemption from meeting that standard of review.

Consistent with LIP Section 13.3 the scope of work proposed required the processing of a CDP application and one was filed pursuant to LIP Section LIP Section 13.6.1. The July 15, 2024 Planning Commission Agenda Report demonstrates the proposed addition's consistency with the requirements contained in the City's LCP for new development. The scope of work previously approved by the PVWF was not part of the scope of work under consideration by the Planning Commission nor does the review of the PVWF fall under the Planning Commission's purview for review.

This project follows all Malibu Municipal Code and Local Implementation Plan requirements.

[LCP 13.4.6](#)

LCP 13.4.6 refers to a specific section within the Malibu Local Implementation Plan (LIP). This section outlines the requirements for replacing structures destroyed by natural disasters, according to the California Coastal Commission. Specifically, it states that the replacement of any structure (other than a public works facility) destroyed by a disaster must comply with the LCP's provisions. If any other City permits are needed, they must also be obtained. This section emphasizes that the LCP's provisions take precedence over any conflicts with the City's Zoning Ordinance, meaning the LCP's guidelines must be followed, as stated in a Malibu City Council agenda report.

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

A. It is for the same use as the destroyed structure;

Applicant Comment:

Yes, it was, and it is residential use.

B. It does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and

C. It is sited in the same location on the affected property as the destroyed structure.

Applicant Comment:

The main residence, pool, garage, and landscaping remains the same.

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

This replacement structure exceeds the size of the structure destroyed by the Woolsey Fire, a Natural Disaster.

A. Above cannot be met. It is not the same use as the destroyed structure. The destroyed structure was a rebuild of the residence and this is a 1,520sf kitchen.

Applicant Comment:

The size of the kitchen does not alter the use of the project—it was, is, and will remain a residential use.

These cannot meet the requirements. The proposed structure at 29738 Cuthbert exceeds the floor area, height and bulk of the destroyed structure by more than 10%.

Applicant Comment:

The fire-destroyed house maintains its original footprint, and the proposed addition complies fully with all applicable floor area and height regulations.

This is not located in the same location. The proposed structure cannot meet the footprint of the pre-fire building, pool, terraces and driveway. This exceeds that of the original structure by more than 10%.

Applicant Comment:

The PV structures and the proposed structure share the same footprint as the original PV. The additional square footage complies fully with all current code requirements, requires no variances, and satisfies all applicable regulations.

This is not a like for like fire rebuild.

The CDP for this Addition project must be denied.

Applicant Comment:

The Appellant is attempting to include the scope of work previously approved under the Planning Verification with the CDP application. The CDP application is a separate scope of work from the PVWF application. The CDP application does not propose the development of a new residence (dwelling unit). Chapter 2 of the LIP defines a single-family dwelling, as containing a dwelling unit which is described as one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. The scope of the proposed addition does not constitute a dwelling but rather an addition to a dwelling because it does not contain a kitchen. Since the scope of work proposed under the CDP application is an addition, the City processed the addition as new development, and that scope of work was required to meet the requirements of the LIP for new development.

2. This Is Not An Addition.

In more than one instance in the July 15, 2024 staff report The Project was described as an Addition,

An example: *"the project is for additions to the existing residence approved under the Planning Verification and other exterior site improvements"* (7-15-24 Staff Report page 9). It is important to note additions are made to an existing structure and in this instance, there is no existing residence for the Addition to be added on to. For this reason, this is not an approval of an Addition but rather one for a new 8,492sf residence.

Applicant Response:

This is an existing permitted structure catastrophically destroyed by a wildfire. Under that existing permit the structure exists. This project is not categorized as a new development. There is a clear distinction between vacant land with no prior structure and rebuilding a structure that was lost due to fire.

The recommended action on page 1 of the July Planning Commission Agenda Report describes the project as, "Consider Coastal Development Permit-Woolsey Fire (CDPWF) No. 23-004 for the construction of a 4,620 square foot addition to a destroyed single-family residence with an attached garage approved under Planning Verification-Woolsey Fire (PVWF) No. 21-034. Furthermore, page 2 of that same report describes the project as, "The proposed additions to the previously approved residence are sited outside the 100-foot buffer from the stream." Lastly, given that a residential structure did not physically exist, the proposed scope of work did not qualify for an exemption per LIP 13.4.1 and therefore was required to obtain a CDP and comply with the development criteria contained in the City's LCP. The standard of review applied for the addition was not given any benefit of the exemption contained in LIP Section 13.4.6.

Even if one determines that it doesn't have to be an existing structure, this Addition cannot be approved because it is to be attached not to a fire rebuild of a destroyed residence but rather to the kitchen area of the 8,492sf residence, which is not grandfathered to be in the ESHA buffer.

Applicant Response:

The kitchen, dining, and living areas remain in the same location as they were prior to the fire. The previously scattered structures—such as the pool room, garage, and storage—have been reconfigured into a more consolidated layout, which reduces impact on the environment.

As discussed previously, the scope of work approved under PVWF 21-034 was consistent with the criteria contained in LIP Section 13.4.6. Specifically, 13.4.6(A)(1) in that the approved replacement structure was for the same use as the structure that it replaces; meaning that the replacement structure met the LCP's definition of single-family dwelling. A single-family dwelling contains sleeping, bathing, and cooking facilities. The Appellant's incorrect description of the project ignores the merits of the previously approved PV application and also the fact that the scope of work proposed in the CDP application is consistent with LIP Section 4.6.1(A) and provides the required 100 foot buffer between the proposed development and the onsite ESHA resource.

3. It Is a New Project.

This property is in the same ownership both pre and post Woolsey fire. If it were the intention of the Owners to rebuild just their former residence plus the allowable 10%, it would be a 2,276sf fire rebuild plus 10% and could be constructed in the same buffer location as the original house.

As you can see in the original Fire rebuild plans approved 9-28-21, this so-called 4,620sf Addition, was always part of a much larger 8,492sf residence and was on the plans submitted with the Woolsey Fire Planning Verification portion of the residence which is located in the ESHA buffer. This was always to be an 8,492sf residence with the kitchen area located in the ESHA buffer (See PVWF page A0.0). Thus, this is not an Addition and therefore it must be denied.

Applicant Response:

This project is proposed for the Bolour Family to recover from the Woosley fire, and it follows the Malibu Municipal Code and Local Implementation Plan. There are no advanced comments from the Coastal Commission. The addition and total floor area have been calculated based on the lot size and fully comply with all applicable Malibu City Codes and regulations.

The PV application and CDP application are separate applications. The PV application determination was based on LIP Section 13.4.6 and MMC Section 17.60.020. The addition to the previously approved structure sought entitlement through the City's CDP process. No portion of the review for the addition benefited from an exemption from the LIP or from the City's nonconforming code allowances contained in MMC Section 17.60.020.

The addition was reviewed for conformance with the residential development standards contained in both LIP Section 3.6 and MMC 17.040.40; Furthermore, the project was also reviewed for conformance with LIP Chapters 4, 5, 6, 7, 9, 10, 12, 13, and 15. The determinations made by the Planning Commission in Resolution No. 24-39 demonstrate that the applicable LIP findings were made in the affirmative for the addition.

