

Received

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Planning Dept.

MALIBU SEA VIEW HOTEL

22741/22729 PACIFIC COAST HIGHWAY
MALIBU, CALIFORNIA

PROJECT DESCRIPTION AND OVERVIEW

JUSTIFICATION/FINDINGS FOR
DISCRETIONARY APPROVALS



THE SEA VIEW HOTEL

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I.

PROJECT DESCRIPTION OF THE HOTEL

An important design requirement of a successful boutique hotel is the number of rooms. The owner has spoken to numerous experienced boutique hotel operators, and they have all stated that the hotel will not be financially successful unless it has a minimum of 35 to 40 rooms. There are economies of scale that explain the hotel operators' and owners' comments. An extreme example is a 10-room hotel; ten rooms cannot pay for a full-time manager, a full kitchen and chef, or the cost of maintenance such as cleaning the pool, paying ongoing maintenance of the wastewater treatment system, or obtaining a valet service. It is noted that a motel on the beach cannot be compared to a hotel that is not on the beach. The four motels in Malibu that are not on the beach were all constructed more than 60 years ago, and they all fail to meet any of Malibu's development standards. Accordingly, a hotel with the amenities that are being proposed requires a minimum of 35 rooms, and this is an important factor in the size and the design of the hotel.

The proposed hotel will be constructed on two commercially zoned lots; one parcel is located at 22729 Pacific Coast Highway, "PCH," Malibu, and referred to herein as Parcel A; Parcel B is located at 22741 PCH. Parcel A is adjacent to PCH and adjacent to Parcel B on the northerly and westerly property lines of Parcel A. Parcel A is the site of an abandoned gas station, and Parcel B has a commercial building on it. Parcel B is north of Parcel A and rises up 25 to 40 feet higher than Parcel A. This unique hillside topographic feature will result in a six-level hotel; however, no section of the hotel is more than two stories. There exists a rooftop deck on the existing building, which will be an important attraction for hotel guests; it will be accessible to all of the guests and will contain tables, umbrellas, trees, a small pool, and an open wet bar and grill, which will be portable and covered with umbrellas. The existing tile deck will be resurfaced with a non-flammable wood (ipe) deck just above the existing tile deck, and except for the umbrellas and trees, the top of the building will look exactly the same as it currently looks from any public viewing location. As the levels of the hotel step up the hill, the roof of the rooms will serve as private decks for the rooms above so that each room will have a private deck that is 14 to 15-feet wide and 24+ feet deep. Every room and every deck will have magnificent ocean views, being higher than the level below and stepping back and up following the topography of the hill. The rooftop deck will be available to the hotel guests that have room keys and will not be accessible to the general public or friends of guests with room keys. This restriction is necessary to ensure that there will be sufficient parking spaces onsite to accommodate all restaurant guests, hotel guests, and hotel employees.

The hotel project will merge Parcels A and B into a single parcel. Development within Parcel A and B will continue to be referenced to facilitate the description of the proposed hotel project.

SPECIFIC PROJECT DESCRIPTION

I. THE REMODEL OF EXISTING BUILDING ON THE UPPER PARCEL, PARCEL B.

The existing building on the upper parcel is fully permitted by the City of Malibu, and the California Coastal Commission with a valid CDP. The size and height of the building were the results of a compromise with the City over a disagreement concerning whether or not the building had vested building permits.

The building consists of three enclosed levels above the garage level plus the roof deck; each level is higher and located northerly of the level below so each level steps up the hillside. The roof of the level below becomes the deck for the level above.

I.

The conversion of the existing building to 21 guest rooms will require only an internal remodel; the remodel will not require any increase in the approved floor areas as verified by City-stamped APPROVED plans that are compared to the hotel remodel plans shown side-by-side at the same scale on Exhibits E-1, E-2, and E-3 attached to the project plans.

E-1 = FIRST LEVEL	6,707.72 SF
E-2 = SECOND LEVEL	3,103.13 SF
E-3 = THIRD LEVEL	3,077.80 SF
TOTAL APPROVED SF =	12,888.75 SF

All exterior walls will remain in place except for the opening for 12 new exterior doors on the north side, backside, of the building.

The existing elevator will be extended upward to be consistent with the ADA laws which require that all disabled persons must have access to the rooftop deck and pool area. The additional height of the elevator will have very little visual impact because it is over 200 feet from PCH, and will be partially blocked by the existing southerly roof overhang. This height variance is referenced in the Sea View Hotel Overlay District.

The Los Angeles County Fire Department is also requiring emergency exit stairs from the rooftop deck on the easterly side which will replace an existing stairway. The new stairs will replace the existing stairs. The new stairs will not extend as far into the east sideyard as the existing stairs.

It is noted that the building was approved by the City as part of a resolution to a vesting claim. Since the approval almost 20 years ago, the definition of what qualifies as a basement has changed in addition to what was counted useable enclosed floor area.

II. THE NEW CONSTRUCTION ON THE LOWER PARCEL, PARCEL A.

Parcel A, the old Shell Gas station property, is the site of old, dilapidated metal buildings, concrete gas pumping isles covered with large, 20-foot-high metal canopies, an old septic system, and a 10 to 11-foot-high retaining wall 27 feet southerly of the northerly property line. ALL of the existing structures will be demolished, removed, and the lower part of the hotel will be constructed.

A. BASEMENT LEVEL:

- i. Men's and women's spa with six massage rooms, private changing rooms, private bathrooms, shower, sink and locker adjacent to each massage room; the spa will also have a men's steam room and a women's steam room.

I.

- ii. Employee changing rooms, lockers and bathrooms.

TOTAL AREA OF i and ii = 3,476 SF

B. FIRST FLOOR LEVEL:

- i. The hotel driveway entrance is on the ground floor with 31 standard parking places and significant landscaping. The first 20 feet adjacent to PCH will be landscaped except for the access drives. All cars will be valet parked after a guest has checked in to the hotel.
- ii. The reception and office area totals 203.6 S.F.
- iii. The Sea View Restaurant.

ELEVATOR	35.75 SF
RECEPTION	203.54 SF
BATHROOMS	321.86 SF
BAR AREA	121.00 SF
SERVING AREA	889.5 SF
KITCHEN	307.7 SF
ENTRY AREA	34.7 SF
TOTAL GROUND FLOOR ENCLOSED AREA	1,914.1 SF

C. SECOND LEVEL:

- i. 15 Guest rooms with subterranean access hallway. = 4,731.75 SF
- ii. Private decks adjacent to each guest room with privacy dividers composed of 7-foot-high tempered and frosted glass. The decks will be partially landscaped with colorful, potted plants, grass, and trees. Minimum size of each deck is 14' wide and 24' deep. The decks will serve as a private patio for a quiet and private indoor/outdoor living experience.

D. THIRD LEVEL:

This level is partially over the second level but is not over the first level. No portion of the three levels contains a section that is more than two stories, except the elevator shaft and the entry area to the elevator, which must provide access to all three levels.

I.

The roofs over each guest room will drain at a slope of 1.5% and are not higher than 24 feet, with a flat roof, or 28 feet with a roof that slopes 25%+ as measured from the existing grade or finished grade, whichever is lower.

- i. 7 guest rooms = 2,722.06 SF
- ii. Private decks adjacent to each guest room with privacy dividers composed of 7-foot-high tempered and frosted glass. The decks will be partially landscaped with colorful, potted plants, grass, and trees. Minimum size of each deck is 14' wide and 24' deep.

II.

THE FOLLOWING WILL LIST THE PRIORITY GOALS AND OBJECTIVES REFERENCED BY ALL OF THE CITY COUNCIL MEMBERS THROUGHOUT MALIBU'S HISTORY AND HOW THE PROPOSED HOTEL WILL HELP TO ACHIEVE THOSE GOALS AND OBJECTIVES.

I. POSITIVE IMPACTS

1. MAINTAIN THE CHARACTER OF MALIBU'S UNIQUE NEIGHBORHOODS:

- a. The proposed hotel is 100% consistent with the character of the neighborhood where it is proposed; the area is the most vibrant and dynamic commercial district in the City.
- b. The hotel is within 200 feet of a PCH stoplight and crosswalk that leads directly to a ten-foot-wide public access to Carbon Beach and the ocean.
- c. The hotel location is also in a short walking distance to many restaurants, including Nobu, the Soho house, "V's," Casa Escobar, and the restaurants on the pier. The hotel is also a short walk to historic sites of interest such as the pier, the famous Surf Rider Beach, the Adamson House, Malibu Lagoon, etc.

Malibu has modified its development standards in 10 different overlay districts to ensure that development within each district will be consistent with the character of the neighborhood in each district. The proposed overlay district will ensure that a hotel use is consistent with the other commercial development in the area and where most of the motels and the City's only hotel is located.

2. TRAFFIC WILL BE REDUCED:

During the past 29 years, every councilmember has been concerned about increases in traffic on PCH.

- a. A highly accredited traffic engineer that was recommended by the Public Works Director, Mr. Bob Brager, conducted a comprehensive analysis of the traffic generated by the businesses in the existing building at 22741 PCH, including doctor's offices, a salon, a spa, a gym, and many other businesses. After analyzing all of the trips generated by these existing uses, he prepared a comprehensive traffic report that verifies that the traffic generated on PCH by a 36-room hotel will be 20% to 40% less than the traffic generated by the existing uses. The hotel will be the only commercial project that the City has approved that will actually reduce traffic in the City.

3. SAFETY WILL BE INCREASED:

During the past 29 years, every City Council member has been in favor of increasing safety on PCH. The proposed hotel will increase safety on PCH in five different ways.

II.

- a. As stated above, the hotel will reduce the amount of traffic on PCH, and this will also increase safety on PCH.
- b. The hotel will reduce the number of active driveways that are used to exist from PCH and enter onto PCH by 50%.

All Traffic Engineers acknowledges that driveways that enter onto and exit from a busy highway such as PCH are a primary cause of accidents.

When a driver exits PCH on the right side he must slow the car to a near stop which causes a chain reaction of many drivers slowing, and if a driver is not paying attention accidents will occur. A more serious source of accidents is drivers exiting PCH through a driveway on the left, requiring crossing two lanes with oncoming traffic; this requires the driver to estimate the distance and speed of oncoming cars, and poor estimates cause many accidents on PCH; the same risks occur when a driver enters onto PCH by making a left-hand turn and crossing in front of oncoming cars and then attempting to merge with the cars on the opposite side of PCH.

The two parcels where the hotel will be located currently have two very active driveways that enter onto PCH. The hotel will require only one active driveway; the second driveway will be available for emergency vehicles only, and therefore will be used very infrequently.

- c. Delivery trucks that park in the center turn lane of PCH so the driver can deliver packages by loading a hand cart and jaywalking across PCH is a very dangerous practice and a major source of accidents. Many cars must slow down or stop suddenly when the person pushing the hand cart is either rude or simply misjudges the speed or distance of the oncoming cars. Additionally, trucks that park in the center turn lane prevent other motorists from using the turn lane to make safe entry onto PCH or safe exits from PCH; this practice is so dangerous it should be illegal.

All contracts with the hotel will forbid any company from parking trucks in the center turn lane of PCH to deliver or pick-up packages. The hotel is setback 46 feet from PCH, leaving plenty of room to load and unload trucks **ONSITE** in the front or in the back of the hotel where the fire department turnaround is located, and then the truck can exist the hotel site safely.

- d. Closing any lane of PCH creates a safety hazard as cars must slow down and try to merge into the mainstream of cars in the adjacent lane. If a person in the open lane is not alert, accidents will occur.

All contractors will **NOT** be permitted to close any lane of PCH during construction of the hotel or after the hotel opens.

II.

The 46-foot front yard setback will allow all construction equipment, trucks, deliveries, and workers to park and perform all construction **ONSITE**.

- e. People attempting to parallel park along PCH is another source of accidents and congestion on PCH. Drivers attempting to parallel park on PCH must use a relatively complicated maneuver which stops the adjacent lane of traffic. Many of the drivers that park on PCH are employees or valet drivers parking cars that belong to guests of a commercial businesses that does not have adequate parking onsite for their employees or guests.

The hotel has more parking places onsite than will ever be required and no cars will ever be parked offsite; this fact does increase safety on PCH.

4. THE HOTEL WILL ELIMINATE A “VISUAL BLIGHT” ADJACENT TO MALIBU’S MOST TRAVELLED SCENIC HIGHWAY; 45,000 VEHICLES TRAVEL PCH DAILY.

The proposed hotel will increase the beautification of PCH in three ways:

- a. The parcel containing the old abandoned and dilapidated Shell Gas station structures is the only parcel in Malibu that the Planning Department has defined as a “visual blight.” The hotel will eliminate the visual blight by eliminating all of the old Shell Gas station structures, including the canopies that are 20± feet high and 1 foot from the PCH right-of-way.
- b. The hotel plans require that the first 20+ feet adjacent to PCH will be landscaped with the only exception being the required access driveways; this is four times the standard 5 feet of landscaping required adjacent to PCH. The landscaping plans specify that 11 specimen trees will be planted in the area adjacent to PCH.
- c. The hotel structure will be setback from PCH almost twice the required front yard setback, which will increase the unobstructed peripheral views of the travelers on PCH. The hotel is setback from PCH more than any building on PCH within 2,000 feet, except for Nobu and the Soho House.

5. THE HOTEL WILL REDUCE POLLUTION IN MALIBU AND THE WORLD.

- a. As stated in sections 2 and 3 above, the hotel will reduce traffic on PCH, increase safety on PCH, and these facts will reduce congestion, which, in turn, will reduce pollution due to hydrocarbons from cars; if it takes a person twice as long to drive from Topanga Canyon to the Civic Center due to a traffic accident or a closed lane, then the amount of carbon dioxide produced by the car’s engine is double the amount released by the car if there were no congestion.
- b. The hotel will provide six electric car charging stations which will be free to the hotel guests. This free offering will encourage people to drive to the hotel in electric cars without fear of being unable to find a charging station that is available in Malibu.

II.

When the charging stations are not being used by the hotel guests, they will be made available to the general public for only the cost of the electricity.

6. THE PROJECT WILL REDUCE CONGESTION ON PCH.

The project will reduce congestion on PCH in the following ways:

- a. Reducing the current number of vehicular trips on PCH;
- b. Increasing safety on PCH;
- c. Providing more than the required parking spaces onsite;
- d. Requiring that all delivery trucks unload, and load, onsite;
- e. Requiring that during the construction process no lanes on PCH will be blocked.

