Commission Agenda Report

Planning Commission Meeting
03-02-26
Item 3.A.1.

To: Chair Riddick and Members of the Planning Commission

Prepared by: Coli Turner, MUP, Assistant Planner

Reviewed by: Didier Murillo, AICP, Principal Planner

Approved by: Yolanda Bundy, MS, PE, CBO, CFCO, Community Development Director and Tyler Eaton, Assistant Community Development Director

Date prepared: February 19, 2026 Meeting date: March 2, 2026

Subject: View Preservation Permit No. 25-001 – An application requesting corrective action to restore the views recorded at 7132 Dume Drive under Primary View Determination No. 12-009 with regard to the foliage located at 29119 Cliffside Drive (Continued from February 2, 2026)

Claimant Name:	Mark DiPaola, Managing Member of Napa Malibu LLC
Claimant Address:	7132 Dume Drive
Claimant APN:	4466-014-008
Foliage Owner Name:	Nancy Alder Esq.
Foliage Owner Address:	29119 Cliffside Drive
Foliage Owner APN:	4466-014-008

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 26-08 determining the action is categorically exempt from the California Environmental Quality Act (CEQA), and approving View Preservation Permit (VPP) No. 25-001 to require alteration and maintenance of foliage at 29119 Cliffside Drive at the height of the horizon, as shown in Primary View Determination (PVD) No. 12-009, in order to restore the primary view documented in PVD No. 12-009.

DISCUSSION: On February 2, 2026, the Planning Commission held a public hearing on the subject application. The Commission directed staff to return with a resolution approving View Preservation Permit No. 25-001 on March 2, 2026, adding a condition of approval to identify the trees requiring trimming to restore the portion of bluewater views

depicted in Primary View Determination No. 12-009 at the top of page 3 and at the bottom of page 4. Resolution No. 26-08, Condition No. 2 has been modified and the recitals and date of approval have been updated to reflect the votes on February 2nd and subsequent consideration on consent on March 2, 2026.

ATTACHMENT: Planning Commission Resolution No. 26-08

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 26-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU DETERMINING THE ACTION IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND APPROVING VIEW PRESERVATION PERMIT NO. 25-001 TO REQUIRE ALTERATION AND MAINTENANCE OF FOLIAGE AT 29119 CLIFFSIDE DRIVE AT THE HEIGHT OF THE HORIZON, AS SHOWN IN PRIMARY VIEW DETERMINATION NO. 12-009, IN ORDER TO RESTORE THE PRIMARY VIEW DOCUMENTED IN PRIMARY VIEW DETERMINATION NO. 12-009

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

SECTION 1. Recitals.

A. On April 5, 2012, staff conducted Primary View Determination (PVD) No. 12-009 at 7132 Dume Drive.

B. On July 2, 2024, a letter requesting informal discussions between the claimant and owner of the property located at 29119 Cliffside Drive (foliage owner) was sent by the property owner of 7132 Dume Drive via certified mail.

C. On September 9, 2024, a letter requesting mediation between the claimant and the foliage owner was sent by representatives of the claimant to the foliage owner via certified mail.

D. On November 15, 2024, a letter requesting binding arbitration between the claimant and the foliage owner was sent by representatives of the claimant to the foliage owner via certified mail.

E. On March 3, 2025, the claimant submitted an application for View Preservation Permit (VPP) No. 25-001.

F. On May 19, 2025, staff conducted a site visit to document the existing view conditions from the primary view location at 7132 Dume Drive.

G. On June 9, 2025, staff sent a letter to the foliage owner notifying them of the application and requesting a site visit via email and standard mail.

H. On September 17, 2025, staff called and sent an email to the foliage owner explaining the public hearing to be held on December 16, 2025, and to attempt a site visit before the hearing.

I. On December 4, 2025, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed the notice to all interested parties, the claimant, the foliage owner, and the record owners and occupants of all properties on which the foliage at issue in the view preservation permit application is located.

J. On December 16, 2025, the Planning Commission continued the item to the February 2, 2026 Regular Planning Commission meeting.

K. On February 2, 2026, 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 and directed staff to return with a resolution of approval on March 2, 2026 including a condition of approval to identify the specific trees requiring trimming to restore the portion of bluewater views depicted in Primary View Determination No. 12-009, at the top of page 3 and the bottom of page 4. The question was called and the motion carried with a vote of 4-1, Vice Chair Mazza dissenting.