4. Necessary Findings for a CDP Cannot Be Made. Project Must be Denied.

In order to approve a Coastal Development Permit for this proposed addition, all of the 4 findings set forth in LIP 13.9 must be made.

13.9. FINDINGS are:

All decisions on Coastal Development Permits shall be accompanied by written findings:

A. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with certified City of Malibu Local Coastal Program; and

B. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

C. The project is the least environmentally damaging alternative.

D. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

The following 2 necessary findings cannot be made:

Finding A. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with certified City of Malibu Local Coastal Program.

The portion of the residence was allowed in ESHA buffer because it was supposed to be a rebuild of the original home in that location. However, this was never intended to be a fire rebuild. It was designed to be the kitchen area of an 8,492sf residence.

In fact, the application for the Planning Verification says:

Finding B. "The project proposes a single-family residence using a combination of existing house footprint and a new footprint" (page 1 Fire rebuild plans approved 9-28-21).

The original footprint is the portion of the residence in the ESHA buffer and the new footprint is the so-called Addition.

The Owner is taking advantage of the Woolsey Fire Verification procedure to obtain approval of the kitchen area portion of an 8,492sf proposed residence under the guise of the reconstruction of the residence destroyed in a fire. This kitchen area and the steps leading to the proposed kitchen roof deck clearly are not a fire rebuild and therefore are not allowed in the buffer setback from a blue line stream.

Since this, in reality, is not a fire rebuild of the existing residence, the kitchen portion of the 8,492sf proposed residence is not allowed in the buffer. It, therefore, doesn't conform to the certified Malibu Local Coastal Program.

Applicant Response:

As previously explained, the project approval sequence has been properly followed, and there is no doubt that this is an addition to a fire-rebuilt structure. The fact that the original building was destroyed in the fire should not prevent the addition—especially since it fully complies with all applicable codes. The proposed kitchen remains within the original pre-fire footprint.

As described in the Planning Commission Agenda Report for the CDP application, the PV application and CDP application are separate applications. The PV application met the requirements of LIP Section 13.4.6 and MMC Section 17.60.020 in that the application approved a

structure the per the definition of the LIP met the criteria of a single-family dwelling and therefore the replacement structure was for the same use as the structure that was destroyed.

As discussed previously, the scope of work approved through the PV application did not rely on the approval of the CDP. The CDP for the addition was reviewed for conformance with both the LCP and MMC. The concern that the CDP is approving development within the required ESHA buffer is erroneous in that the scope of work reviewed and approved by the Planning Commission through Resolution 24-39 demonstrates that the project is consistent with the requirements of LIP Section 4.6.1(A) and no development is being approved that will take place within the required 100-foot buffer.

Finding C. The project is the least environmentally damaging alternative.

This project is not the least environmentally damaging. To qualify as such, the portion of the structure in the ESHA Buffer must be taken out of the buffer and a smaller project be designed that conforms to the neighborhood character.

Applicant Comment:

The proposed project includes the replacement of the pre-fire septic system to ensure it is located away from the blue line stream. Additionally, the project is being developed in collaboration with Fish and Wildlife to enhance the condition of the blue line stream, protect its habitat, and remove unnatural materials.

The Technical Review Sheet dated January 17, 2024 indicates they are grading almost the entire site except in ESHA and the tennis court.

And a smaller project would require less grading so it would be less environmentally damaging.

Applicant Response:

The statement that a smaller house will necessarily be less environmentally damaging is not accurate. The thoughtfully designed project follows the contour lines of the land, stepping down gradually to minimize grading. The concentrated layout allows for more open space and landscaping, contributing to a more environmentally sustainable design.

The July 15, 2025 Planning Commission Agenda report discusses alternative projects to the proposed project and provides a basis for justification for why the proposed design is the least environmentally damaging alternative. As discussed in the Planning Commission Agenda Report, the site was previously developed and subsequently graded and cleared as part of the State of California's requirements for post disaster hazards remediation. Given the actions that have taken place to date, the amount or location of grading is not significantly reduced with a smaller development footprint.

Furthermore, the proposed development will not result in the enlargement of the previously approved and disturbed pre-fire building pad. Lastly, as described in the July 15, 2024 Planning Commission Agenda Report, relocation or reorientation of the structure may result in increased site disturbance to provide the required fire department access.

In addition, the term "least environmentally damaging alternative" is a principle within the California Coastal Act and does not have a specific definition. Nevertheless, the coastal act is concerned with finding alternatives that result in the least harm to coastal resources. As demonstrated in the Planning Commission's determinations that are contained in Resolution No. 24-39, the scope of work approved by the CDP is consistent with the City's LCP and was determined to not harm coastal resources, specifically the scope of work provides the required 100-foot buffer from the onsite ESHA resource.

The appellant cites conformance with neighborhood character; however, neighborhood character is specifically limited by LIP Section 13.27.5(A)(2) and 13.27.5(B)(2) to a finding for either a Site Plan Review request or Minor Modification request and not a general LCP finding that applies to the project as a whole nor is it required finding for residential development that is contained in LIP Section 3.6.

Neighborhood Character as criteria to consider as part of the review process for applications was initiated by the City Council on August 28, 2019. City Staff returned to the Council on February 25, 2019 to discuss various options to address the neighborhood character finding and at that meeting, staff was directed to return with an ordinance that proposed reducing TDSF and considering the average size of surrounding homes in

the neighborhood. Staff returned to the Council on July 8, 2019 regarding this matter and at that meeting, the City Council did not take action on the proposed zone text amendment (ordinance) and removed the program from the City's workplan and therefore no such criteria or ordinance was ever adopted.

Since 2 of the four necessary findings can't be made, the CDP for this addition project must be denied.

A new application has to be submitted for a new project that is not in the ESHA buffer. Since it was always the Owners' intention to rebuild one 8,492sf house, this Addition also has to be denied because it would be attached to a proposed kitchen structure which is not allowed in an ESHA buffer. In the future, when the Owner applies for a new residential project, no portion of it can be constructed in the ESHA buffer.

But the intention of the Owner was always to construct an 8,492sf structure which they have said is allegedly for family gatherings and use by family members.

The Owner took advantage of the fire rebuild rules to have the kitchen area portion of the residence built in the pre-fire home's location in an ESHA Buffer. Under the LIP, construction is not allowed in an ESHA Buffer when a project can be built outside the buffer in a different location on the site.

Applicant Response:

Prior to the fire, the addition to the house would not have been subject to any specific requirements, meaning the kitchen would have remained within the buffer zone. Preventing the client from adding the proposed addition and maintaining the pre-fire footprint would unfairly penalize the Applicant. The appeal must be denied due to a lack of evidence as it relies on hearsay and personal preference, rather than being based on code, facts, and tangible evidence.

In reality, this is the construction of a new 8,492sf residence, a portion of which is being constructed in the ESHA buffer in violation of the Malibu Local Coastal Program.