7. THE HOTEL WILL PROVIDE MUCH NEEDED OVERNIGHT ACCOMMODATIONS LEGITIMATELY.

The demand for overnight accommodations has destroyed the tranquility of many residential neighborhoods; the hotel will provide an alternative to the commercial use of Airbnbs, and the hotel will have no negative impacts.

- a. Investment companies are buying residential condominiums, apartments, and homes in quiet residential neighborhoods and commercializing these structures by converting them to Airbnbs, which do not have the required parking, the required wastewater treatment facilities, or the required 24-hour onsite management.

This practice of converting residential structures into commercial uses and destroying quiet residential neighborhoods is gaining momentum because the investment companies are sidestepping the appropriate zone changes, the parking requirements, the wastewater treatment requirements, and the 3 years required to file a zone change application, pay the fees, and properly vet all of the issues in front of the residents of the community, the Planning Commission and the City Council.

- b. Although the practice of commercializing residential neighborhoods provides the city with a substantial amount of income, there is a legitimate way to generate revenue; it is estimated that the proposed hotel will provide more than 50% of the revenue the City received from all of the Airbnbs in the City and the revenue will be generated in a properly designed hotel in the proper commercial district with 24 hours of onsite management.

II.

By not treating Airbnbs as a commercial use that must be approved by the City Planning Commission and City Council after being vetted by all of the City's departments, and after full public hearings, the City is encouraging the ongoing Airbnb conversions.

- c. The proposed hotel is in a very active and dynamic commercial district, and going through the very costly and time-consuming project approval process, it is the appropriate process and will ensure that the use is respectful of the neighborhood and all of the citizens of Malibu, while also providing the City with substantial revenue due to the TOT and increased property taxes.

8. THE HOTEL WILL INCREASE FUNDING FOR LOW AND MODERATE OVERNIGHT ACCOMMODATIONS.

The proposed hotel will provide funding for low and moderate overnight accommodations consistent with the LCP.

- a. The LCP requires that a prescribed amount of funding be provided for future low and moderate income overnight accommodations, and the applicant will provide 100% of the prescribed amount of funding to be used specifically for low and moderate income overnight accommodations.

9. FOR THE PAST 29 YEARS OF THE CITY'S EXISTENCE, EVERY CITY COUNCILMEMBER AND ALL OF MALIBU'S CITIZENS HAVE WANTED ADDITIONAL YOUTH PLAYING FIELDS, A SKATE PARK, AN AQUATIC CENTER, SOLAR PANELS FOR THE CITY HALL, AND OTHER AMENITIES; HOWEVER, THESE AMENITIES REQUIRE FUNDS.

- a. The hotel will provide \$1,000,000 to the City to be issued by the City to help provide the above "amenities and benefits." The referenced funds will be provided to the City as part of the hotel approval process.
- b. In addition to funds referenced in "a" above, it is estimated that the transient occupancy tax, TOT, will generate over \$1,000,000 each and every year. The referenced funds will pay for a very significant portion of the City's new soccer fields, skate park, aquatic center, etc.
- c. In addition to the above, property taxes for the building will increase by a minimum of 400%.

10. EVERY COUNCILMEMBER AND ALL OF MALIBU'S CITIZENS SUPPORT INCREASING THE WATER SUPPLIED TO MALIBU IN THE EVENT OF WILDFIRES, EARTHQUAKES, AND/OR OTHER POTENTIAL EMERGENCIES.

- a. As part of an agreement with Water District 29, the approval of the hotel will ensure that an additional 4 million gallons of water will be available to increase the water flow and pressure in the primary water main in PCH which supplies water to Malibu.

II.

The water department does not have the money required to fix a dysfunctional valve that, if opened, would allow the 4 million gallons of water currently being stored in two water tanks at the top of Topanga to flow into the water main in PCH that provides water to the City. If the hotel is approved, the owner of the hotel site will provide the required funds and ensure that the valve will be fixed before the hotel is opened. It is noted that the replacement of the 20"-diameter check valve.

11. THE CITY'S PLANNING DEPARTMENT AND THE LIP STRESS THAT PROJECTS SHOULD BE CONSISTENT WITH THE NATURAL TOPOGRAPHY OF AN AREA WHERE THE PROJECT IS SITED.

The design of the hotel is consistent with the natural topography where it will be sited.

- a. The Planning Department and City Council require that proposed projects be designed to follow the natural topography of the project site and "notch" into the hillside where possible to reduce the visual impact of the structure. The design of the hotel is 100% consistent with the topography of the area; the lower level is notched into the hillside which reduces the appearance of size; 25% to 35% of each level is excavated into the hillside, "notched," and is not visible, so each level appears smaller. An additional benefit of excavating the lower level and the second level of the hotel into the northerly hillside is the front yard setback is almost twice the required setback at 46 feet from PCH.

As each level of the hotel increases in height it steps back into the hillside to be consistent with and blend with the natural topography; this also ensures that no section of the hotel is higher than two stories.

- b. Another visual benefit of following the natural topography is that the viewing angle from the Pacific Coast Highway and adjacent sidewalks is consistent with the slope of the hillside, so that each level of the hotel is substantially blocked by the level below it, and this fact will substantially reduce the visual perception of size and height of the hotel.

12. THE HOTEL WILL PROVIDE MUCH-NEEDED LIVING ACCOMMODATIONS FOR VICTIMS OF FIRES AND OTHER DISASTERS THAT WILL SURELY PLAGUE THE MALIBU COMMUNITY IN THE FUTURE.

- a. Anyone that lives in the City and loses the ability to occupy their home due to a community emergency will be able to stay in one of the hotel luxury guest rooms for up to six weeks at 50% of the normal rate.
- b. The hotel garage can accommodate 37 cars and the garage has been designated as a shelter-in-place area. Anyone fleeing a fire or other natural disaster may park their cars in the garage free of charge.

III.

POTENTIAL NEGATIVE IMPACTS

There are legitimate reasons why Malibu created commercial development standards that are extremely restrictive. The original City Council felt that 95% of the vacant commercially-zoned property was located in the Civic Center area and the council was concerned about the potential negative impacts of large developments such as major shopping centers, etc., so the council adopted the restrictive commercial development standards, believing “that it was better to be safe than sorry.”

The same City Council that adopted the restrictive development standards also knew that there would be exceptions to the development standards that would be necessary to ensure the unique character of many of Malibu’s unique neighborhoods, so the City Council created a method that would allow unique overlay districts to be proposed and approved. Other exceptions to the development standards could be approved as legally justified variances; finally, the councilmembers knew that there could be exceptions to the development standards that may not have the negative impacts to the City that they were concerned about and could possibly have positive impacts on the City by helping the City achieve its primary goals and objectives. The Sea View Hotel project is a very rare example of such a project. A brief summary of the positive impacts that the Sea View Hotel will have on the City of Malibu is listed below:

- Traffic will be reduced
- Safety will be increased
- Congestion will be reduced
- The project is 100% consistent with the character of the neighborhood
- PCH will have a “visual blight” eliminated
 - The old abandoned Shell Gas station structures are the only structure in Malibu that the City’s Planning Department has labeled a “visual blight”; the hotel will eliminate the visual blight adjacent to the most traveled scenic highway in Malibu.
 - To be consistent with the hillside topography and to reduce the appearance of size, each level of the hotel is “notched” into the hillside consistent with Malibu’s LIP.
 - The front yard setback of 46+ feet from PCH is more than any commercial building within 1,000 feet of the project on the north side of PCH and 90% of all commercial buildings on both sides of PCH.
- Landscaping adjacent to PCH is four times the required area.
- Pollution will be decreased due to reduced traffic, increased safety, and electric car charging stations.
- The deficits in the City for responsible overnight accommodations will be reduced. The proposed hotel is a commercial use in the most vibrant and dynamic visitor-serving district in the City, and the hotel will provide an alternative to the commercial uses that are destroying Malibu’s quiet residential communities due to the epidemic of Airbnbs that do not have the required parking, the required OWTS, or the 24-hour onsite management;
- During and after an emergency, hotel rooms will be made available at 50% of the normal rental rates for six weeks.
- The project will increase water flow and pressure in Malibu’s primary water main in PCH.
- The project will deliver \$1,000,000 of amenities and benefits when construction permits are issued and an estimated \$1,000,000 to the City every year in the form of TOT.

To summarize, the Sea View Hotel will have NO negative impacts on the area where it is proposed, or on the City in general. It is very unusual when a commercial project has virtually no negative impacts on the Malibu community; however, when the primary goals, objectives, and policies of the City are examined, it is clear that the project will have only positive impacts. SEE EXHIBIT 1.

IV.

NEIGHBORHOOD CHARACTER

The City of Malibu has always tried to establish development standards and approve development consistent with the character of the neighborhood. With respect to the proposed hotel, it is located in the middle of the most dynamic and vibrant commercial district in the entire city; the area from Cross Creek to PC Greens is the center of Malibu's visitor-serving commercial district with over 15 restaurants and 5 fast-food restaurants within walking distance of the proposed hotel, plus the hotel restaurant. The location of the hotel is within 200± feet of a stoplight and crosswalk that leads directly to a 10-foot-wide public beach access as well as the Nobu restaurant and the Soho House. The hotel will be within walking distance of the Surfrider Beach, the famous 100-year-old Pier, and the Adamson House. The only existing hotel in Malibu and three of the five motels are all within this commercial area and the proposed hotel is in the center of it all. Clearly, the hotel is consistent with the character of the neighborhood where it is proposed.

MERGING THE PARCELS TOGETHER

The original application for the Sea View Hotel was filed over 2 ½ years ago and provided for Parcel A, the old Shell Gas station parcel adjacent to PCH, and Parcel B, the parcel where the existing office building is located, to be tied together for as long as the building located on Parcel A existed. The tying of the parcels together within an overlay district is not unusual; the only hotel in Malibu -- the Malibu Beach Inn -- is constructed on three parcels that are tied together, but not merged, and the La Paz Shopping Center Project is constructed on three parcels that are tied together, but not merged. The reason the project description specified that the parcels would be tied together instead of merged was to make it clear that the existing building on the upper parcel was 100% approved and permitted by the City of Malibu and the Coastal Commission, and although it does not conform to the current commercial development standards, it is legal. The City's Project Planner and the Planning Director are aware of the fact that if the parcels are merged the larger size of the upper developed parcel will substantially increase the size of the areas normally required for landscaping and open space, and will affect the Floor Area Ratio, when, in fact, the development that exists on Parcel B was approved by the City over 18 years ago and construction was completed 13 years ago, and only a remodel is proposed for the hotel use.

After a comprehensive analysis of the project and the innate differences between a hotel use and all other commercial uses, the Planning Director decided it would be appropriate to merge the two parcels and form a single parcel and to create a single overlay district as opposed to separate overlay districts for Parcels A and B. The Planning Department assured the owner of Parcels A and B that the project would be analyzed with a full understanding that the proposed development on the upper parcel involved a remodel of the existing building that was fully permitted by the City and that merging the parcels would not require any changes to the project design. Accordingly, the Sea View Hotel project will merge the two parcels. The development of the hotel requires both parcels and any modifications to the development standards required to make the hotel economically viable and able to provide the benefits and amenities to the City will be provided for in the provisions of the Sea View Hotel Overlay District and associated Development Agreement. Although the parcels will be merged and the Sea View Hotel Overlay District will apply to the single-merged parcel, the project plans will continue to describe the proposed development on each of the parcels separately because the upper parcel, Parcel B, is completely developed with valid permits from the City and Coastal Commission, and it is unreasonable to apply Malibu's development standards to the merged parcel when 64.6% of the merged parcel is fully developed with valid City approvals and Coastal approvals which did not require 40% of the land be landscaped and an additional 25% of the land to be used as open space. Accordingly, the analysis of the hotel will continue to refer to the development of the area within Parcel A and the area within Parcel B separately as though the parcels would be tied together as long as the buildings exist; this type of analysis will permit the project to be analyzed fairly.

As discussed above, it would be extremely difficult for any hotel to be constructed under the City's general commercial development standards as verified by the fact that no hotels or motels have ever been approved by the City. Although the proposed hotel development plans may not satisfy the literal interpretation of some of the development standards, any modifications to the standards are all justified because a review of the commercial development within 1000 feet of the project indicates that all of the findings required to justify variances can easily be made with only one exception; the FAR required for a hotel is higher than other land uses. The only hotel in Malibu has a net Floor Area Ratio of 107%. This is more than twice the FAR proposed by the Sea View Hotel project.

SIDE NOTE

As long as the City of Malibu will permit residentially-zoned property, including apartments, condominiums, and single-family homes to be converted to motels and hotels via Airbnbs without being required to meet the requirements that are required of a person that owns a commercially-zoned parcel and wants to develop a hotel, there will be very few hotels or new motels. The Airbnbs are simply side-stepping the following requirements that commercially-zoned parcels must meet:

1. ADA laws. Disabled persons' access to all areas.
2. Number of parking spaces that are required.
3. Disabled parking spaces.
4. Sufficient wastewater treatment facilities.
5. Fire Department requirements for access and the building must be sprinklered.
6. Percentage of "open space" and "landscaping requirements."
7. Frontyard and sideyard setback requirements.
8. Floor Area Ratio requirements.
9. Meeting the Fire Department's emergency access and water flow and pressure requirements. (The Fire Department has different access and exit requirements for a house or condominium than for a hotel.)

It would be much easier for a developer to purchase a multi-family-zoned parcel, build an apartment or a condominium complex in accord with less restrictive development standards, and then as soon as the apartment complex is constructed turn it into an Airbnb hotel as compared to spending three years trying to obtain the approval for a hotel and spending millions of dollars trying to meet all of the commercial development standards, and then eventually get denied because you were unable to meet one of the commercial development standards.

VI.

EXCEPTIONS TO MALIBU'S DEVELOPMENT STANDARDS

SUMMARY

- A. EXISTING ZONE: CC
PROPOSED ZONE: CV-2 (SEE EXHIBIT #1)

B. PARKING CARS IN THE FRONTYARD SETBACK:

All commercial developments within 1,000 feet of the proposed hotel park cars in the frontyard setback area. See EXHIBIT #7. The hotel overlay district will permit cars to be parked in the frontyard setback area.