L. On March 2, 2026, a resolution approving the subject application was presented to the Planning Commission on consent for approval.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposed project. The Planning Commission found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines section 15301(h) - Existing Facilities - Maintenance of Existing Landscaping. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines section 15300.2).

SECTION 3. View Preservation Permit Findings.

Based on all the evidence contained within the record and testimony and deliberations at the December 16, 2025, Planning Commission meeting, and pursuant to the Malibu Municipal Code (MMC), including MMC Chapter 17.45, the Planning Commission adopts the findings of fact below, and approves VPP No. 25-001 to require alteration and maintenance of foliage at 29119 Cliffside Drive at the height of the foliage in order to restore the documented primary view documented in PVD No. 12-009.

1. The claimant has provided evidence of attempts at informal discussion, mediation and binding arbitration. They waited 60 days between the mediation and binding arbitration letters and another 60 days with no agreement with the foliage owner as required by MMC Section 17.45.060.

2. The foliage under dispute does not qualify as exempt per MMC Section 17.45.140. Foliage growth obstructs views of the Pacific Ocean which were documented in PVD No. 12-009. The location of these obstructions is within the center-left (southeast) of the view looking towards the Pacific Ocean, which is documented in the PVD. The new obstructions block views of the ocean.

3. PVD No. 12-009 can be restored if the vegetation in question was trimmed and maintained to be no taller than the horizon as depicted in PVD No. 12-009. The proposed modification of the foliage is not expected to have an adverse impact on the vegetation.

4. The recommended restorative action does not include removal.

5. The recommended restorative action includes trimming the foliage to line, which

is the minimum necessary to restore the claimant's primary view, as documented in PVD No. 12-009.

SECTION 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves VPP No. 25-001, subject to the following conditions.

SECTION 5. Conditions of Approval.

1. The claimant, 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. The foliage located at 29119 Cliffside Drive shall be trimmed and maintained to restore the portion of bluewater views depicted in PVD No. 12-009 at the top of page 3 and at the bottom of page 4.

3. The claimant shall be responsible for paying the cost of the restorative action required to return the view conditions to those documented by PVD No. 12-009, and the foliage owner shall be responsible for paying the costs of any subsequent maintenance of the subject foliage unless otherwise agreed to by the parties or required pursuant to any final arbitration decision or court order.

4. A 20-day grace period, after the 10-day appeal period, shall be allowed for the claimant and foliage owner to agree in good faith to dates to cut the subject vegetation before the citations can be issued.

5. The claimant and foliage owner must sign and notarize an affidavit of acceptance of conditions of approval prior to commencement of any restorative actions.

6. The Planning Commission's decisions regarding view preservation shall be binding on all current and future owners of the claimant's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property.

7. Any decision of the Planning Commission made pursuant to MMC Section 17.45.060 takes effect ten (10) calendar days from the date of adoption of a resolution unless an appeal is filed. If appealed, the effective date is the date on which final action is taken by the city council.

8. The City shall not be liable for any damages, injuries, costs or expenses which are the result of a decision issued by a city employee or official or any agreements or determinations resulting from mediation, arbitration or litigation concerning view restoration claims or claimant's assertions pertaining to views granted or conferred herein. Nor shall the City

have any liability because a particular neighborhood or overlay district is granted or denied an exemption pursuant to MMC Section 17.45.140.

9. Under no circumstances shall the City have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a VPP.

10. Nothing in this Resolution shall be construed as preventing a claimant or foliage owner from bringing a civil action to enforce the terms of a VPP.

11. Failure to abide by the terms and conditions of this VPP shall constitute a violation punishable in accordance with MMC Section 1.16.010.

12. In addition to all penalties authorized by MMC Section 1.16.010 or any other provision of law, violations of this VPP are subject to the administrative penalty provisions of MMC Chapter 1.10. Each day that a violation continues shall constitute a separate offense.

13. To the extent any foliage is in violation of the terms of this VPP, it shall constitute a public nuisance.

SECTION 6. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 2nd day of March 2026.

_____
ELIZABETH RIDDICK, Planning Commission Chair

ATTEST:

_____
REBECCA EVANS, Recording Secretary

LOCAL APPEAL - Pursuant to Malibu Municipal Code Section 17.45.060(E)(7) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days of the planning commission's adoption of its resolution regarding the view preservation permit and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, extension 246.

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.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 26-08 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 2nd day of March 2026 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
REBECCA EVANS, Recording Secretary