Applicant Response:

This project is a fire rebuild, as the house was destroyed in the Woolsey Fire. The seven years of delays in the process does not change the fact that this is a fire rebuild. If the fire had never occurred, the client would have completed the addition and would already be occupying the property, rather than being stuck in this prolonged process. The appeal is not based on substantial evidence or violations of any codes. Rather, it is driven by

accusations, attempts to sway public opinion, and false claims that the property will be turned into a rehabilitation facility. These unfounded assertions have unfairly burdened the Applicant, leading to the imposition of restrictions on the land deed.

The appellant misstates the project. The CDP is not for a residence; it is for the addition to a previously approved residence. The work that was approved to take place within the previously existing developed pad and building footprint was approved through a PV application. Both LIP Section 13.4.6 and MMC Section 17.60.020 allow for the replacement of a structure destroyed by disaster in its previously existing location and this is what took place. The scope of work that falls under the CDP application is consistent with LIP 4.6.1(A) in that no work was proposed or approved within 100 feet of the onsite stream ESHA. The construction of the residence is independent of the proposed addition considered under the CDP application.

5. Piecemealing Development

This is one residence being processed in 2 stages. Stage one is the kitchen and stage two is the Addition. This should not be allowed especially since 1,520sf are to be constructed in an ESHA buffer which is prohibited under these circumstances. A Planning Verification should have never been issued for this kitchen area since it is not a Fire Rebuild.

Applicant Response:

As discussed previously, the scope of work approved under the PV application consists of a standalone residential structure that meets the criteria contained in LIP Section 13.4.6 and MMC Section 17.60.020.

The addition was processed as a CDP since it did not qualify for an exemption from the requirements of a CDP. Furthermore, the City's LCP does not define the reconstruction of a structure destroyed by a disaster as New Development.

Since the replacement structure had been previously approved through a PV and did not meet the definition of new development, there were no other applications for new development pending with the City at the time that this CDP application was submitted. Lastly, had the house approved under the PV application or pre-fire house physically existed at the time

the CDP for the addition was submitted to the City, the standard of review would have been the same. With respect to zoning ordinances and review, the applicant, did not benefit from this being a fire affected property

6. Smaller Project is Allowed Under LIP.

The total maximum allowable square footage is the maximum size residence allowed. It is not guaranteed by right. The LIP says a structure can be "up to" the maximum TMSF. The Planning Commission and the Council always have the discretion to deny this addition and require a smaller project.

Then planning director Richard Mollica, stated in the first hearing on this project on February 21, 2023, that the project could be smaller and could be denied on the basis it is too large. Mr. Mollica said at 2:38 on the video "*As Commissioners you feel you cannot make the findings and you would like to see a smaller home on the site and you feel it is out of character, that is where the Commission has its discretion.*"

Applicant Comment:

Taking former Director Mollica's comment into consideration, the Commission made an informed decision supporting the size as submitted and approved the project.

You have the ability to say you can't make the findings for it is out of character."

Applicant Comment:

The fact that this project has been approved by the Planning Commission demonstrates that it has been found to be in harmony with its surroundings. The design is tailored to meet the Applicant family's needs, incorporating features such as a ramp for a disabled family member and a kitchen that aligns with their requirements.

In fact, a smaller project is required to meet the Character of the Neighborhood.

Applicant Response:

Neighborhood character relates to a finding that must be made for the requested Site Plan Review (SPR) for construction over 18 feet in height per LIP Section 13.27.5(A)(2) and is not a residential development standard contained in LIP Section 3.6 and therefore only applies to the requested SPR. Per the LIP, the question is, does the portion of the residence that requires the SPR fit the character of the neighborhood; the

square footage, siting, and layout are guided by the development standards contained in LIP Section 3.6.

Furthermore, as discussed previously, the City Council directed staff to study and develop a neighborhood character development standard on August 28, 2017. City Staff returned to the Council on February 25, 2019 to discuss various options to address the neighborhood character finding and at that meeting staff was directed to return with an ordinance that looked at reducing TDSF as a way to regulate and evaluate neighborhood character. Staff returned to the Council on July 8, 2019 and at that meeting, the City Council did not take action on the zone text amendment and removed the program from the City's workplan and therefore no such criteria was ever adopted and neighborhood character remained only in the LIP section providing guidance on site plan review requests.

7. Neighborhood Character

Preservation of neighborhood character is another reason for this project to be denied. Neighborhood character refers to the 'look and feel of an area'.

Applicant Comment:

This argument appeared before the Council before, and when it did the Council voted against size as a measure of character based on outpouring of community sentiment.

As discussed previously, on July 8, 2019 the City Council did not take action on the zone text amendment that would have made neighborhood character a general development standard that would have affected the TDSF or size of a residence, and therefore no such criteria was ever adopted and neighborhood character remained only in the LIP section providing guidance on site plan review requests. Based on the actions of the City Council, this is not a development standard to be evaluated beyond its requirement of LIP Section 13.27.5(A)(2).

Prior to the Woolsey Fire, the residence was 2,276sf. With the addition of the square feet of the garage, guest house and pool house, the area totaled 3,520sf. The 10% brought the rebuild total to 3,872sf.

This 4,620sf proposed Addition to a yet to be constructed 3,872sf Woolsey Fire rebuild will result in an 8,492sf residence that is out of character with the neighborhood and should be denied.

Malibu Park is made up of many different neighborhoods. Among the properties that make up this particular Malibu Park neighborhood are the following:

The existing neighboring homes are substantially smaller:

29755 Harvester is 3,400 sf plus a guest house 900sf

29748 Harvester is 1,944 sf

29745 Harvester is 1,680 sf

29735 Harvester is 7,246 sf

28725 Harvester's final sf is 4,600 sf and the Planning Commission required the owners to reduce the size of their guest house by 90sf

29756 Cuthbert was 1,720sf prior to the Woolsey Fire

29718 Cuthbert was 3,827sf prior to the Woolsey Fire

29800 Cuthbert is 5,500 sf.

29824 Cuthbert is less than 4,000sf

The average size of these nearby homes is 3,868.55sf.

The proposed house is more than two times the neighborhood average.

Applicant Response:

Many large homes are omitted for the Appellant's list.

For example nearby:

29685 Cuthbert is 7,250 sf

29934 Cuthbert is 7,572 sf

29623 Cuthbert is 6,782 sf on a smaller lot with extreme visibility

29800 Cuthbert is 5,975 sf on a hillside lot with extreme visibility and significantly less flat buildable land

29735 Harvester is 7,246 sf (per public record)

29600 Harvester is 9,351 sf with extreme visibility and on a hillside with less flat buildable land

A fair assessment should be based on lot coverage and amounts of open space left to nature. The proposed residence is 9.6% of the lot area. The neighborhood is a mix of large and small parcels. The Applicant should not be penalized for owning a large parcel. The size of the house is determined by the lot size, both before and after the fire. An analysis of sites shows that lots range from 20,000 to 181,000 square feet, with

structures varying from 2,800 to 9,300 square feet. The building-to-lot ratio ranges from 4.7% to 22.5%. This project's ratio of building to land is 9.6% - median size.