1. EAST SIDEYARD SETBACK:

- A) The proposed building, where the abandoned gas station exists, originally applied for a minor modification to the required 10% setback for a parcel that was 150 feet wide. The setback would then be 12 feet. The referenced minor modification was superseded when the Fire Department required emergency stairs in the east sideyard setback which were over 3 feet high in some areas; Clearly, the Fire Department's requirements would have resulted in a variance which would have been approved. However, when the parcels are merged then the resulting parcel is 175 feet wide, and a variance would normally be required. The findings which would be required to justify the variance would be easy to establish since 86+% of the 15 commercial buildings within a 1,000-foot radius of the proposed building have one or both sideyard setbacks equal to "0". The adjacent building, McDonald's restaurant, has a 6' sideyard setback.
- B) The existing building is fully permitted by the City and the Coastal Commission with a portion of the building being on the east property line.

The Fire Department is also requiring emergency stairs in one area of the easterly sideyard where the existing building is located; however, the subject stairs would replace existing stairs that encroached further into the easterly sideyard setback area than the new stairs so the new stairs are further from the east property line than the existing stairs will be.

2. WEST SIDEYARD SETBACK

- A) The merged parcel is 175 feet wide, so 15% of the merged width is 26.25 feet. The access drive to the upper building is 25 feet wide and located on the west side of the merged lot, and the new building is setback 2.5 feet east of the access drive. The setback from the westerly property line is 25 feet + 2.5 feet for a total of 27.5 feet which verifies the west sideyard setback is 27.5 feet, which is more than 15% of the 175-foot width.

VI.

The referenced access drive to the existing upper building is supported by a retaining wall on the east side of the drive, which is higher than 6 feet high in some areas, and the vehicular guard rails that are 3.5 feet high would technically require a variance. The variance would be granted because it is the only access to the upper building for cars or a fire engine; additionally 86% of all of the 15 commercial buildings within 1,000 feet of the project have sideyard setbacks equal to "0" feet on one or both side of the building, so it would be easy to establish the findings to support the variance.

- B) The existing building on the existing upper parcel has a 25-foot westerly sideyard setback, which is 1.25 feet short of 15%; however, the building and its east and west sideyard setbacks are fully vested.

3. CONSTRUCTION ON SLOPES 40% OR STEEPER:

The concrete gunited slope above the 10± foot-high retaining wall across the northerly area of the lower parcel is steeper than 40% and to build on this area would normally require a variance, although the old existing retaining wall and concrete slope is a visual blight. The proposed hotel overlay district will permit the slope to be modified to allow for the hotel to be "notched" into the hillside. —See Exhibit #9.

4. SITE PLAN REVIEW:

Portions of the hotel to be constructed on the lower parcel are higher than 18 feet in height but do not exceed 28-feet in height and will require a site plan review; however, no site plan review will be required for the existing building on the upper parcel. —See Exhibit #10.

5. LANDSCAPED AREAS:

The applicant believes that the proposed development on the lower parcels is consistent with the intent of the commercial standard requiring that areas equal to 40% of the parcel be landscaped; however, it can be argued that the project does not fulfill the strict literal interpretation of the general commercial development standards. See exhibit #11 for an explanation. Additionally, the existing development of the upper parcel is inconsistent with this standard; however, this inconsistency is permitted by the city. The hotel overlay district will allow the referenced inconsistencies to the general commercial development standard. —See Exhibit #8.

It is relevant to note that the purpose of landscaping is to beautify the appearance of a new development, and the amount of area that is landscaped does not always improve the appearance of a building, compared to less landscaped area but located in the right place and with the right kind of vegetation.

For example, the hotel specifies that the first 20+ feet adjacent to PCH will be landscaped with plants, grass, and specimen trees that are 14 feet to 18 feet high and have canopies with green leaves and flowers that have a radius of 13 to 16 feet in diameter. The canopies of the trees will equal 154 square feet; however, the trunk will occupy only 1 square foot.

VI.

The beautification of a project is less about the size of the area that is landscaped and more about the location of the landscaping and the type of vegetation and trees that are used by the landscape architect.

The size of the area within Parcel A that is landscaped equals 37.24%, which does not include the green roof area which was allowed to be included in the Santa Monica College project or the living green walls that were approved by the City of Malibu in the Whole Foods project.

When compared to the 15 commercial buildings within a 1,000-foot radius of the proposed hotel site, the findings for a variance can easily be made and are articulated in the attached Exhibit #1.

With respect to the area contained in Parcel B, the upper parcel, the area is completely developed with valid approvals and permits from the City and the Coastal Commission and the development standard specifying that 40% of this upper area does not apply prior to, or after, the merger of the subject two parcels.

The Sea View Hotel Overlay District will specify that with respect to the proposed use, the amount and location of the proposed landscaped area is acceptable.

6. “OPEN SPACE” AREAS:

The applicant believes that the proposed development on the lower parcel is consistent with the intent of the general commercial standard requiring that areas equal to 25% of the parcel be developed as open space; however, it can be argued that the project does not fulfill the strict literal interpretation of the general commercial development standards. See Exhibit #12 for an explanation.

Additionally, although the existing building on the upper parcel has over 15,000 square-feet of patios and patios are defined as “open space” it can be argued that the existing and city permitted development is inconsistent with the strict literal interpretation of the general commercial development standards. The hotel overlay district will allow the referenced inconsistencies to the general commercial development standards. —See Exhibit #11.

7. BACKYARD SETBACK

The original request for a backyard setback variance for Parcel A does not exist after Parcels A and B are merged.

It is noted that the backyard setback for the merged parcels is more than compliant with Malibu’s standards; however, there are permitted retaining walls in the setback area that are higher than 12 feet.

VI.

It is noted that the referenced retaining walls can only be seen by tenants of the building and not by the general public; they are fully permitted by the City and the Coastal Commission. The backyard setback is 48.5'. The required backyard setback is $15\% \times 292.7' = 43.9'$.

8. HEIGHT:

The new proposed building on the lower parcel is consistent with Malibu's development standards of 24 feet for a flat roof and 28 feet for a sloping roof above the existing grade or finished grade, whichever is lower. All of the eave overhangs required to keep the sun off of the south-facing windows are also consistent with the referenced height standard and will reduce the carbon footprint due to a reduction of power used for air conditioning with one exception. The Sea View Hotel Overlay District will permit the third level guest rooms to extend an eave overhang to be consistent with all six levels of the hotel design. The referenced eave overhang is above a small area that was lowered when the owners of the gas station removed the toe of the natural hillside; the seven-foot overhang is over that lowered area which makes it technically higher than 24 feet. This exception is very important to the design and attractiveness of the hotel and will reduce the carbon footprint.

With respect to the existing development on the upper parcel, it is fully permitted by the City and the Coastal Commission and except for the placement of a 3-inch-thick wooden (ipe) deck just above the tile deck; The tile deck slopes at 2.5% to the north so rainwater will flow into a drain. The wood deck will be level just above the tile deck. The southern portion of the roof that can be seen from PCH will not be any higher than it is currently.

The existing elevator will be extended up one level to provide access for disabled persons to the rooftop deck. This elevator extension is over 200 feet from PCH and will be partially blocked by the existing 7-foot southerly roof overhang.

The emergency exit stairs from the rooftop deck required by the Fire Department on the far east side of the building may have to be enclosed; however, the enclosure will be only 2.0 feet above the required hand railing required around the rooftop deck.

VII.

UNIQUE LAND USE AND FLOOR AREA RATIO CONSIDERATIONS

It is appropriate to compare apples to apples when analyzing land use and land use designations. Different commercial uses have different requirements for the use to function properly without overburdening the neighbors, public streets, etc. A McDonald's restaurant with a drive-thru is a much different use than an office building or a lumber yard; a cemetery is also a very unique land use with services generally provided on the weekend, which is very different from an auto repair shop which is only open during weekdays, or a bar that is open at night. However, all of the uses mentioned are commercial uses and the same FAR limitation is applied equally to all of the uses without regard for important considerations like impacts on traffic, congestion, safety, etc.

Hotels are a very unique land use in the City of Malibu as there are only two parcels designated as CV-2, which is required for a hotel use. Hotels require more parking than other commercial uses; hotels require more than double the parking required by a motel. Hotels require 2 parking spaces for every room, plus restaurant parking and hotel employee parking. It is extremely difficult to construct a hotel that meets the 15% FAR and still be economically viable. Not one hotel or motel has been approved since Malibu incorporated and established the 15% FAR for all commercial development 28+ years ago. It is important to consider the benefits and the amenities that a hotel use in the appropriate location will provide to the Malibu community; a list is attached in section II.

The extremely low FAR and the impossible task of meeting the onsite parking requirement, "landscaping" and "open space" requirements, and wastewater treatment requirement, to say nothing of the three years it takes to get all of the required approvals, there should be no mystery why real estate investment companies are buying apartment buildings, condominium buildings, and single homes and converting them into motels and hotels with Airbnbs and bypassing all of the above requirements.

★ The only hotel in the entire City of Malibu is the Malibu Beach Inn, and it is 3 stories high, has allocated only 5.5% of its land to landscaping, and has a net FAR of 107.6%

THE PROPOSED HOTEL

The portion of the hotel on the Shell Gas station lot provides 15 rooms, a very small restaurant, a reception area, and has a FAR of 53.43%. The portion of the hotel that will result from remodeling the upper existing building, i.e. 21 rooms, has a FAR of 50.35%. The proposed FAR for the merged parcels is 51.8%. Although the proposed FAR for the hotel is substantially larger than Malibu's commercial standards it will actually reduce traffic on PCH, eliminate a visual blight, and provide the City with \$1,000,000± every year, and many more benefits and amenities to the Malibu community. The unique benefits and amenities that will be provided to the City by a hotel use of the subject two parcels justify the approval of an overlay district which will allow an exception to Malibu's extremely low FAR, which was established to limit the negative impacts associated with commercial development. The Sea View Hotel is very unusual because it will have no negative impacts, but will have many positive impacts. See the attached list, section II.

★ In earlier calculations there were some errors made with respect to the FAR for the remodel of the existing building on the upper lot due to the fact that what qualifies as a basement area has changed since the project was approved and constructed, and currently areas that are over 60% enclosed are now counted in the FAR calculation even if they are breezeways and not counted in the past.

VIII.

AN OVERLAY DISTRICT IS APPROPRIATE FOR A HOTEL USE.

An overlay district is Malibu's method of handling land uses that are consistent with the character of the neighborhood and beneficial to the community; however, it is inconsistent with one or more of Malibu's development standards.

The proposed Sea View Hotel is a very unique use as there is only one hotel in the entire 27 miles of beautiful shoreline of Malibu, and the zoning required to even apply for a hotel, CV-2, exists only where the Malibu Beach Inn is located and where the City has approved a memorial park. In fact, the City has not approved one hotel or motel since its incorporation 28 years ago! Yet the demand is very strong for overnight accommodations and has resulted in Airbnb's turning quiet rural residentially-zoned neighborhoods into commercial uses without the required parking, the required wastewater treatment facilities, or the necessary 24-hour onsite management of the use. These residentially-zoned apartments, condominiums, and homes are being converted into hotel and motel use because of the high demand for overnight accommodations and because the investors are not required to provide any of the requirements for a commercial use, including 40% of the land dedicated only to landscaping, 25% of the land dedicated only to open space, the required onsite park spaces, the wastewater treatment requirements, and finally the impossible FAR of 15%.

The proposed venue for overnight accommodations is in a commercially-zoned area with the required wastewater treatment facilities, the required parking, and the required 24-hour onsite management; however, hotel and motel projects have not been submitted and approved because it is extremely difficult for any parcel to fulfill all of these appropriate requirements and still meet the requirements for landscaping, open space, and the lowest FAR in the nation. Investors can sidestep all of the appropriate commercial development requirements including a zone change, as well as all of the other restrictive commercial development standards, save millions of dollars and 3 years of processing time to obtain a zone change simply by converting a home or an apartment building to an Airbnb.

In order for a hotel or motel to be economically viable, there must be enough rooms to justify the cost of 24-hour staff, a restaurant, valet parking team, and the cost of the daily maintenance of the rooms. For example, three rooms cannot support a restaurant, a full-time manager and maid service. The owner of the proposed hotel has spoken to 7 boutique hotel operators, and they have all stated that in Malibu the minimum number of rooms for a boutique hotel where the occupancy rate will approach 80 to 90% during the year is 35 to 40 rooms, or the hotel will fail economically. Although the Sea View Hotel is located in the appropriate place for a hotel and will have only positive impacts on the Malibu community, it requires a higher FAR than the Malibu "one shoe fits all" commercial development standards will permit. Additionally, the parcels require a zone change to CV-2. It is noted that the only hotel in Malibu is the Malibu Beach Inn, and it is three stories high and has a net Floor Area Ratio of 107%. Overlay districts were established for just these types of situations.

A hotel use is extremely different from any other commercial use requiring very large wastewater treatment facilities, two parking spaces onsite for each room and parking for all of its employees and visitors to the restaurant, and, as referenced above, at least 35 to 40 rooms. The proposed hotel will provide many benefits to the City and will have virtually no negative impacts. Malibu has approved 10 different overlay districts to ensure that new development in each district is consistent with other similar land uses in a particular community, so the character of the community is maintained. An overlay district is an appropriate way to fairly consider the uniqueness of a hotel use, and the equally unique CV-2 land use.

Some people may ask, "so why is it important to permit a second small hotel?" One of the important reasons is to provide an alternative to the inappropriate commercialization of quiet residential communities by Airbnb conversions as referenced in the second paragraph above; additionally, the Sea View Hotel will substantially help the City and its citizens attain many of the City's primary goals and objectives and the hotel will have no negative impacts. A detailed list of the positive impacts the hotel will have is listed in the next section.

IX.

PROJECT'S VISUAL IMPACTS

The Sea View Hotel will turn the only parcel in Malibu that the Planning Department has defined as a visual blight into a beautiful, small boutique hotel that is beautifully landscaped adjacent to PCH and set back from PCH almost twice the distance of the required setback. The old Shell Gas station canopies will be removed and the first 23 feet adjacent to PCH, the most traveled Scenic Highway in the City, will be planted with colorful native plants, grasses, and large specimen trees, the only exception being the access drives.

After the setback from PCH the hotel follows the natural slope of the hill, stepping up the hill so that the flat roof of the lower level is the seaward deck of the upper level; the seaward decks will have large planter pots with specimen trees that will be very visible from PCH and add to the landscaping and beautification of the hotel project.