As previously discussed, the neighborhood character determination that was made by the Planning Commission was required to assess the portion of the project that required the site plan review. The portion of the project related to the site plan review were the portions of the project that are over 18 feet in height and based on Resolution No. 24-39, the Planning Commission determined that the portions of the addition over 18 feet in height were consistent with the neighborhood. No part of LIP 13.27.5(A)(2) required the Planning Commission to consider the size of surrounding development. The ordinance that would have required that type of analysis was removed from the City's workplan and abandoned. The analysis requested by the Appellant is contrary to the City Council's specific direction to staff.

With the proposed Addition of 4,620sf for a total of 8,492sf, the proposed structure at 29738 Cuthbert more than doubles the pre-Woolsey Fire residential structure on the site. The proposed house would adversely affect the quiet neighborhood's friendly character as it is substantially larger than the nearby properties on Harvester, Cuthbert, and Clover Heights.

Structures like this are destroying the quiet, rural character of this equestrian neighborhood. If this residence is approved others of similar size will follow.

Applicant Comment:

This is conjecture and opinion.

There is insufficient parking on the property for the number of bedrooms and the number of people who would be working on the property. Cuthbert is too narrow to allow street parking.

Applicant Response:

There is ample covered and on site parking. The City's requirement for single-family residential parking has been to require two enclosed and two unenclosed parking spaces regardless of size or the number of bedrooms. This practice is consistent with LIP Section 3.14.3 in that it requires more than the minimum of two spaces for any use or development regardless of the size or scope of the use or development. In addition, the proposed project is consistent with LIP Section 3.14.3 in that each of the four spaces

provided meet the minimum size for a residential parking space which is 18 feet long by 10 feet wide.

This plan more than doubles the number of bedrooms and has 6 times the number of bathrooms. This will put excessive strain on the water tank on Busch that failed the morning of the Woolsey Fire.

Applicant Response:

The City is not the subject matter expert in this area and the review for adequate water flow for fire purposes and general water service is completed by the Los Angeles County Fire Department and Los Angeles County Water District 29. Based on LIP Sections 9.4(S) and (T) projects are required to demonstrate adequate fire-flow water supply in compliance with applicable fire safety regulations and demonstrate the availability of an adequate water supply for fire protection in compliance with applicable fire safety regulations. Based on the Fire Department approved plan (page 34 of the July 15, 2024 Planning Commission Agenda Report) stamped March 18, 2024 and Waterworks approval dated May 13, 2022, the project was determined to have adequate water flow as required by the LIP and as described below.

LIP Section 9.4(S). New development shall provide for emergency vehicle access and adequate fire-flow water supply in compliance with applicable fire safety regulations.

LIP Section 9.4(T). Prior to approval all new development shall demonstrate the availability of an adequate water supply for fire protection in compliance with applicable fire safety regulations.

A structure this size does not allow for the re-planting of native trees and shrubs that were lost during the Woolsey Fire and would help provide habitat for wildlife.

Applicant Response:

This statement is incorrect. There is ample space for planting of habitat support. The Applicant has already volunteered to repair habitat and in response to Appellant's request to plant screening trees in the southwest corner of the parcel.

Per LCP ESHA Map No. 2, the only onsite ESHA resource is a stream and consistent with LIP Section 4.6.1(A) no development is taking place within the LIP's required 100-foot buffer area. Furthermore, based on the

site-specific information, plans, and review of the City's ESHA maps, no other ESHA habitat is present on the site.

Furthermore, as stated on page 10 of the July Agenda Report no native trees are or were present in the project area. As part of the CDP standard of review, LIP Chapter 5 requires an assessment for native trees and none were found.

Lastly, both the LIP and MMC ensure adequate planting area through the impermeable surface calculations contained in LIP Section 3.6(I)(1) and MMC Section 17.040.40(A)(11). The approved project results in greater softscape and planting areas than what previously existed. Based on the lot size, the code allows for 25,000 square feet of impervious surfaces (hardscape, building footprint, and driveways) and the project as approved by the Planning Commission proposes 16,932 square feet of impervious surfaces which is less than what previously existed prior to the fire. The addition as proposed results in greater landscaping opportunities than what previously existed prior to the Woolsey fire.

A much smaller footprint would be in character with the neighborhood. The Owners can still have their family gatherings in a smaller structure. After all, prior to the Woolsey Fire, these gatherings were held in a residence that was 2,276 sf with a 484sf guest house.

Applicant Response:

The assumption that the size of the house will result in excessive noise is not valid, as the primary residents are elderly individuals seeking a quiet place to enjoy the rural character of the site. This unfounded assumption prompted the applicant to bring Homa, one of the users with mobility issues, to the hearing. Despite her severe pain and difficult situation as a long-time and advanced Multiple Sclerosis (MS) patient, Homa attended the hearing to demonstrate that the house's ramp was specifically designed to accommodate her needs, not for use as a rehabilitation center, as falsely suggested by the Appellant. These baseless accusations, made without evidence, caused emotional distress and confusion, and further delays of the project. The number of bedrooms is carefully tailored to meet the client's specific needs. Similarly, the parking arrangements have been designed to accommodate the client's requirements, and the proposed number of spaces will be more than sufficient for their use.

As previously discussed, the neighborhood character determination that was made by the Planning Commission was required to assess the portion of the project that required a site plan review. The footprint of the development was not the subject of the site plan review request. The portion of the project related to the site plan review were the portions of the project that were over 18 feet in height and based on Resolution No. 24-39, the Planning Commission determined that the portions of the addition over 18 feet in height were consistent with the character of the neighborhood. No part of LIP 13.27.5(A)(2) required the Planning Commission to consider the footprint size of surrounding development. The ordinance that would have required that type of analysis was removed from the City's workplan and abandoned. The analysis requested by the appellant is contrary to the City Council's direction to staff.

8. This Project Previously Denied

This project was heard by the Planning Commission twice. At the first Commission hearing on February 21, 2023 the project was denied.

Applicant Comment:

The project was denied because of an unfortunate hot mike moment among the Commissioners with one of the Commissioners present via telephone only, on his way to an airport, and unable to fully participate.

On February 21, 2023, the Planning Commission considered CDP No. 22-003 which is a separate application from CDP No. 23-004. Furthermore, per the February 21, 2023 Planning Commission Hearing Actions Memorandum, no resolution for denial of the project was adopted. Per the action memorandum, the Planning Commission, "Directed staff to bring back a Resolution of denial..." In order to deny a project, the Planning Commission must adopt a resolution that contains findings for denial. That action did not occur. MMC 17.04.200 which addresses the required notification of a Planning Commission decisions, states that final decisions by the Planning Commission shall be made by resolution.

Furthermore, one cannot appeal direction to staff. Per 13.20.1(A) A decision or any portion of the decision made by the planning manager under the provisions of this chapter may be appealed to the planning commission by an aggrieved person as defined in Chapter 2 of the Malibu LIP (Definitions). Any decision made by the planning commission may be

appealed by an aggrieved person to the city council. In the case of the February 21, 2023 Planning Commission Hearing there was no decision to appeal, as the form of a decision is a resolution.