As travelers look up toward the hotel from PCH, the angle of the line of sight is close to the angle of the slope of the hill and the levels of the hotel stepping up the hill, which significantly reduces the visual perception of the hotel's height and size; this combined with the fact that 30% of the hotel is "notched" into the hillside and not visible from anywhere outside the hotel site makes the hotel appear much smaller than it is.

There are five single-family homes approximately 50 to 60 feet above the highest part of the hotel, the rooftop deck, and the ocean views from the homes will not be impacted in any way. The design of the hotel will be respectful of our residential neighbors to the north with respect to their views and with respect to sound pollution.

**THE SEA VIEW HOTEL'S ECONOMIC IMPACT ON THE CITY
AND THE CHARACTER OF ITS RESIDENTIAL NEIGHBORHOODS**

The economic analysis of the proposed boutique hotel indicates that the transient occupancy tax ("TOT") will generate \$1,000,000+ that will go directly to the City; this will significantly lessen the City's dependence on the TOT from the Airbnbs that are, in some cases, destroying the tranquil character of residential neighborhoods in Malibu.

Multifamily residences such as apartments and condominiums as well as single-family homes are an integral part of many of Malibu's RESIDENTIAL neighborhoods and should not be turned into commercially operated hotels and motels; not only do conversions of residential uses to commercial uses destroy the character of Malibu's residential neighborhoods, these conversions are not required to go through the City's three-year rigorous review process or to satisfy the commercial parking requirements and wastewater treatment facilities requirements. Finally, most of the referenced commercial uses in residentially zoned communities do not have 24-hour onsite management to guarantee that the overnight guests will respect their neighbors' privacy.

The Sea View Hotel will be located in the most vibrant and dynamic visitor-serving commercial district in all of Malibu, and will have more than the required onsite parking, more than the required wastewater treatment facilities, and continuous onsite management to ensure that the guests are respectful of the commercial neighbors and especially the five residential homes to the north of the hotel. Simply stated, the hotel is the appropriate use for the commercially-zoned area and is the appropriate alternative to unmanaged commercial uses in Malibu's quiet residential neighborhoods.

There are many economic and other positive ramifications associated with the approval of the proposed hotel; a comprehensive list of 12 benefits and amenities is provided in Section II of this project presentation. However, the following will focus only on the economic benefits:

1. The City will receive \$1,000,000 when the building permits are issued associated with an increase in the required Floor Area Ratio.
2. The revenue from the TOT is estimated at \$1,000,000+ going directly to the City to use at the City's discretion. This is an annual source of revenue.
3. The property tax for the hotel property will increase by more than 500%.
4. The visitors to the City will visit restaurants and retail centers which will significantly help the small businesses in the City and stimulate the economy.
5. The above-stated revenue sources will help to eliminate the need for revenue from Airbnbs that are commercializing Malibu's quiet residential neighborhoods and dramatically changing their character. The negative economic impact of the infestation of Airbnbs is far-reaching because they devastate the value of the homes wherever they exist and devastate the number of children that attend Malibu's schools as families move out of town.

XI.

PROJECT APPROVALS FROM ALL OF THE CITY AND COUNTY DEPARTMENTS.



City of Malibu

23825 Stuart Ranch Road • Malibu, California 90265-4861
 (310) 456-2489 • Fax (310) 317-1950 • www.malibucity.org

GEOTECHNICAL REVIEW SHEET

<u>Project Information</u>		Review Log #:	4113
Date:	June 5, 2018	Planning #:	CDP 17-086
Site Address:	22729 and 22741 Pacific Coast Highway	BPC/GPC #:	
Lot/Tract/PM #:	n/a	Planner:	Lilly Rudolph
Applicant/Contact:	Norm Haynie, norm@blueonyxdesign.com		
Contact Phone #:	310-456-5515 Fax #:		
Project Type:	New 36-room boutique hotel, grading-liquefaction mitigation, shoring, onsite wastewater treatment system (OWTS)		

<u>Submittal Information</u>	
Consultant(s) / Report Date(s): <i>(Current submittal(s) in Bold.)</i>	GeoSoils Consultants, Inc. (Miller, GE 2257; Ruberti, CEG 1708): 5-21-18, 3-29-18, 12-26-17 (revised 2-8-18), 12-26-17 Lawrence Young (REHS # 3738): 2-28-18, 1-29-18, 11-20-17, 11-15-17 Ref: Stratum Geotechnical Consultants: 3-25-16, 8-4-14, 3-29-13, 7-3-09, 11-7-08, 10-8-07
	Building plans prepared by DMP Construction, Inc. dated August 25, 2017. Grading plans prepared by LC Engineering Group, Inc. dated December 7, 2017. OWTS plans prepared by Lawrence Young dated February 28, 2018, January 29, 2018.
Previous Reviews:	5-9-18, 3-5-18, Geotechnical Review Referral Sheet dated 10-13-17: Ref: Environmental Health Review Sheet dated March 29, 2018, Environmental Health Review Sheet dated February 12, 2018

<u>Review Findings</u>	
<u>Coastal Development Permit Review</u>	
<input checked="" type="checkbox"/>	The hotel development project is APPROVED from a geotechnical perspective.
<input type="checkbox"/>	The hotel development project is NOT APPROVED from a geotechnical perspective. The listed 'Review Comments' shall be addressed prior to approval.
<u>Building Plan-Check Stage Review</u>	
<input checked="" type="checkbox"/>	Awaiting Building plan check submittal. Please respond to the listed 'Building Plan-Check Stage Review Comments' AND review and incorporate the attached 'Geotechnical Notes for Building Plan Check' into the plans.
<input type="checkbox"/>	APPROVED from a geotechnical perspective. Please review the attached 'Geotechnical Notes for Building Plan Check' and incorporate into Building Plan-Check submittals.
<input type="checkbox"/>	NOT APPROVED from a geotechnical perspective. The listed 'Building Plan-Check Stage Review Comments' shall be addressed prior to Building Plan-Check Stage approval.



City of Malibu

23825 Stuart Ranch Rd., Malibu, California CA 90265-4861
(310) 456-2489 FAX (310) 317-1950 www.malibucity.org

ENVIRONMENTAL HEALTH REVIEW REFERRAL SHEET

3/1/2018

TO: City of Malibu Environmental Health Administrator DATE: 9/5/2017
FROM: City of Malibu Planning Department

PROJECT NUMBER: CDP 17-086
JOB ADDRESS: 22729 PACIFIC COAST HWY
APPLICANT / CONTACT: Norman Haynie, Blue Onyx Design and Engineerin
APPLICANT ADDRESS: 22741 Pacific Coast Highway #400
Malibu, CA 90265
APPLICANT PHONE #: (310) 456-5515
APPLICANT FAX #: (310) 456-9821
APPLICANT EMAIL: norm@blueonyxdesign.com
PROJECT DESCRIPTION: New 36-Room Boutique Hotel

TO: Malibu Planning Department and/or Applicant
FROM: City of Malibu Environmental Health Reviewer

Conformance Review Complete for project submittals reviewed with respect to the City of Malibu Local Coastal Plan/Local Implementation Plan (LCP/LIP) and Malibu Plumbing Code (MPC). The Conditions of Planning conformance review and plan check review comments listed on the attached review sheet(s) (or else handwritten below) shall be addressed prior to plan check approval.

Conformance Review Incomplete for the City of Malibu LCP/LIP and MPC. The Planning stage review comments listed on the City of Malibu Environmental Health review sheet(s) shall be addressed prior to conformance review completion.

OWTS Plot Plan: NOT REQUIRED
 REQUIRED (attached hereto) REQUIRED (not attached)

Melinda Talant
Signature

3-29-18
Date

The applicant must submit to the City of Malibu Environmental Health Specialist to determine whether or not an onsite wastewater treatment system (OWTS) Plot Plan approval is required.

The Environmental Health Specialist may be contacted Tuesday and Thursday from 8:00 am to 11:00 am, or by calling (310) 456-2489, extension 364.

Rev 141008



City of Malibu

23825 Stuart Ranch Rd., Malibu, California CA 90265-4861
(310) 456-2489 FAX (310) 456-7650

RECEIVED

MAR 15 2018

PUBLIC WORKS REVIEW REFERRAL SHEET

PLANNING DEPT.

TO: Public Works Department
FROM: City of Malibu Planning Department

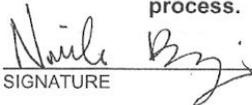
DATE: 9/5/2017

PROJECT NUMBER: CDP 17-086
JOB ADDRESS: 22729 PACIFIC COAST HWY
APPLICANT / CONTACT: Norman Haynie, Blue Onyx Design and Engineerin
APPLICANT ADDRESS: 22741 Pacific Coast Highway #400
Malibu, CA 90265
APPLICANT PHONE #: (310) 456-5515
APPLICANT FAX #: (310) 456-9821
APPLICANT EMAIL: norm@blueonyxdesign.com
PROJECT DESCRIPTION: New 36-Room Boutique Hotel

TO: Malibu Planning Department and/or Applicant
FROM: Public Works Department

The following items described on the attached memorandum shall be addressed and resubmitted.

The project was reviewed and found to be in conformance with the City's Public Works and LCP policies and CAN proceed through the Planning process.


SIGNATURE

4/16/18
DATE

Rev 120910



City of Malibu

23825 Stuart Ranch Rd., Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 456-7650

BIOLOGY REVIEW REFERRAL SHEET

TO: City of Malibu Contract Biological Staff **DATE:** 9/5/2017
FROM: City of Malibu Planning Department
PROJECT NUMBER: CDP 17-086
JOB ADDRESS: 22729 PACIFIC COAST HWY
APPLICANT / CONTACT: Norman Haynie, Blue Onyx Design and Engineerin
APPLICANT ADDRESS: 22741 Pacific Coast Highway #400
 Malibu, CA 90265
APPLICANT PHONE #: (310) 456-5515
APPLICANT FAX #: (310) 456-9821
APPLICANT EMAIL: norm@blueonyxdesign.com
PLANNER: To Be Assigned
PROJECT DESCRIPTION: New 36 room Boutique Hotel

TO: Malibu Planning Department and/or Applicant
FROM: City Contract Biologist *DAVE CRAWFORD*

The project review package is **INCOMPLETE** and; **CANNOT proceed through Final Planning Review until corrections and conditions from Biological Review are incorporated into the proposed project design** (See Attached).

The project is **APPROVED**, consistent with City Goals & Policies associated with the protection of biological resources and **CAN** proceed through the Planning process.

The project may have the potential to significantly impact the following resources, either individually or cumulatively: Sensitive Species or Habitat, Watersheds, and/or Shoreline Resources and therefore **Requires Review** by the Environmental Review Board (ERB).

Signature *[Handwritten Signature]*

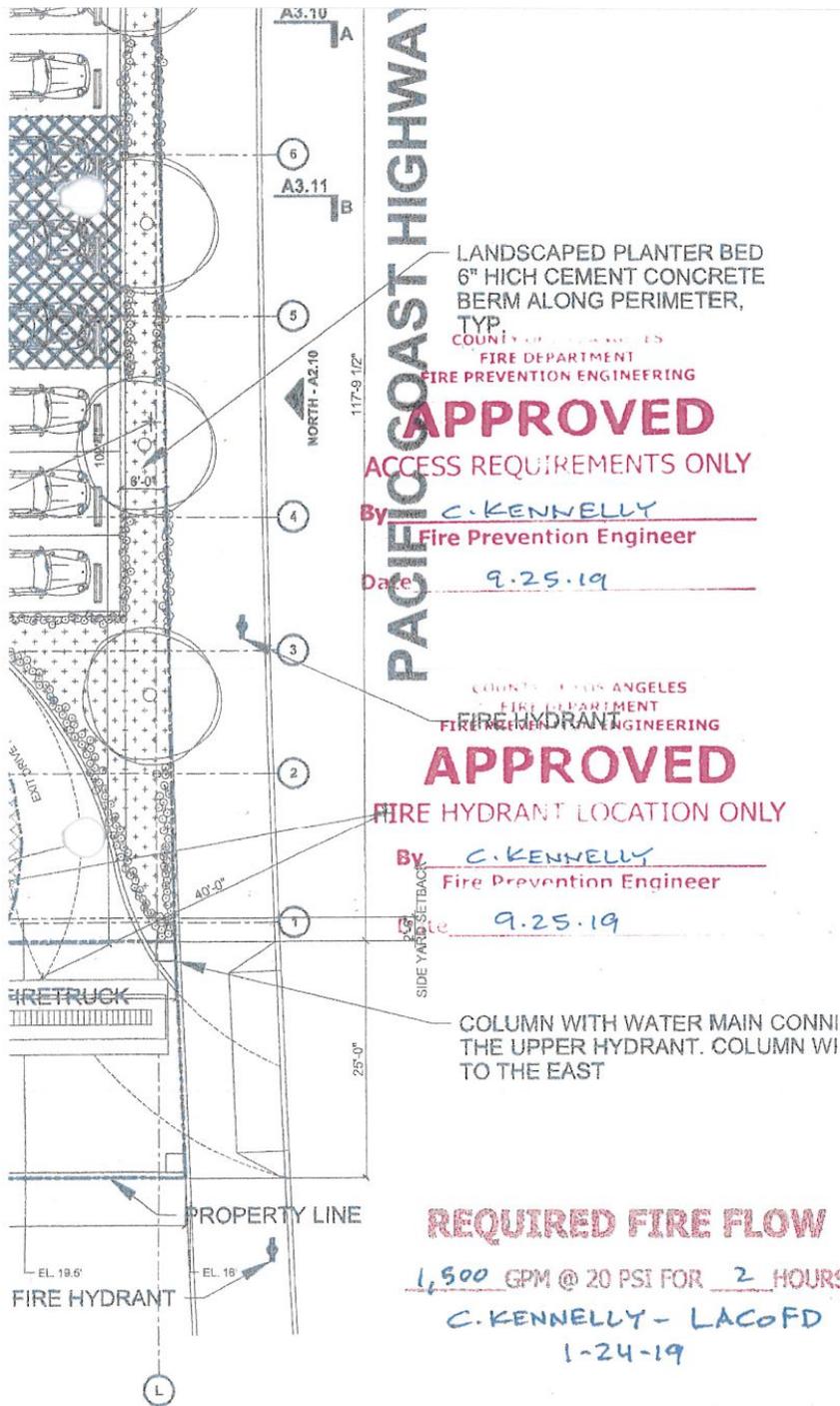
Date *10/3/17*

Additional requirements/conditions may be imposed upon review of plan revision

Contact Information:

Dave Crawford, Contract Biologist, dcrawford@malibucity.org, (310) 456-2489, extension 277
 Steven Hongola, Contract Biologist, shongola@malibucity.org, (310) 456-2489, extension 301
 Christopher Julian, Contract Biologist, cjulian@malibucity.org, (310) 456-2489, extension 301

Rev 110816



MALIBU SEA VIEW HOTEL

22741 / 22729 PCH
MALIBU, CA 90265

ISSUANCE:

DATE	DESCRIPTION
03/04/17	SCHEMATIC DESIGN
03/25/17	SCHEMATIC DESIGN
04/04/17	SCHEMATIC DESIGN
04/14/17	SCHEMATIC DESIGN
08/17/17	PLANNING DEPT SUB
12/19/18	NADEL REVISIONS

APPROVED
ACCESS REQUIREMENTS ONLY
By C. KENNELLY
Fire Prevention Engineer
Date 9.25.19

APPROVED
FIRE HYDRANT LOCATION ONLY
By C. KENNELLY
Fire Prevention Engineer
Date 9.25.19

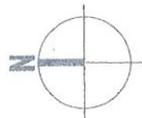
REQUIRED FIRE FLOW
1,500 GPM @ 20 PSI FOR 2 HOURS
C. KENNELLY - LACOFD
1-24-19

PLANNING DEPT. SUBMISSIC
NOT FOR CONSTRUCTION

FIRE TRUCK AND
PEDESTRIAN
SITE PLAN

FA1.00

FIRE TRUCK AND
PEDESTRIAN SITE PLAN
1'-0"



*The flows indicated on this form are based on uninterrupted water supply from Metropolitan Water District of Southern California and continuous flow in Waterworks District No. 29's high-pressure transmission main in Pacific Coast Highway. To secure a commitment from District No. 29 to provide water service to the subject property, the property owner has executed an agreement for construction water system improvements per Spec 28-840 (PC) to increase local water storage and conveyance capacity in the event of an interruption in water supply, pursuant to Part 10 of the Rules and Regulations of the Los Angeles County Waterworks Districts and the Marina Del Rey Water System.