After the denial, the Owner withdrew the application on July 17, 2023, almost 5 months after denial according to the Geotechnical Report contained in the 7-15-24 staff report. *"The scope of the project has not changed from that reviewed and accepted by the City's geotechnical/ consultants in the referenced review letter dated 4-21-2022."* (There was no resolution for denial written. Does it take five months to write a resolution of denial? Staff told Appellant that the findings for denial were never made. This seems odd to the Appellants, considering the project was denied on February 21, 2023 according to the Geotechnical Report. Then, the same project was brought before the Commission to be reheard a second time on July 15, 2024 in the hope of getting a different result.

Applicant Comment:

To avoid embarrassment and legal consequences to the City, due to the inter-commissioner hot mike moment, the project was withdrawn and resubmitted with responses to Commission comments.

As stated previously, per the February 21, 2023 Planning Commission Hearing Actions Memorandum, no resolution for denial of the project was adopted. Per the action memorandum, the Planning Commission, "Directed staff to bring back a Resolution of denial..." In order to deny a project, the Planning Commission must adopt a resolution that contains findings for denial. That action did not occur. MMC 17.04.200 which addresses the required notification of a Planning Commission decisions, states that final decisions by the Planning Commission shall be made by resolution.

It was the same project because the scope of the project had not changed from that which was reviewed previously and accepted by the City's Geotechnical consultants, the City Biologist and Environment Health.

This second hearing should never have been allowed once the project was denied by the Commission on February 21, 2023. Stare decisis applies. This is settled law. Every resident deserves certainty as it applies to the City's decisions.

Applicant Comment:

Based on the February 21, 2023 Planning Commission Hearing Actions Memorandum no resolution of denial was approved. Furthermore, per the

meeting minutes it was stated that, “Vice Chair Mazza moved and Commissioner Hill seconded a motion to direct staff to bring back a resolution denying Coastal Development Permit-Woolsey Fire No. 22-003...” By making the motion and directing staff to bring back a resolution, it was made clear by the Commission that no decision was made that evening and that a resolution would be brought back at a later date for the Commission to vote on and memorialize their actions.

Once a project is denied, an Owner should not be allowed a second hearing on essentially the same project in the hope of getting a positive result. The first decision of denial by the Planning Commission should have been the final and only decision.

The project before you is the same project that was previously denied on a 3-2 vote. It is in the exact same location, the same size and the same design.

Applicant Comment:

The appeal misstates the actions of the planning commission as documented in the Planning Commission Actions Memorandum and the minutes of that meeting. The Planning Commission’s action was as follows, “Vice Chair Mazza moved and Commissioner Hill seconded a motion to direct staff to bring back a resolution denying Coastal Development Permit-Woolsey Fire No. 22-003...” and no such resolution was adopted.

The initial hearing resulted in a 2-2 vote, in which Commissioner Jennings was absent, a hot mic incident occurred, and a Commissioner elected to depart his home and re-join the meeting while driving to the airport.

The approval, which is the subject of this appeal, was based on a 3-2 vote, after changes were made to the application, including a list of conditions:

- Voluntary Deed Restriction to restrict short term rentals under 30 days
- Voluntary Deed Restriction to prevent uses falling under the category of a drug and/or alcohol rehabilitation facility
- Voluntary removal of permitted tennis court lights, removal not required due to their existence predating the Dark Sky ordinance
- Condition that the Applicant and adjacent property owner restore creek, per Fish and Wildlife advisory and standards
- Condition to reduce lighting on rooftop deck.

Commissioner Peak made the motion to deny the project giving these reasons for denial: he wasn't comfortable with the lighting, or with an 8,500sf house where a portion of the house was in the ESHA Buffer. He agreed with Commissioner Mazza that just because you can get "up to" the TDSF doesn't mean you get it and that the house doesn't fit the neighborhood. Commissioners Mazza, Hill and Peak agreed that a CDP could not be serial.

At the second hearing, without explanation, Commissioner Peak voted to approve the project stating the entire project was within the allowable TDSF. All of his previous reasons for denial miraculously no longer existed.

We ask that the first Planning Commission decision be upheld. Stare decisis applies.

Applicant Comment:

The project includes the removal of cypress trees and the surrendering of a portion of the property to create view corridors. Additionally, the project has committed to improving the condition of the blue line stream, and the tennis court lights have been eliminated. The project's lighting design was also revised to comply with the Dark Sky ordinance.

The Council must deny this project. It should not have been heard a second time.

Applicant Comment:

As discussed previously, no action other than to direct staff to return with a resolution of denial was taken at the February hearing and therefore no decision was adopted through a formal resolution. Furthermore, if one were to stand by things decided, then the discussion would revolve around only the Planning Commission's direction. Direction by the Planning Commission is not a resolution and does not constitute a denial that can be appealed.

PART THREE

Resolutions with Conditions of Approval: Inaccuracies

We would like to point out the following to the Council:

1. Recital A is not accurate because it states: *"that the Planning Verification for this project was approved for the in-kind replacement of a single-family residence."* This is inaccurate. The PVWF was for the kitchen area of an 8,492sf residence. Moreover, this kitchen area PVWF was located in an ESHA buffer which is not

permitted. It would have been permitted if it were a replacement of the original house.

Applicant Comment:

The appellant does not accurately describe the scope of work that was approved in the PV application. The scope of work approved under PVWF No. 21-034 satisfied the criteria contained in LIP Section 13.4.6. Specifically, consistent with LIP Section 13.4.6(A)(1), PVWF No. 21-034 approved a structure that allowed for a residential use in that it met the LIP's definition of a dwelling which was the previously existing use prior to the fire. Consistent with LIP 13.4.6(A)(2), the approved dwelling did not exceed either the floor area, height, or bulk of the destroyed structure by more than ten (10) percent. Lastly, the replacement dwelling was generally sited in the same location on the affected property as the destroyed structure and did not reduce any required ESHA or structure setbacks. It should be noted that because the development approved under the PVWF application met the definition of a dwelling, it was not functionally related to the scope of work proposed under the CDP and could function on its own.

2. Recital Resolution: History fails to state that the project was previously before the Commission for the first time on February 21, 2023 and was denied.

Applicant Comment: The City's practice has been to list recitals that are related to the project under consideration and past milestones that are related to that Planning Commission determination because they had a bearing on the scope of work. This was done here.

Under Section 2 Environmental Review

3. A. General Coastal Development Permit

It is inaccurate to state: *"the proposed project is/or an addition to an existing residence"* The approval was for the kitchen area of a proposed 8,492sf Residence and not an existing residence.

Applicant Comment:

This comment is incorrect, as explained multiple times throughout these comments, with supporting evidence, code citations and Planning Commission concurrence.

In the General Coastal Development Permit findings section, the project is also described as an addition to a previously approved residence (Finding A3). Furthermore, throughout the Planning Commission Agenda Report, CDP No. 23-004 was described as an application for an addition and not a new residence. As described in the project overview section of Page 2 of the July 15, 2024 Planning Agenda Report, the project was for additions to a previously approved residence that was approved under PVWF No. 21-034. The project was processed as a coastal development permit application because the proposed project did not qualify for an exemption from the Coastal Act based on the criteria contained in Chapter 13 of the City's Local Implementation Plan (LIP), specifically sections 13.4.1 and 13.4.6. LIP Section 13.4.1 could not be applied because the project was not an addition to an existing structure and also was adjacent to an environmentally sensitive habitat area.