PART II-A

**INFORMATION ON FIRE FLOW AVAILABILITY
(To be completed by Water Purveyor)**

Location Along Pacific Coast Highway approximately 785' east of Sweetwater Canyon Dr
Distance from Nearest Property Line 260' Hydrant Number N/A
Size of Hydrant 6"x4"x2.5" Size of Water main 10"
Static PSI 83 Residual PSI 20 PSI Orifice size 2.5", 4" Pitot N/A
Fire Flow at 20 PSI 1,750* Duration 2 Hours Flow Test Date / Time Hydraulic Model

Location Along Pacific Coast Highway approximately 1,100' east of Sweetwater Canyon Dr
Distance from Nearest Property Line 0' (fronting) Hydrant Number N/A
Size of Hydrant 6"x4"x2.5" Size of Water main 10"
Static PSI 83 Residual PSI 20 PSI Orifice size 2.5", 4" Pitot N/A
Fire Flow at 20 PSI 1,750* Duration 2 Hours Flow Test Date / Time Hydraulic Model

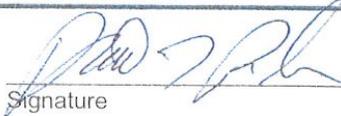
Location Along Pacific Coast Highway approximately 1,400' east of Sweetwater Canyon Dr
Distance from Nearest Property Line 155' Hydrant Number N/A
Size of Hydrant 6"x4"x2.5" Size of Water main 10"
Static PSI 83 Residual PSI 20 PSI Orifice size 2.5", 4" Pitot N/A
Fire Flow at 20 PSI 1,750* Duration 2 Hours Flow Test Date / Time Hydraulic Model

PART II-B

SPRINKLERED BUILDINGS/PRIVATE FIRE HYDRANTS ONLY

Detector Location (check one) Above Grade Below Grade Either
Backflow Protection Required (Fire Sprinklers/Private Hydrant) (check one) Yes No
Minimum Type of Protection Required (check one) Single Check Detector Assembly
 Double Check Detector Assembly Reduced Pressure Principle Detector Assembly

L. A. Co. Waterworks District # 29
Water Purveyor
9/24/2019
Date


Signature
David Rydman, Senior Civil Engineer
Title

This Information is Considered Valid for Twelve Months

Fire Department approval of building plans shall be required prior to the issuance of a Building Permit by the jurisdictional Building Department. Any deficiencies in water systems will need to be resolved by the Fire Prevention Division only prior to this department's approval of building plans.

22729/22741 Pacific Coast Hwy.
(2)



FORM 196
Rev. 04/03

COUNTY OF LOS ANGELES FIRE DEPARTMENT
FIRE PREVENTION DIVISION

Fire Prevention Engineering
5823 Rickenbacker Road
Commerce, CA 90040
Telephone (323) 890-4125 Fax (323) 890-4129

Information on Fire Flow Availability for Building Permit

For All Buildings Other Than Single Family Dwellings (R-3)

INSTRUCTIONS:

Complete parts I, II (A) when:

Verifying fire flow, fire hydrant location and fire hydrant size.

Complete parts I, II (A), & II (B) when:

For buildings equipped with fire sprinkler systems, and/or private on-site fire hydrants.

PROJECT INFORMATION
(To Be Completed By Applicant)

PART I

Building Address: 22729 & 22741 Pacific Coast Highway

City or Area: Malibu

Nearest Cross Street: 1000 Feet East of Sweetwater Mass.

Distance of Nearest Cross Street: ↑

Applicant: Norman R. Haynie Telephone: (310) 456-5515

Address: 22741 Pacific Coast Highway

City: Malibu

Occupancy (Use of Building): Hotel Sprinklered: Yes No

Type of Construction: IIA

Square Footage: 22,197 + 3,476 Basement Number of Stories: 3 - Fire Dept. Standard

Present Zoning: Community Commercial, CC, Will Change to Commercial Visitor Serving = CV-2

Norman R. Haynie
Applicant's Signature

9 - 23 - 2019
Date

LOS ANGELES COUNTY WATERWORKS DISTRICTS *

P. O. Box 1460
Alhambra, CA 91802
Telephone: (626) 300-3306

260 East Avenue K-8
Lancaster, CA 93535
Telephone: (661) 942-1157

23533 Civic Center Way
Malibu, CA 90265
Telephone: (310) 317-1389

TO:

Los Angeles County
Department of Public Health
Environmental Health:
Drinking Water / Land Use Program
5050 Commerce Drive
Baldwin Park, CA 91706-1423

Los Angeles County
Department of Public Works
Building & Safety Division

Los Angeles County
Fire Department

City of Lancaster
Building Department
44933 N. Fern Ave.
Lancaster, CA 93534

City of Malibu
Building Department
23815 W. Stuart Ranch Rd.
Malibu, CA 90265

City of Palmdale
Building Department
38300 N. Sierra Hwy.
Palmdale, CA 93550

RE: 22729 & 22741 PACIFIC COAST HWY MALIBU 90265
Address City Zip Code
APN # 4452-022-010, 015, 017

Los Angeles County Waterworks District No. 29
CONDITIONALLY Will serve water to the above single lot property subject to the following conditions:

<input type="checkbox"/>	Annexation of the property into Los Angeles County Waterworks District is required. Water service to this property will not be issued until the annexation is completed.
<input checked="" type="checkbox"/>	The appropriate fees <u>must be paid</u> to the District and other related water agencies.
<input checked="" type="checkbox"/>	The appropriate service connection fees have been paid to Waterworks Districts for the existing 1.5" service connection.
<input checked="" type="checkbox"/>	The property has an existing 1.5" water meter.
<input type="checkbox"/>	The appropriate connection fees have been paid to Waterworks Districts for the proposed service.
<input checked="" type="checkbox"/>	Water system improvements will be required to be installed by the developer subject to the requirements set by the Fire Department and the District, <i>including the installation of one 20" check valve assembly on the existing 20" waterline and an 18" spool in the existing manifold, within the Caltrans right-of-way of Topanga Canyon Blvd as part of Spec 29-840 (PC)</i>
<input checked="" type="checkbox"/>	Water meter serving the property must be installed in accordance with Waterworks' District standards.
<input checked="" type="checkbox"/>	Public water system and sewage disposal system must be in compliance with Health Department separation requirements.
<input checked="" type="checkbox"/>	A portion of the existing fronting water main may be required to be replaced or upgraded if the water service tap cannot be made or if damage occurs to the water main.
<input checked="" type="checkbox"/>	Property may experience low water pressure and / or shortage in high demand periods.
<input type="checkbox"/>	The District CAN NOT serve water to this property at this time.
<input checked="" type="checkbox"/>	Must comply with and satisfy Caltrans requirements in order to obtain Water Service.
<input checked="" type="checkbox"/>	A USC approved backflow device is required for this property and is to be installed and maintained by the property owner.
<input checked="" type="checkbox"/>	This CONDITIONAL Will Serve Letter is for a building conversion and new hotel and it is conditional upon completion of Spec 29-840 (PC).

By:



Dave Rydman
Senior Civil Engineer
Print Name

(310) 456-6621 x238
Phone Number

9/23/19
Date

*** THIS WILL SERVE LETTER WILL EXPIRE ONE YEAR AFTER THE DATE OF ISSUANCE.**

Rev. 06/09

SEA VIEW HOTEL OVERLAY DISTRICT

OVERVIEW

The City of Malibu has ten Overlay Districts and they all involve unique land uses which are consistent with the character of the associated neighborhoods and benefit the residents in the City of Malibu. For example, the Rambla Pacific Overlay District is composed of winding streets, steep topography, and dense residential use; Malibu's standard height restrictions and setback requirements would result in primary view blockage for many homes, so the standards for the neighborhood were modified by the Overlay District.

The proposed Sea View Hotel requires a CV-2 zone which is also a very unique use as verified by the fact that there is only one small hotel in the entire City which includes 27 miles of beautiful shoreline: the Malibu Beach Inn, which is located on three separate parcels that are tied together has a building with a Floor Area Ratio (FAR) of 90.8% excluding public easement areas that cannot be developed; even with the high FAR, the hotel falls short of meeting the required number of parking spaces for a hotel.

The owner of the only other CV-2 zoned parcel abandoned his 6+ year effort to satisfy Malibu's hotel development standards and decided a memorial park was an economically superior option. It is also noted that not one hotel or motel has been approved by the City. Hotels require almost twice as much parking as motels, very large wastewater treatment facilities, and a substantial number of rooms to make the project economically feasible.

The above facts verify that a hotel is a very unique use that is appropriate for an Overlay District when proposed in the most vibrant and dynamic visitor-serving commercial district in the entire City and which will result in positive impacts to the City's primary objectives, and will have virtually no negative impacts.

1. DESCRIPTION

The Sea View Hotel Overlay District area is composed of two existing parcels, Parcel A and Parcel B. Parcel A is located at 22729 Pacific Coast Highway, herein "PCH," Malibu; it is the site of an abandoned Shell Gas station. Parcel B is located at 22741 PCH, Malibu, and is adjacent to the west and north side of Parcel A. Parcel B is the site of a commercial building that was constructed with permits from the City of Malibu and the California Coastal Commission. The Sea View Hotel will remodel the existing building on Parcel B to create 21 guest rooms with the possibility of adding and additional room in the future. A new building is proposed on Parcel A and will provide 15 additional rooms, a small restaurant, a reception room, and a spa in the basement area. The remodeled building on Parcel B will not increase the building's total floor area based on the existing development standards.

The above-described parcels, A and B, will be formally merged to create a single parcel. The Sea View Hotel Overlay District will require the merged parcels to be rezoned from Community Commercial Use ("CC") to Visitor Serving Use ("CV-2"). The parcel merger is required in order to develop enough rooms and onsite parking spaces to make the hotel economically viable and to create many of the positive impacts with respect to the City's highest priority goals and objectives. The proposed hotel is 100% consistent with the character of the area.

XII.

2. Sea View Hotel Permitted Land Uses and Design Standards.

The following uses and design standards are applicable to the parcel referred to in the Sea View Hotel Development Agreement as “Parcel A and Parcel B”.

- a. Permitted Uses: The following uses and structures are permitted within Sea View Hotel Overlay District.
 - i. All uses permitted in the Visitor Serving Commercial, CV-2, land use zoning district.
 - ii. The sale and consumption of alcoholic beverages in a restaurant, in hotel guest rooms and private decks and the rooftop deck;
 - iii. Onsite or offsite wastewater treatment facilities;
 - iv. Restaurants within a hotel that are not open to the general public will not require one parking space for every 100 square feet of serving area; Restaurants within a hotel and open to the general public will require one parking space for every 100 square feet of serving area, excluding decks.
 - v. Retail store which sells beach towels, chairs, sunscreen, hats, bathing suits, food items, and other items that may be desired by hotel guests;
 - vi. Electric car charging stations;
 - vii. Private lockers available to guests for storage of recreational equipment including, but not limited to surfboards, boogie boards, beach towels, umbrellas, and chairs;
 - viii. Offices,
 - ix. Medical offices;
 - x. Special events for public congregations or entertainment, which are temporary in nature; with no limitation on the number of events;
 - xi. Spas, including, but not limited to, steam rooms, lockers, bathrooms, etc.;
 - xii. Salons;
 - xiii. Gyms with physical fitness training equipment;
 - xiv. Solar panels for electricity operation;
 - xv. Sound walls specifically designed to prevent sound emanating from a commercially-zoned property being heard by people within a residentially-zoned property.
 - xvi. Guest rooms with private decks and rooftop decks that are restricted to hotel guests unless used for special events; or are adjacent to a restaurant.

XII.

- xvii. General office use including, but not limited to the reception office.
 - xviii. Other uses determined by the Planning Director to be of a similar nature to uses permitted in this district.
- b. Prohibited Uses. The following uses are specifically prohibited.
- i. Fast food restaurants with drive-thru facilities;
 - ii. Liquor stores (stand-alone);
 - iii. Adult book stores;
 - iv. Hazardous waste facilities;
 - v. Gas stations.
- c. Conditionally Permitted Uses. The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Code:
- i. Cocktail lounges, ancillary to restaurant use;
 - ii. Cultural and artistic uses (museums, galleries, and performing arts studios);
 - iii. Live entertainment scheduled to occur after 7:00 PM shall require a Temporary Use Permit; Live entertainment scheduled to occur prior to 7:00 PM will not require a Temporary Use Permit.
 - iv. Nursery schools and daycare facilities;
 - v. Veterinary hospitals;
 - vi. Churches, temples, mosques and other places of worship;
 - vii. Hand car washing and detailing;
 - viii. Wireless telecommunications antennae and facilities;
 - ix. Emergency communication and service facilities.