Furthermore, the addition did not meet the criteria listed in LIP Section 13.4.6. Consistent with the requirements of LIP Section 13.3(A) the property owner filed a coastal development permit application consistent with LIP Section 13.6.1.

Lastly, both the title of the resolution and the scope of work approved by the resolution have the project listed as an addition to a previously destroyed residence as well as an addition to a previously approved residence. Neither the project title or scope of work identify this an addition to an existing residence.

Add these Conditions of Approval:

Should the Council deny this appeal and uphold the Planning Commission's second decision on this project, please add the following to the Conditions of Approval:

Add a condition to deny rooftop decks because they create a noise nuisance that will disturb neighbors and wildlife. One of the decks is on top of the kitchen structure in the ESHA buffer and must be denied. The noise emanating from the deck could be harmful to wildlife especially as this is a migratory flyway.

Applicant Comment:

The Coastal Commission accepted the roof deck. Migratory flyway extends over the entire region, and it's not particular to this site. There would be no light on the deck which meets all City Code and LIP requirements.

Neither, the MMC or LCP contain criteria or development standards that would affect the location of the roof deck or govern its placement. The only development standard specific to roof decks is LIP Section 3.6(E)(3) which provides an allowance for extra height on beachfront properties to accommodate the required railing.

Add that all lighting shall be 3000 Kelvin or less.

Applicant Comment:

This is required by code, no condition is needed. MMC 17.41.040(A) requires both all properties and all new lighting to comply with the Malibu Dark Sky Ordinance and that would apply to this project.

Add all windows including clerestory windows, skylights and glass doors to be covered with film to diminish the impact and spillage of interior lighting. The city biologist recommended interior night lighting be minimized.

Applicant Comment:

There is no ordinance that addresses interior lighting. The biologist's comments are general guidance and are included as a condition of approval. The City Council when discussing the Malibu Dark Sky Ordinance discussed regulation of interior lighting, but did not include it in the ordinance. MMC Section 17.41.040(E)(1) states that the Malibu Dark Sky Ordinance does not apply to indoor lighting.

Add conditions that there be no lighting or light spill in the ESHA and ESHA buffer and that all lighting is not reflected off site.

Applicant Comment:

This is already addressed by MMC Section 17.41.050 of the Malibu Dark Sky Ordinance and all properties in the City are required to comply with this ordinance.

Add a condition that the use of rodenticides is prohibited at all times on the property. The dumpsters must be rodent proofed. Include Poison Free Malibu guidelines.

Applicant Comment:

The project will follow Malibu guidelines - no dumpsters.

Add a condition that surface water runoff will be directed away from the OWTS.

Applicant Comment:

All surface flow will be directed away from the OWTS.

Add a condition, if needed, an underground stormwater detention basin will be installed.

Applicant Comment:

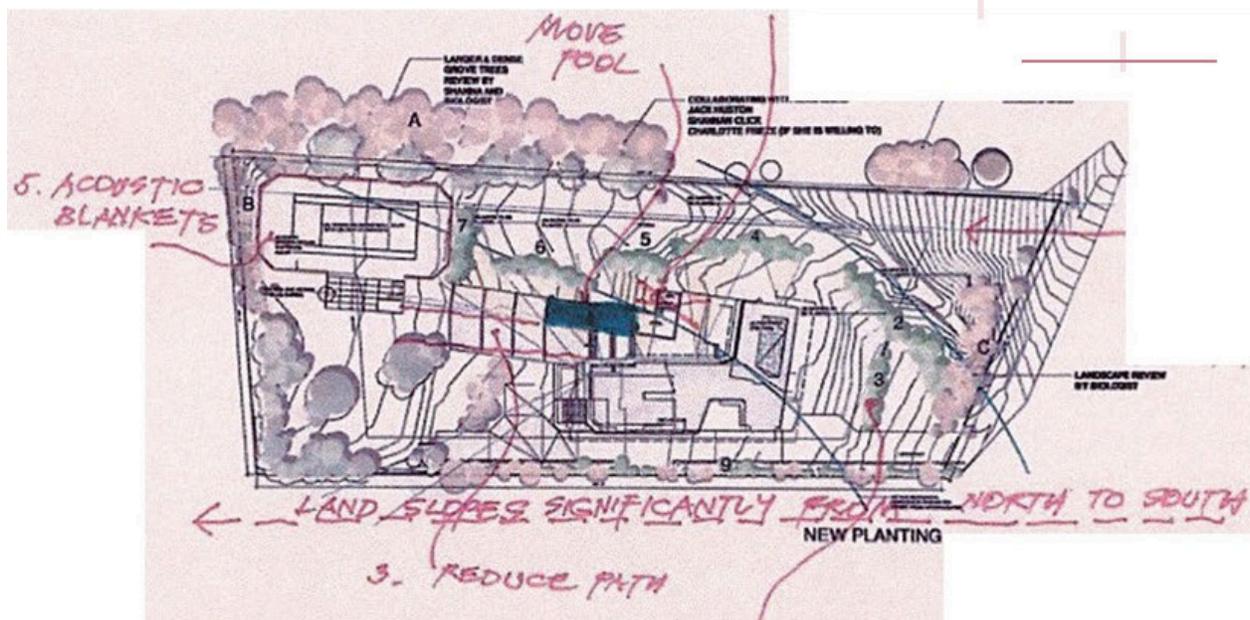
We will abide by the required code and city standards.

Add a condition that no parking either during or after construction shall be permitted in ESHA.

Applicant Comment:

We will abide by the required code and city standards.

After the July 15, 2024 decision, the owner's architect on August 13, 2024 proposed the following landscape plan:



Add conditions to remove the pre-fire swimming pool from ESHA.

Add a condition that all landscaping in the ESHA buffer shall include all native plants and trees.

Applicant Comment:

All future planting proposed in ESHA will be native and in compliance with California Department of Fish and Wildlife requirements.

Add the condition that all plants used to landscape the banks of the blueline stream thrive in a riparian habitat buffer.

Applicant Comment:

All future planting proposed in ESHA will be native and in compliance with California Department of Fish and Wildlife requirements.

The City Biologist has reviewed the proposed project including the landscaping plan and has already added the following conditions:

“No planting or landscaping is permitted within the banks of the mapped blue line stream. The area between the banks lies within the jurisdiction of California Department of Fish and Wildlife and the bottom of the drainage is in the jurisdiction of US Army Corps of Engineers and Regional Water Quality Control Board. Any proposed changes in the drainage would require permits from each of the associated agencies.”

“No non-native plant species shall be approved greater than 50 feet from the residential structure.”

In addition, the biologist reviewed the landscape plan for conformance with LIP Section 4.6.1 which prohibits the planting of non-native or invasive vegetation within the required ESHA buffer.

Add the condition that the tennis court is to be screened with native trees such as Toyon.