XII.

DEVELOPMENT STANDARDS

<p>WESTERLY SIDEYARD SETBACK</p>	<p>25 feet. Freestanding or retaining walls may be within the setback area. 14.3% of the merged parcel's width, 175 feet.</p>
<p>EAST SIDEYARD SETBACK</p>	<p>12 feet for new buildings. 0 feet for existing buildings. fire department required access and exit stairs and vehicular access are exempt from sideyard setback standards.</p>
<p>BACKYARD SETBACK</p>	<p>15% of the merged parcels depth. retaining walls are permitted in the backyard setback areas.</p>
<p>FRONT YARD SETBACK</p>	<p>46 feet = 15.8% of the merged parcel's depth of 290.93'</p>
<p>MAXIMUM BUILDING HEIGHT</p>	<p>For a flat roof, 25 feet above the existing grade or finished, whichever is lower.</p> <p>For a sloping roof, 28 feet above the existing grade or finished grade, whichever is lower.</p> <p>7' eave extensions to keep sun off south-facing windows are exempt.</p> <p>The height of existing building and improvements as shown on project plans, plus the extension of the elevators and entrance areas to provide access to disabled persons are exempt.</p>
<p>MINIMUM ONSITE LANDSCAPING</p>	<p>a) Ground-level landscaping = 17.3%</p> <p>b) Landscaped areas on decks landscaping on the seaward portion of the decks composed of plants and trees that can be seen from PCH = 4.89%</p> <p>c) Green roof that can be seen by neighbors above = 6.67% <u>Will not be counted</u> as in the Santa Monica college project</p> <p>Total of the merged parcels, "a" and "b" = 22.19%</p>
<p>MAXIMUM FLOOR AREA RATIO</p>	<p>Remodel of the existing building on the upper parcel permitted by city and shown on project plans Exhibits E-1, E-2, and E-3. and areas that qualify as enclosed by 10-01-2019 Development Standards can be enclosed provided the maximum FAR referenced herein is not exceeded.</p> <p>The merging of parcel A and B eliminates the common property lines between the parcels and the 10-foot-wide walkway between the buildings will now be counted as enclosed building area because a cross-section of the area reveals that less than 40% of the area's surfaces are enclosed and therefore the area may be fully enclosed with the Fire Department's approval.</p> <p>Maximum FAR - 51.8% of the merged parcel area.</p>

XII.

<p align="center">MINIMUM OPEN SPACE</p>	<p>A) At ground level = 4.8%</p> <p>B) Patios adjacent to guest room and rooftop deck = 38.0%</p> <p>Total open space = 42.8% of the merged parcel.</p> <p>General commercial standard specifies 25%</p>
<p align="center">MAXIMUM GRADING</p>	<p>1,000 cubic yard excluding grading under structures and R&R.</p>
<p align="center">CONSTRUCTION ON SLOPES WITH GRADIENTS STEEPER THAN 40%</p>	<p>Non-natural slopes that have a layer of concrete on the surface can be developed with structures.</p>
<p align="center">REQUIRED PARKING AND LOCATION</p>	<p>2 parking spaces per hotel room.</p> <p>Parking spaces for all hotel employees as indicated on the submitted plans.</p> <p>Total valet parking spaces available on site = 90 spaces, as shown on the plans</p> <p>Total required spaces = 87</p> <p>The landscaped areas and the parking plan shown on the sea view hotel plans are an integral part of the proposed hotel and are acceptable within the overlay district. parking spaces in the frontyard setback area is permitted.</p>
<p align="center">MONUMENT SIGNS AND GENERAL SIGN REQUIREMENTS.</p>	<p>Monument signs shall be permitted in accordance with the provisions of section 3.13.6. of the LIP with the following modifications made to the provisions of that section:</p> <p>The provisions of LIP section 3.13.6.A.7 shall not apply.</p> <p>Monument signs shall be permitted up to a maximum of 48 square feet, and a maximum height of 6.0, excluding the base area supporting the sign. one monument sign shall be permitted within 30 feet of PCH. One sign shall be permitted to be placed on the building equal in size to 87 square feet.</p> <p>One address monument sign shall be permitted up to a maximum of 16 square feet, excluding the base. there shall be no setbacks required from rights of way or property lines for monument signs.</p>
<p align="center">SOUND WALL FOR NORTHERLY RESIDENCES AND SOLAR PANELS</p>	<p>A sound wall and southerly overhang at the top of the wall may be erected at the north edge of the rooftop deck to shield sound emanating from the deck and traveling to the residences located northerly of the deck. the overhand will support solar panels, reducing the building's carbon footprint. the wall and overhang shall not block any ocean views of the residences to the north and shall not be visible from that portion of PCH that is adjacent to the hotel site.</p>

XIII.
SEA VIEW HOTEL
DEVELOPMENT AGREEMENT

This Development Agreement (Agreement”) is entered into on this ____ day of _____, 2019, by and between the following entities:

1. City of Malibu (“CITY”), a general law city duly organized and existing under the laws of the State of California, and
2. Sea View Terrace LLC, Las Tunas Beach LLC, and Grey Granite LLC; together the three limited liability companies are authorized to do business in the State of California and shall be referred to herein as “SEA VIEW.”

CITY and SEA VIEW may be referred to individually as “Party” and collectively as “Parties.”

1. RECITALS

This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

- 1.1. SEA VIEW has submitted an application to CITY for the development of two parcels of land located at 22729 and 22741 Pacific Coast Highway, Malibu, California (the “Parcels.”) The parcel located at 22729 Pacific Coast Highway shall be referred to herein as “Parcel A,” and the parcel located at 22741 Pacific Coast Highway will be referred to herein as “Parcel B.” The Parcels are described more specifically in Exhibit A, attached. A map showing the location of the Parcels is attached as Exhibit B. The application is for the project (the “Project”) described hereinafter and more specifically shown on the approved Project plans and by the City-approved construction plans.
- 1.2. The Project consists of the following elements:
 - A. A 36-room hotel with a restaurant and associated facilities.

The hotel project will include the remodel of an existing commercial building on Parcel B, located at 22741 Pacific Coast Highway, and the construction of a new building on Parcel A, located at 22729 Pacific Coast Highway. Parcel A is immediately adjacent to Parcel B on the entire west side and north side of Parcel A.

Parcel A and Parcel B will be merged together as a condition of the project’s approval by the City and the California Coastal Commission. The merge of the parcels will occur prior to the City’s issuance of the construction permits required to build the project.

The operation of the hotel will include a Conditional Use Permit for the serving of alcoholic beverages in the restaurant, the guest rooms and decks, and the rooftop deck.

The hotel design includes some setback modifications and a number of modifications to the City's general commercial development standards, which are all required for the hotel to function properly and legally.

All of the proposed hotel design features and modifications to the City's general commercial development standards are all justified and are included in the plans that are approved by the City of Malibu.

- B. An Amendment to CITY's zoning map and Local Coastal Program (LCP) land use map changing the land use designation from Community Commercial ("CC") to Commercial Visitor Serving-2 ("CV-2").
- C. An Amendment to CITY's General Plan and Local Coastal Program (LCP) as stated below:
 - 1) The LCP Land Use Plan will be amended as follows: the designated land use of the Parcels will be changed from a Community Commercial use, ("CC"), to a Visitor Serving Use ("CV-2"). The reason for the land use change is to allow for the development of a hotel on the Parcels and CV-2 is the only land use category that will permit a hotel use.
 - 2) A provision in Malibu's General Plan and LCP Land Use Plan, Section 30244, subsection C-2, under the heading "Commercial Visitor Serving (CV)", which limits the maximum Floor Area Ratio, will not apply to the Project Parcels. This provision is required for the 36-room hotel to be economically viable, and the proposed hotel is the use that will achieve the goals, objectives and policies specified in Malibu's General Plan and LCP to the greatest extent possible as specified in sections 1.11.1 through 1.11.11, beginning on page 3. The requested LCP amendment is required because of the existence of a very unique situation in which the current legal permitted uses of the parcels can achieve only a very small fraction of the goals and objectives specified in the CITY's General Plan and LCP when compared to the proposed hotel use.

Page 1-48 of Malibu's General Plan states that "Visitor Serving uses such as motels and hotels shall be consistent with compatible accessory uses, shall protect the surrounding properties, shall ensure safe traffic circulation, and shall promote economically viable visitor serving areas of the City."

- D. The proposed project and any modification to the project will be implemented in accord with the provisions in this Development Agreement and the Sea View Hotel Overlay District which are an integral part of the project approval and the terms of the future development of the land contained in Parcel A and Parcel B.
- 1.3. As part of the Project, SEA VIEW has offered CITY twice the amount of public benefits and amenities as specified in Malibu's LCP Local Implementation Plan ("LIP"), Section 3.8, subsection A, 5-f in accord with the "Avoided Cost of Development Model", or \$1,000,000, whichever is the larger amount, relative to the portion of the project approved on Parcel A.

- 1.4. CITY has agreed to accept the value of the public benefits and amenities specified in paragraph 1.3 above in the form of a cash payment and will accept the responsibility of applying the cash payment to public benefits and amenities as approved by the City Council.
- 1.5. Government Code §65864, et seq. authorizes CITY to enter into binding development agreements such as this Agreement with persons having legal or equitable interests in real property in order to, among other things, provide certainty in the approval of development projects so as to strengthen the public planning process, encourage private participation in comprehensive planning, provide needed public facilities, make maximum efficient utilization of resources at the least economic cost to the public and avoid waste of resources escalating the cost of development to the consumer. This Agreement provides assurances to SEA VIEW that, if the Project is approved, during the term of this Agreement it may be implemented in accord with the Sea View Hotel Overlay District and CITY's official policies, ordinances, rules and regulations in force as of the date the ordinance approving this Agreement was approved by the City Council;
- 1.6. Pursuant to Government Code §65865, CITY has adopted rules and regulations for consideration of development agreements, and proceedings have been taken in accordance with CITY's rules and regulations;
- 1.7. By entering into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement and permitted by law;
- 1.8. The terms and conditions of this Agreement have undergone extensive review by CITY and the City Council. CITY and SEA VIEW acknowledge and agree that the consideration to be exchanged pursuant to this Agreement is fair, just and reasonable;
- 1.9. This Agreement and the Project which is the subject of this Agreement are consistent with the goals and objectives in CITY's General Plan, and its LCP;
- 1.10. All actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, including hearings by the planning commission and legislative body, findings, votes, and other procedural matters;
- 1.11. Development of the Project will further the comprehensive planning objectives by achieving the goals and objectives specified in CITY's General Plan and LCP, which include the following:
 - 1.11.1. The Project will result in the reduction of traffic on Pacific Coast Highway as verified by a highly accredited California State licensed Traffic Engineer. The Traffic Engineer's analysis verified that the uses of the existing building, including a spa, salon, doctor's offices, a gym and other businesses currently generate more traffic on PCH than the proposed 36-room hotel will generate.

1.11.2. Safety will be increased for travelers on Pacific Coast Highway as a result of the proposed Project reducing traffic on Pacific Coast Highway. Additionally, the Project will reduce the number of existing active driveways permitting vehicles to enter and exit Pacific Coast Highway by 50% and thereby reduce a major contributor to accidents on Pacific Coast Highway which will greatly increase safety for travelers on Pacific Coast Highway.

1.11.3. The proposed project is consistent with the character of the neighborhood.

The proposed hotel is in the most dynamic and vibrant commercial district in the entire CITY; there is a public crosswalk and stop light within 200± feet of the proposed hotel, which will allow visitors to cross PCH safely to a 10-foot-wide public access to the beach; many restaurants and historical places of interest are within easy walking distance of the proposed hotel site including the famous Nobu Restaurant and many other restaurants, the Malibu Pier, the Adamson House, the Malibu Lagoon, and Surfrider Beach. The proposed hotel is in the very best commercial location for a small hotel and will provide needed overnight accommodations to visitors and City citizens.

1.11.4. The proposed project will greatly improve the visual resources as seen by travelers on Pacific Coast Highway, the most traveled Scenic Highway in Malibu. The parcel that contains the remaining structures from the abandoned Shell Gas Station is the only parcel in Malibu that the City Planning Department has identified as a “visual blight”, and the hotel project will eliminate this blight. The project will also landscape the 20 feet adjoining PCH, excepting the access drives.

In addition to the above, the hotel structure will be located 46+ feet from Pacific Coast Highway, which is almost twice the required front yard setback if Parcel A were to be developed independently of Parcel B; this setback will increase the openness of the peripheral view of travelers on PCH.

1.11.5. The proposed hotel will reduce pollution in the City and the world. The reduction in traffic and the increase in safety will reduce congestion, which will reduce the amount of time that cars are traveling on PCH, which will reduce the carbon dioxide and tire dust currently being spewed into the atmosphere. Additionally, the hotel will provide six electric charging stations and will recharge guests’ electric cars at no cost.

1.11.6. The hotel will increase funding for low to moderate overnight accommodations. The Project will include a component to increase lower cost overnight visitor accommodations in accord with CITY’s LCP, LIP Section 12.11, “New Luxury Overnight Accommodations.”

- 1.11.7. The hotel project will reduce congestion on PCH. The project is designed to provide that all loading and unloading of packages will occur onsite and all construction staging can occur onsite in the extensive front yard setback area. These design features and the previously referenced reduction in traffic and increases in safety will assist in reducing congestion on PCH.

In addition to the above, the hotel design complies with Malibu's onsite parking requirements which will insure that hotel guests and employees will all park onsite and will not be trying to find offsite parking which is a contributor to traffic, accidents, and congestion on PCH.

- 1.11.8. The hotel will generate funds that can be used to assist the City in providing many benefits and amenities for its citizens and the general public, including but not limited to, soccer fields, charging stations for City electric cars, a skate park, an aquatic center, and to help the City fund acquisition of commercially zoned property.

The Transient Occupancy Tax generated by the hotel is estimated to provide the City with more than \$1,000,000 every year. Additionally, the mitigation for an increase in Floor Area Ratio will provide the City with a minimum of \$1,000,000 at the time the construction permits are issued.

- 1.11.9. The Project will increase much needed short term visitor serving overnight accommodations.

The City has 27 miles of shoreline with beautiful beaches and mountains, however the City has only one small, 47-room hotel and five motels. The hotel was approved 30± years ago before Malibu incorporation and the motels were constructed over 50 years ago. Three of the motels have been remodeled and 8 rooms were eliminated in the process. The need for additional short-term overnight accommodations is verified by the increase in Airbnb short-term rentals in Malibu's Rural Residentially Zoned areas, which is equivalent to a commercial use in a residentially zoned area. Currently, the City has only one parcel zoned for a hotel, besides the existing 47-room hotel, and that parcel was recently approved for a cemetery. The proposed hotel is consistent with the needs of the community and Malibu's LCP.

- 1.11.10. The Project will increase the City's firefighting capability.

The owner of the hotel project will pay for the design and participate in the cost of installing a new 20" diameter check valve near the intersection of Topanga Canyon Road and PCH so water from two water tanks containing 4.0± million gallons of water close to the top of Topanga Canyon can provide additional water flow into the major water main in PCH during times of an emergency.

- 1.11.11. The Project will provide emergency overnight accommodations to Malibu's citizens during times of emergencies. When an emergency occurs in the City which prevents homeowners from occupying their homes, the hotel will provide rooms for a minimum of six weeks at 50% of its average nightly rates. The hotel will be 100% sprinklered, and the 9,500 square foot enclosed garage is 2-hour rated and defined as a "place of refuge" by the Los Angeles County Fire Department.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, promises and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

2. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- 2.1. "Agreement" means this Development Agreement.
- 2.2. "Sea View Hotel Overlay District" means the Overlay District that applies to the land within the parcels located at 22729 and 22741 Pacific Coast Highway, Malibu.
- 2.3. "Vesting Date" means the date on which the Project is filed complete.
- 2.4. "CITY" means the City of Malibu, a general law city, duly organized and existing under the laws of the State of California.
- 2.5. "SEA VIEW" means Sea View Terrace LLC, Las Tunas Beach LLC, and Grey Granite LLC.
- 2.6. The "Project" means the Project described in Sections 2.14.3 and 5.1.
- 2.7. "Development" means the entitlement, and improvement of the Property for the purposes of completing the structures, improvements and facilities described herein including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project (as such Project may be approved) whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping, septic system, retaining walls, drainage devices, retention ponds, drive aisles with at grade parking, a basement, fire department turnarounds, water features, and hardscaping.
- 2.8. "Development Agreement Statute" means Government Code § 65864, et seq. as it exists on the Effective Date.

- 2.9. “Project Approvals” means all plans, permits, and other entitlements for use of every kind and nature, whether discretionary or ministerial, necessary in connection with development of the Project in accordance with this Agreement, which may include but are not limited to:
- 2.9.1. Compliance with the California Environmental Quality Act, Public Resources Code § 21000, *et seq.* (“CEQA”);
 - 2.9.2. Plot Plans;
 - 2.9.3. Site Plan Review;
 - 2.9.4. Coastal Development Permits;
 - 2.9.5. General Plan Amendments;
 - 2.9.6. Local Coastal Program amendments;
 - 2.9.7. Zone text amendments;
 - 2.9.8. Conditional Use Permits, including, but not limited to the consumption of alcoholic beverages and staging of entertainment;
 - 2.9.9. Minor modifications;
 - 2.9.10. Variances to Development Standards;
 - 2.9.11. Grading and building permits;
- 2.10. The “Applicable Rules” shall consist of the following:
- 2.10.1. CITY’s General Plan and Local Coastal Program (LCP) and the fee schedule as they exist on the Vesting Date;
 - 2.10.2. CITY’s Municipal Code, including those section of the Zoning Code which are applicable to the development of the Property, as the Municipal Code exists on the Vesting Date;
 - 2.10.3. Such other laws, ordinances, rules, regulations, Overlay Districts, and official policies governing permitted uses of the Property, density, design, improvement, and construction standards and specifications applicable to the development of the Property in force at the time of the Vesting Date;
- 2.11. “Development Exaction” means any requirement of CITY in connection with or pursuant to any Applicable Rule or Project approval, the construction of improvements or public infrastructure and facilities, or the payment of any type of fees, taxes, and assessments in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

- 2.12. “Subsequent Rules” means any change in the Applicable Rules, excepts as provided in Section 2.13, including, without limitation, any change in applicable general plan or specific plan, local costal program zoning, or subdivision regulation, adopted or becoming effective after the Vesting Date, excluding any such change processed concurrently with this Agreement, but including, without limitation, any change effected by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, the Planning Commission or any other board, agency, commission or department of the CITY, or any officer or employee thereof, or by the electorate, as the case may be (collectively the “Subsequent Rules”), which would, absent this Agreement, otherwise be applicable to the Property, shall not be applied by the CITY to any part of the Project, except as SEA VIEW may consent to the application thereof pursuant to Section 3.1 of this Agreement.
- 2.13. “Reservations of Authority” means the rights and authority excepted from the assurances and rights provided to SEA VIEW and reserved to CITY under this Agreement. Notwithstanding any other provision of this Agreement, the following Subsequent Rules shall apply to the development of the Property.
- 2.13.1. Processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for development approvals and permits for monitoring compliance with any development approvals or permits granted or issued.
- 2.13.2. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.
- 2.13.3. Regulations governing construction standards and specifications including without limitation, the CITY’s Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.
- 2.13.4. Regulations that otherwise would not apply to the development of the Property or Project for which SEA VIEW has given its written consent to the application of such regulations pursuant to Section 3.1 of this Agreement.
- 2.14. “Projects” shall mean the Project that SEA VIEW has applied for.
- 2.14.1. Project Parcels Descriptions
- 2.14.1.1. “Parcel A,” identified as Assessor’s Parcel Number 4452-022-010, at 22729 Pacific Coast Highway, Malibu, California, and legally described in Exhibit A.
- 2.14.1.2. “Parcel B,” identified as Assessor’s Parcel Number 4452-022-017, at 22741 Pacific Coast Highway, Malibu, California, and legally described in Exhibit A.

- 2.15. “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property.

3. VESTED DEVELOPMENT RIGHTS

- 3.1. SEA VIEW is hereby granted the vested right to develop the Project on the Parcels, subject to the Applicable Rules, the Project Approvals, and any future approvals applied for by SEA VIEW, or its successors, and granted by the CITY for the Project (the “Future Approvals”).
- 3.1.1. Vested Development Rights. Notwithstanding any future action of the CITY, whether by ordinance, resolution, initiative, or otherwise, the Applicable Rules shall govern the development of the Project during the term of this Agreement, except and subject to the Reservations of Authority and the terms of this Agreement. In developing the Property, SEA VIEW is provided, and assured, the vested right to require that the rules governing the development of the Project during the term of this Agreement shall be as provided in this Agreement, and shall permit the project to be constructed as approved by the City and the Coastal Commission. SEA VIEW in its sole discretion may elect to be subject to any Subsequent Rules that may be enacted. Any such election by SEA VIEW shall be made in its sole discretion and shall be in writing.
- 3.1.2. This Agreement does not (1) grant density in excess of that established in the Project Approvals, (2) supersede, nullify or amend any condition imposed in the Project Approvals, (3) guarantee to Owner any profits from the Project, or (4) prohibit or, if legally required indicate Owner’s consent to, the Property’s inclusion in any public financing district or assessment district, except as specified herein.
- 3.1.3. The Project conditions are attached hereto as Exhibit X and constitute the entirety of the conditions imposed upon the Project.
- 3.2. Purposes of Agreement. This Agreement is entered into in order to provide a mechanism for planning and carrying out the Project in a manner that will ensure certain anticipated benefits to both CITY, including without limitation the existing and future residents of CITY, and SEA VIEW, and to provide to SEA VIEW assurances regarding the land use regulations that will be applicable to the development of the Property, including but not limited to, those land use regulations relating to timing, density and intensity of development, that will justify the undertaking and commitments of SEA VIEW described in this Agreement and the investment in planning and development of the major on-site infrastructure and improvements needed for the Projects.

- 3.3. Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may reasonably be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations unless compliance with such state or federal laws or regulations causes a material breach or failure of consideration. Upon repeal of any such law or regulation, or the occurrence of any other event removing the effect thereof, the provisions of this Agreement shall be restored to their original effect.
- 3.4. Ownership of Property. SEA VIEW represents and covenants that it is the owner of the fee simple title to the Property.
- 3.5. Binding Effect of Agreement. All of the Property shall be subject to this Agreement. The burdens of this agreement are binding upon, and the benefits of the Agreement inure to, the CITY and SEA VIEW. Any and all rights and obligations that are attributed to SEA VIEW under this agreement shall run with the land, subject to the assignment of provisions of Section 4 of this Agreement.
- 3.6. Term. The term of this Agreement shall commence on the date that the project is finally approved by the City, and shall continue for a period of ten years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.
- 3.6.1. The Term of Project Approvals. The term of each of the Project Approvals, shall be extended through the termination date of this Agreement.
- 3.6.2. Tolling of Term of Agreement. The term of this agreement shall be tolled during the time the Project is pending before the California Coastal Commission. The term of this Agreement shall be tolled during any period of time during which a development moratorium is in effect. For purposes of this Agreement, a development moratorium shall be deemed to exist (i) during the period that any action or inaction by CITY or other public agency that regulated land use, development or the provision of services to the land prevents, prohibits or delays the use of the approval or the construction of the Project or (ii) during the period any lawsuit is pending brought by any third party concerning this Agreement, any of the Project Approvals, including pursuant to CEQA, or any Subsequent Approval. Any tolling pursuant to this Agreement of the commencement, or running, of SEA VIEW's ten-year vesting period will likewise, for an equal period of time, toll the performance of CITY's obligations.

- 3.7. Bargained For Reliance by Parties. The assurance of the CITY to SEA VIEW and of SEA VIEW to the CITY, in this Agreement are provided pursuant to, and as contemplated by, the Development Agreement Statute, and are bargained for, and in consideration of, the undertakings of SEA VIEW and the CITY set forth in this Agreement.

4. ASSIGNMENT

- 4.1. SEA VIEW may assign or transfer its rights and obligations under Agreement with respect to the Property, or any portion thereof, pursuant to the following provisions.
- 4.2. Right to Assign. SEA VIEW shall have the right to sell, transfer or assign the Property, in whole or in part (provided that no such partial transfer shall be made in violation of the Subdivision Map Act, Government Code § 66410, et seq.), to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the property transferred.
- 4.3. Partial Transfers. The Property currently consists of two parcels. As long as the two parcels are used and operated as a hotel, the two parcels shall be held together and shall be owned by the same entity.

5. DESCRIPTION AND PROCESSING OF THE PROJECT

5.1.

- 5.1.1. General Project Description. The Project consists of the development of two adjacent parcels of land, Parcel A and Parcel B into a 36 to 37 room Hotel, Restaurant, and associated facilities. The Project also includes landscaped areas, open space areas, and 90 valet parking spaces. The details of the Project are clearly described and shown on the Project plans, and will be further defined by the approved and permitted construction plan, this development agreement, and the Sea View Hotel Overlay District.

It is noted that Parcel B was fully developed with valid approvals and permits from the City of Malibu and the California Coastal Commission and, accordingly, the improvements to Parcel B will involve an internal remodel and modifications to meet ADA access laws and the Fire Department's requirements for emergency exit stairs. Although this project description discusses the portion of the proposed project on Parcel A and on Parcel B, the parcels will be merged into a single parcel to allow for development across the common property lines to improve the design of the hotel so the hotel can function properly with respect to access, wastewater treatment facilities, and parking facilities.

The proposed development includes the merging of Parcel A and Parcel B into a single Parcel.

The merging of two parcels will eliminate the common property lines that separate Parcel A and Parcel B which will eliminate some inconsistencies with respect to Malibu's development setback standards, will allow the buildings to be connected in the future, and to function more efficiently as a hotel. Although the project includes the merging of Parcel A and Parcel B, the parcels will continue to be referenced in the description of the project.

5.1.2. General Parcel By Parcel Breakdown of the Project. The following summarizes the Project.

- 5.1.2.1. Parcel A is at 22729 Pacific Coast Highway and is the site of an abandoned Shell Gas Station. The property is currently and temporarily being used as a hand car wash. The parcel is located adjacent to and 26± feet below the floor of the parking garage of the existing building at 22741 Pacific Coast Highway, herein referred to as Parcel B. Parcel A is located adjacent to and south of Parcel B.

Parcel A is also adjacent to Pacific Coast Highway and will provide the primary access to the hotel from Pacific Coast Highway. The area adjacent to Pacific Coast Highway is relatively flat, however, the most northerly 27± feet of the property rises up 10± feet and is supported by a retaining wall; this topographic increase in height allows for a third level of development without violating the City's development height standards, or the City's restriction that limits new building to no more than two-story sections.

Parcel A is approximately 18,375 square feet of land area and will be developed with a new building. The first level of the hotel will be located on Parcel A and will provide 31 valet parking spaces with six electric car charging ports, the reception area, front desk, and a small restaurant and kitchen; the basement level will contain an area for linen storage, liquor storage, employee changing rooms with bathrooms, and recreational facilities for the hotel guests. The second level of the hotel will be developed with eight guest rooms including large decks adjacent to each room overlooking the ocean which will serve as private patios furnished with a landscaped area, jacuzzi, lounges, etc. The third level will be developed with 7 guest rooms with large decks adjacent to each room overlooking the ocean and furnished similar to the decks described above. All three levels and basement area will be connected with an elevator and stairs which are consistent with ADA requirements.

The Project includes modifications to the City's commercial development standards which are required due to the following:

- a) The Los Angeles County Fire Department's emergency access and exit requirements.
- b) Exception to the commercial standards to bring the project into conformity with the character of the neighborhood.
- c) ADA access laws.
- d) Potential differences in interpretations with respect to what qualifies as landscaped areas and open space areas.

The justifications for the Project modifications to the City's general development standards have been justified as required in Malibu's Municipal Code and Local Coastal Program. The referenced modifications or exceptions to any development standards are also permitted in the Sea View Hotel Overlay District.

The Project plans provide a more detailed description of the Project, which is further defined by the approved and permitted construction plans.

Parcel A is legally described in Exhibit A attached.