Applicant Comment:

This is already proposed. Please see Site Plan provided to Appellant prior to appeal.

Add condition that padded windscreen is to be added around the tennis court to reduce noise

Applicant Comment:

This is already proposed. Please see Site Plan provided to Appellant prior to appeal.

PART FOUR

Lack of a Fair and Impartial Hearing

The hearing was not fair because the Commission did not have critical information to make an informed decision and the Public did not have this information either. The missing information was the Planning Verification file that the Appellant obtained for this appeal. If the Commission and the Public had had this information, most likely a different Decision would have been reached.

Applicant Response:

This comment is inaccurate. The PVWF file was specifically cited and fully included with the Planning Commission decision. All parties were fully notified, and there is no evidence of impropriety.

Consistent with the requirements of LIP Section 13.6 the application for the addition was properly filed with the City of Malibu. Consistent with LIP Section 13.10, the Planning Department made a determination on the notice and hearing requirements. Consistent with LIP Section 13.11 a public hearing was noticed and conducted. Pursuant to LIP Section 13.12, the required public notice was published and notifications were sent out to surrounding neighboring properties and interested parties describing the project as an addition.

At the time of the hearing, the Planning Commission Agenda Report accurately described the project as an addition and based on the City's public record, the public hearing took place and both opponents and proponents of the project were afforded the opportunity to speak. Furthermore, the Planning Commission debated the proposed project for over two hours.

The PV application was not the subject of the CDP application and per both the MMC and LIP, the review and consideration of the PV application is not within the Planning Commission purview. The CDP application was completely separate from the PV application, in that PV application was previously approved and could be built without the issuance of the CDP.

Furthermore, while the PV application is available for public viewing, the PV application contains copyrighted material that the City is unable to publish without the copyright's owner permission.

A commissioner hot mike incident was the only inappropriate event that has occurred in relation to the initial hearing of this project.

See Planning Commission meeting dated February 13th, 2023, linked below:

<https://www.youtube.com/watch?v=Ey31L2eawuc&t=8834s>

Time Stamp: 3:07:45

Commissioner John Mazza left his microphone on during the virtual meeting while the meeting was in recess for a 5 minute period. He was heard to be talking to an unidentified party on the phone and communicating actions to be taken on the project.

The incident raised issues of bias and unwarranted private deliberations during the conduct of a public hearing. It compromised the Commission's impartial and independent position and decision making protocol. The end result was that the application was withdrawn and reheard at a later date.

Since this information was not presented in the staff report, the Decision was not impartial. The lack of this information favored the Applicant over the Public. What was unknown was that the plans for an 8,492sf structure was what the Owner had intended to build from the beginning. The Planning Verification was for just a portion of this huge residence. The Owner never intended to rebuild the grandfathered residence destroyed in the fire even though it was in the ESHA buffer but rather to build the kitchen and roof deck areas of the new residence in the ESHA buffer which is prohibited.

Applicant Comment:

All required information was made available. The Planning Commissioners knew the project and visited the site. The process followed was clear in both the Agenda Report and the Approval Resolution.

The application before the Planning Commission was for an addition. The CDP application was filed consistent with the requirements of LIP Section 13.6 and no part of that section requires the inclusion of the plans from the previously approved planning verification application. Lastly, the staff

properly described the CDP application as an addition to the previously approved PV application.

The Commission was not aware that the Addition was not to be attached to a fire rebuild but that it was just the kitchen area of a larger structure. If this had been known, this Addition would have been denied.

Applicant Comment:

This application has always been a clear CDP for an addition to a PVWF, per the Planning Department recommendation to approve, per the Planning Commission Approval Resolution, and per City Code.

PART FIVE

Decision was Contrary to Law.

This Addition didn't meet the requirements of the Local Coastal Program because a CDP was approved when 2 of the 4 necessary findings couldn't be made.

Applicant Comment:

This is incorrect. All 4 required findings were made and documented by the Agenda Report and Approval Resolution.

This project was never intended to be a fire rebuild but rather a large new 8,492sf residence. No portion of the structure was eligible for the Planning Verification process.

Applicant Comment:

That is incorrect. Per the City of Malibu Municipal Code, the owner is entitled to the replacement of the burned-down structures in their pre-fire positions. To build smarter and reduce environmental impact, the owner consolidated several independent structures into one. In addition, the owner removed a guest house adjoining the blue line and a 2500-gallon septic system.

The kitchen portion of the house was planned to be built in the ESHA buffer which is prohibited when there are other locations on the site the residence could be built. If there are no other locations on the property to locate the proposed residence, a smaller residence would have to be constructed.

Applicant Comment:

The project was intended as a consolidated footprint with reduced fuel modification impacts as reviewed and approved by the City Biologist. The project has an active PVWF permit. That permit is in effect and can be built.

Planning Commission Resolution No. 24-39 contains all of the required LIP findings and determinations pursuant to Chapter 13 for the issuance of a CDP. The majority of the Planning Commission determined that all of the required findings could be made in the affirmative.

It violates the General Plan, which describes the character of Malibu Park as rural residential and this proposed project is urban in nature.

It violates the Mission and Vision Statement of the City set forth below:

Applicant Comment:

Both the Malibu Municipal Code and the Local Implementation Plan contain development standards to implement the vision and mission statement of those documents. Specifically, MMC Sections 17.40.030 and 17.40.040 contain development standards that implement MMC Section 17.02.030. Furthermore, LIP Sections 3.5 and 3.6 as well as the associated chapters of the LIP contain development standards to implement the vision and mission statement of the Coastal Act. As demonstrated in both the determinations contained in Planning Commission Resolution No. 24-39 and as described in the conformance table shown on Page 7 of the Planning Commission Agenda Report, the project is consistent with the requirements of both the MMC and LIP and no variances are requested. The project does contain a site plan review for height, but per MMC Section 17.62.060 and LIP Section 13.27, a site plan review is not a variance. Furthermore, both MMC Section 17.62.060 and LIP Section 13.27 contain criteria that must be met to grant approval of the site plan review request; and the Planning Commission made the required findings in the affirmative per Resolution No. 24-39 to grant the site plan review request.

Vision Statement

"Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in order to protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics. The people of Malibu are a

responsible custodian of the area's natural resources for present and future generations."

Malibu Municipal Code Section 17.02.030

Mission Statement

"Malibu is committed to ensure the physical and biological integrity of its environment through the development of land use programs and decisions, to protect the public and private health, safety and general welfare. Malibu will plan to preserve its natural and cultural resources, which include the ocean, marine life, tide pools, beaches, creeks, canyons, hills, mountains, ridges, views, wildlife and plant life, open spaces, archaeological, paleontological and historic sites, as well as other resources that contribute to Malibu's special natural and rural setting.

Malibu will maintain its rural character by establishing programs and policies that avoid suburbanization and commercialization of its natural and cultural resources.

Malibu will gradually recycle areas of deteriorated commercial development that detract from the public benefit or deteriorate the public values of its natural, cultural and rural resources.

Malibu will provide passive, coastal-dependent and resource-dependent visitor-serving recreational opportunities (at proper times, places and manners) that remain subordinate to their natural, cultural and rural setting, and which are consistent with the fragility of the natural resources of the area, the proximity of the access to residential uses, the need to protect the privacy of property owners, the aesthetic values of the area, and the capacity of the area to sustain particular levels of use".

Malibu Municipal Code Section 17.02.030

Applicant Comment:

As discussed previously, both the Malibu Municipal Code and the Local Implementation Plan contain development standards to implement the vision and mission statement of those documents. Specifically, MMC Sections 17.40.030 and 17.40.040 contain development standards that implement MMC Section 17.02.030. Furthermore, LIP Sections 3.5 and 3.6 as well as the associated chapters of the LIP contain development standards to implement the vision and mission statement of the Coastal Act. Planning Commission Resolution No. 24-39 demonstrates that the project meets the residential development standards contained in both the MMC and LIP.

CONCLUSION

This is a new 8,492sf structure and requires a totally new CDP.

Applicant Comment:

This is an addition to a current and approved PVWF rebuild. The current and approved PVWF could be built at this time.

Instead of applying for the kitchen area in ESHA as a fire rebuild and then asking for this 4,620 Addition, the owner should have applied for a CDP for an 8,492 sf residence located out of the ESHA Buffer.

Applicant Comment:

The Applicant followed the process as directed by City staff and consistent with the Malibu Municipal Code.

The proposed 8,492sf structure is not a 3,872sf Woolsey Fire Re-build plus a 4,620sf Addition. The rebuild was never intended to be constructed.

At 8,492sf, more than double the size of neighboring houses, the structure is out of keeping with the neighborhood character. Since the Woolsey Fire, the neighborhood character has been eroded by developers who ignore the rural character and peaceful lifestyle enjoyed by residents and wildlife alike.

Instead of applying for the kitchen area in ESHA as a fire rebuild and simultaneously asking for this 4,620 Addition, the owner should have applied for a CDP for an 8,492sf residence located out of the ESHA Buffer. Most importantly, the Addition before you is not an Addition to a fire rebuild. It is an Addition to a proposed kitchen area in an ESHA buffer which is not allowed. In the PVWF plans you can see that this is one residence. Therefore, the Council must deny this Addition and tell the owner he has to come back with an application for a residence that is located out of the ESHA buffer and fits in with the neighborhood character.

Applicant Comment:

The project footprint in ESHA buffer is a fire catastrophe replacement. Additionally, the pre-fire footprint has been significantly reduced, and a functioning septic system, 75' from blue line, is proposed to be voluntarily removed.

The proposed construction including kitchen, adjacent terrace, staircase and a portion of the swimming pool are in the ESHA buffer. A roof deck atop the kitchen and illuminated by the kitchen's clerestory windows intrudes noise, light and human activity into the ESHA and are not allowed in the ESHA buffer.

Applicant Comment:

As discussed previously, the CDP that was approved by the Planning Commission, does not propose any development within the required 100-foot ESHA buffer.

If this structure is approved, it will open the floodgates for future, irresponsible development in Malibu Park as well as other neighborhoods in Malibu. The properties on either side of 29738 Cuthbert are also burnouts poised for re-construction. The owners of these properties are the only neighbors to write letters of approval. There were over 50 letters requesting denial.

Applicant Comment:

Adjoining neighbors are most important to compatibility. Both adjoining neighbors have approved the project. Many of the 50 signatures are outside of this project area and are part of political organizations opposed to development.

The determination of this application is not precedent setting. As described there were no variances associated with the application. The proposed scope of work meets the criteria contained in MMC Sections 17.40.030 and 17.40.040 and LIP Sections 3.5 and 3.6 as well as other chapters as applicable. The siting or massing of the addition did not exceed the development standards that currently exist in the code. The Planning Commission's determinations were not contrary to law. As proposed the addition is consistent with the current zoning ordinances that have been adopted by the City Council as the vehicle to achieve the City's vision for how residential development should occur within the City.

Furthermore, the application was an addition to a previously issued PV application. The PV application met the criteria in both the MMC and LIP for rebuilds in that not only was the replacement structure within the massing and siting limitations, but the PV application also restored the pre-fire uses on the site. The PV application is independent of the CDP and does not rely on the CDP for compliance with the City's zoning codes.

A structure this size will erode away at the beautiful setting at the interface of Malibu Park's residential neighborhood and the Santa Monica Mountains. It will chip away at the lifestyle that attracts people to Malibu. Malibu Park has historically been a family

neighborhood composed of residents who care profoundly about the wildlife that makes Malibu their home.

Applicant Comment:

The size of the addition and resulting structure is consistent with the requirements of LIP Section 3.6(K) and MMC Section 17.40.040(A)(13). Furthermore, the siting of the addition is consistent with LIP Sections 3.6(F) and (J) and LIP Section 4.6.1

I am profoundly disappointed that we neighbors have had to come together to protect our neighborhood - to protect the Malibu we love. The decisions and actions of the Planning Department and the Planning Commission have placed an unfair burden upon our community.

Please uphold the Appeal and DENY the CDP for 29738 Cuthbert for the reasons stated above.

Applicant Comment:

Approval or denial of projects is based on the development standards contained in both the LIP and MMC and the Planning Commission determined that those findings can be made in the affirmative. Furthermore, the Planning Staff does not have the ability to issue approvals for CDP applications that per LIP Chapter 13 require a public hearing. LIP Chapter 13 contains standards that must be met in order for the Planning Commission to issue an approval and Planning Commission Resolution No. 24-39 is evidence of that.

Request for Recusal: Councilwoman Haylynn Conrad

CHARLOTTE FR

Charlotte J. Jones

LOTTE GERRIN

Lotte Charie

PETER C. JONES

Pete Jones

PATT HEALY

Patt Healy

Mitchell Miller

Mitch Miller

Diane Sherman

Diane Sherman

Haylynn Conrad

Haylynn Conrad

Dru Ann Jacobson

Dru Ann Jacobson

? Kern Sherman

Kern Sherman

Will Morris

Will Morris

? email Jeff Corner

Jeff Corner

ANN JONES

Ann Jones

Georgia Goldfarb

Georgia Goldfarb

Sandra Glover

Sandra Glover

Rhonda Jessum

Rhonda Jessum

? CYNTHIA CHRISTIANSEN

Cynthia Christiansen

The Applicant requests that Councilwoman Haylynn Conrad recuse herself from participating in the hearing and City Council vote on this Appeal. As shown in the above image, Councilwoman Conrad signed the Appeal as an Appellant.

The City Council is required to uphold and execute a fair and impartial hearing when deliberating and determining the results of appeals. Councilwoman Conrad's recusal will satisfy this requirement and ensure an absence of bias and a preconceived position on the project.

The Applicant holds Councilwoman Conrad in the utmost esteem and is greatly appreciative of her tremendous service to the City. However, the Applicant is reasonably concerned that someone who signed the Appeal as an Appellant would likely hold a preconceived bias against the project. In order to insure a fair and impartial hearing and avoid any legal conflict, Applicant respectfully requests that Councilwoman Conrad recuse herself in this matter.