- 5.1.2.2. Parcel B is at 22741 Pacific Coast Highway and has 33,384 square feet of land area. Topographically, the existing building on Parcel B is located midway up a hill that rises northerly, so the lowest floor of the building, the garage floor, is 26± feet above the flat area of Parcel A below. The existing building on Parcel B has a floor area of 12,889± square feet in accord with the interpretation of the commercial development standards at the time the City approved the building. The building includes a 9,226 square-foot semi-subterranean garage. The building is notched into the hillside so each level steps back northerly and upward relative to the level below consistent with the natural topography of the hillside.

The building was approved and permitted by the City of Malibu.

The building's tenant improvement plans that were stamped "City of Malibu approved" by the Planning Department and the Environmental and Building Safety Department" are compared to the interior remodel plans required to create 21 guest rooms of the hotel as shown on Exhibits E-1, E-2 and E-3 of the hotel plans. The hotel design requires the removal of less than 10% of the building's exterior walls and will not increase the existing floor area in accord with current development standards.

Nine of the above referenced 21 hotel guest rooms will be located on the level above the garage, which is also one level above the proposed third level of that portion of the hotel that will be located on Parcel A; accordingly the referenced nine guest rooms will be the fourth level of the hotel. The level above the fourth level will have 6 guest rooms and is the fifth level of the hotel. The level above the fifth level has six additional guest rooms and is the sixth level of the hotel. Above the sixth level is an existing rooftop deck/patio, ac units, etc. The existing rooftop deck is tiled and drains to the north at a 2%± slope; the deck will be covered with a non-flammable wood deck with planks that are spaced ¼" apart to allow water to drain through to the tiled deck.

The proposed wood deck surface will not slope to the north like the tiled surface; however, it will not be any higher than the southerly flat portion of the existing roof. The rooftop deck will have a small swimming pool sunken into the area between the ceiling below and the top of the roof deck. All of the referenced 21 guest rooms will have large decks overlooking the ocean and furnished with lounge chairs, jacuzzis, umbrellas, landscaping, etc.

All of the rooms and the rooftop deck will be connected with stairs and an elevator; the existing elevator will be extended upward to provide ADA access to the rooftop deck. The portion of the Project located on the area within Parcel B will require an exception to the City's development standards for the extension of the existing elevator to the rooftop deck, which is required by ADA laws, and the encroachment of emergency exist stairs into a portion of the east sideyard setback area as required by the Los Angeles County Fire Department. The Project plans provide a more detailed description of the Project, which is further defined by the approved and permitted construction plans.

The proposed development plans and the description of development contained herein may be modified from time to time in the future including, but not limited to, the number of guest rooms, the number and location of access walkways, etc., provided the modifications are not inconsistent with the Sea View Hotel Overlay District.

Less than 10% of the exterior walls of the existing building will be removed and replaced.

Parcel B is legally described in Exhibit A attached.

5.1.3. Summary of Entitlements for the Project.

5.1.3.1. Coastal Development Permit. In accordance with § 13.3 of the LCP, the Project will require a Coastal Development Permit, which will permit the development of buildings, landscaping, drainage devices, septic system, roadways, etc.

5.1.3.2. Local Coastal Program Amendment. Pursuant to Sections 3.8 and 13.28.1 of the LCP, an LCP Amendment is required for the Project.

5.1.3.3. Development Agreement. This Agreement between the CITY and SEA VIEW is entered into pursuant to 3.1, 3.3 and 13.28 of the LIP, which require that projects proposing FAR greater than .15 are processed in accordance with either a developmental agreement (DA) or as a planned development (PD). In either case, the DA or the PD must also be subsequently certified by the California Coastal Commission as an LCP Amendment. SEA VIEW has elected to utilize this Development Agreement.

5.1.3.4. Zone Text Amendment. A Zone Text Amendment shall be required to establish new development standards for the Project in accordance with section 3.8(A)(5)(f) of the CITY's LCP.

5.1.3.5. Parcel Merger. Parcel A and Parcel B will be merged as a condition of the City's approval of the project.

5.1.3.6. Conditional Use Permit. A Conditional Use Permit is required for restaurants, in accordance with Section 3.3(k) of the LIP, Table B of the LIP and Sections 17.28 CV-2 and 17.66 of the CITY's Municipal Code. A conditional Use Permit is being applied for which will permit the serving of alcoholic beverages and providing entertainment.

- 5.2. Fees, Exactions, Mitigation Measures, Conditions, Reservations and Dedications. All development Exactions that are applicable to the Project or the Property are established by the Applicable Rules, the Project Approvals and this Agreement.

Other than as set forth herein, this section shall not be construed to limit the authority of CITY to charge SEA VIEW the then current normal and customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse CITY's actual expenses attributable to such application, processing and permitting and are in force and effect on a CITY-wide basis at the time application is filed complete. SEA VIEW waives any and all rights it may have to challenge development fees that are in force as of the Vesting Date. SEA VIEW retains the right to challenge amended or increased development fees enacted after the Vesting Date.

- 5.3. Plan Review. Plans for each building of the Project, including plans for signage, trash enclosures and screening and landscaping, shall be reviewed and approved by the City's Planning and Building and Safety Director prior to issuance of a building permit; provided, however, that the sole purpose of such review shall be to verify consistency with this Development Agreement, Development Standards, Exceptions to the Standards as approved by the City Council, the Applicable Rules and Project Approvals.

- 5.4. CITY Processing of Permit Applications On An Expedited Basis. The CITY shall expedite the processing of all permits needed for the Project at SEA VIEWS expense, including, but not limited to, all plan checking, excavation, grading, building, encroachment and street improvement permits, certificates of occupancy, utility connection authorizations, and other permits or approvals necessary, convenient as appropriate for the grading, excavation, construction, development, improvement, use and occupancy of the Project in accordance with the CITY's accelerated plan check process under the Applicable Rules. Without limiting the foregoing, if requested by SEA VIEW, the CITY agrees to utilize contract planners and plan checkers (at SEA VIEW's sole cost), and any other reasonably available means, to expedite the processing of Project applications and approvals, including concurrent processing applications by various CITY departments.

- 5.5. Issuance of Building Permits. The CITY shall not unreasonably withhold or condition any ministerial permit provided SEA VIEW has satisfied all requirements for such permits.

- 5.6. Timing of Development. The Parties acknowledge that SEA VIEW cannot at this time predict when or the rate at which the Property will be developed.

Such decisions depend upon numerous factors which are not within the control of SEA VIEW, such as market orientation and demand, interest rates, completion and other similar factors.

In *Pardee Construction Co. v. City of Camarillo (Pardee)*, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development prevailing as against the parties' agreement. CITY and SEA VIEW intend to avoid the result in *Pardee* by acknowledging and providing that SEA VIEW shall have the right to develop the Property in such order and at such rate and times as SEA VIEW deems appropriate solely within the exercise of its subjective business judgement, but SEA VIEW shall have no obligation to develop the Project or the Property.

5.6.1. In furtherance of the Parties' intent, as set forth in this Section 5.6 no future amendment of any existing CITY ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property or the Project.

5.6.2. Moratorium. The CITY shall not impose a moratorium on the Property or Project unless the CITY has made legislative findings that there is a current and immediate threat to the public health, safety or welfare and that the approval of the entitlement sought by SEA VIEW would result in that threat to public health, safety or welfare, and provided that the CITY as otherwise complied with all applicable law.

5.7. Consistency With Use Designation.

5.7.1. In the unexpected event that SEA VIEW or the successor in interest to the ownership of Parcels A and B and the hotel buildings determines, at their sole discretion, that the use of the parcels and buildings as a hotel would result in economic failure then the buildings may be used for an alternative use providing the use is listed as permitted in the CV-2 Land Use Designation in CITY's Local Coastal Program.

6. PROJECT HEARINGS

6.1. Hearing Schedule. The requirements for notice and hearing are governed by the applicable sections of the CITY's LCP and Municipal Code.

6.2. Coastal Commission. If the Project is considered by the California Coastal Commission, and during that consideration modified, then the matter shall be placed on the Planning Commission agenda and, if required, on the City Council agenda, consistent with legal noticing requirements, at the earliest reasonable opportunity, subject to Section 7.3.1.

6.2.1. If the Project is modified by the California Coastal Commission, SEA VIEW in its sole discretion may elect not to proceed with the hearing process. The CITY retains its legal discretion to disapprove a modified project after it conducts the required public hearing process.

7. DEFAULT AND REMEDIES

- 7.1. Default. Either Party to this Agreement shall be deemed to have breached this Agreement if it materially breaches any of the provisions of this Agreement and the same is not cured within the time set forth in a written Notice of Violation from the non-breaching Party to the breaching Party. The period of time to cure shall not be less than thirty days from the date that the Notice of Violation is deemed received; provided, however, that if the breaching Party cannot reasonably cure a default within the time set forth in the Notice of Violation, then the breaching Party shall not be in default if it commences to cure the default within the time limit and diligently effects the cure thereafter.
- 7.2. Specific Performance. The Parties acknowledge that money damages are inadequate, and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and are available to the Parties.

8. ADMINISTRATION OF AGREEMENT

- 8.1. Appeal. Any decision by CITY staff concerning the interpretation or administration of this Agreement or the development of the Project or Property in accordance herewith, may be appealed by SEA VIEW to the Planning Commission, and thereafter, if necessary, to the City Council, following the procedures set forth in the CITY's Municipal Code. All determinations of the CITY's Planning Commission with respect to the Property or Project may be appealed to the City Council pursuant to such Municipal Code procedures. Final determinations by the City Council are subject to judicial review in accordance with California law.
- 8.2. Modifications Requiring Amendment of this Agreement. Any proposed modification of the performances of CITY or SEA VIEW which results in any of the following shall not constitute a clarification but rather shall require an amendment of this Agreement:
 - 8.2.1. Any increase in the total developable square footage of the entire Property in excess of the maximum FAR allowed under this Agreement;
- 8.3. Amendment or Cancellation of Agreement. Except as otherwise set forth herein, this Agreement may only be amended or cancelled, in whole or in part, by mutual consent of CITY and SEA VIEW, and upon compliance with the provisions of Government Code § 65868.
This provision shall not limit any remedy of CITY or SEA VIEW as provided by this Agreement.

9. TERMINATION

- 9.1. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:
- 9.2. Expiration of the stated term of this Agreement except for its provisions that are stated to survive its termination.

- 9.2.1. Entry of a final judgment after all appeals are concluded setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- 9.2.2. The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement and the conclusion of any litigation, including appeal, upholding the measure overriding or repealing the ordinance that approved this Agreement.

10. INDEMNIFICATION/DEFENSE.

- 10.1. SEA VIEW's Indemnification. SEA VIEW shall indemnify, defend, and hold harmless the CITY and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, SEA VIEW's performance pursuant to this Agreement, except to the extent such is a result of the CITY's sole negligence, gross negligence or intentional misconduct. SEA VIEW shall indemnify, defend and hold harmless the CITY and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement or the Project Approvals, including without limitation, the CEQA determination.
- 10.2. Defense of Agreement. The CITY agrees at SEA VIEW's expense to, and shall timely take, all actions which are necessary or required to uphold the validity and enforceability of this Agreement and the Applicable Rules.

The CITY may choose its own counsel or, at its sole discretion, demand that SEA VIEW provide counsel to provide such defense in which the event the CITY shall cooperate with such counsel.

- 10.2.1. The rate per hour billed to SEA VIEW for the services of the City Attorney shall be capped at the City Attorney's regular hourly rate billed to the CITY at the time the lawsuit is filed, with persons billing at a lesser rate billed to SEA VIEW at their actual rate billed to the CITY at the time the lawsuit is filed.
 - 10.2.2. In defending such joint litigation, the CITY agrees that SEA VIEW's counsel may take the laboring oar to avoid duplicative work.
 - 10.2.3. The CITY shall not settle any lawsuit attacking the Project Approvals, or other litigation implicating SEA VIEW, without SEA VIEW's written consent, obtained in advance.
- 10.3. This section 10 shall survive the termination of this Agreement.

11. TIME OF ESSENCE. Time is of the essence for each provision of this Agreement of which time is an element.

12. NOTICES. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

- 12.1. All notices shall be in writing and shall be given by personal delivery, by deposit in the U.S. mail first class with postage prepaid, or by sending the same by overnight delivery service, or, registered or certified mail with return receipt requested, with postage and postal charges prepaid, or by facsimile, as follows:

If to CITY:

City Clerk
City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265

With copies to:

The City Attorney:
Christi Hogin, Esq.
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, California 90266

If to SEA VIEW:

Sea View Terrace
c/o Norman Haynie
22741 Pacific Coast Highway, Suite #400
Malibu, California, 90265

With copies to:

The Attorney for Sea View:
Fred Gaines.
Gaines & Stacey LLP
16633 Ventura Blvd., Suite 1220
Encino, CA 91436

- 12.2. Either Party may change its designated recipient, mailing address and/or facsimile number, by giving written notice of such change in the manner provided herein. All notices under this Agreement shall be deemed received on the earlier of the date personal delivery is affected or not date deposited in the mail or the delivery date shown on the return receipt, air bill or facsimile confirmation sheet.

13. MISCELLANEOUS PROVISIONS

- 13.1. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the Clerk of the City Council within ten days of execution, as required by Government Code § 65868.5.

- 13.2. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are merged herein. This Agreement shall not be amended, except as expressly provided herein.
- 13.3. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.
- 13.4. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable. The remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.
- 13.5. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners.
- 13.6. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person or party shall have any right of action based upon any provision of this Agreement.
- 13.7. Cooperation Between CITY and SEA VIEW. CITY and SEA VIEW shall execute and deliver to the other all such other and further instruments and documents as may be reasonably necessary to carry out the purposes of this Agreement.
- 13.8. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to conflict with any provision of the Applicable Rules or the Project Approvals or the Future Approvals, the provisions of this Agreement shall control.
- 13.9. Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.
- 13.10. Governing Law and Venue. This Agreement is made and entered into in the County of Los Angeles, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the County of Los Angeles.
- 13.11. Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result

of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award of thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

- 13.12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.
- 13.13. Weekend/Holiday Dates. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or federal or state holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.
- 13.14. Not a Public Dedication. Except as otherwise expressly provided herein, nothing herein contained, or shown or graphically depicted on the approved plans for the Project, including without limitation all site plans and surveys, shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to the development of the Project for the purposes herein expressed. SEA VIEW shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common area and building and improvements located thereon, by any person for any purpose which is not consistent with the development of the project. Any portion of the Property conveyed to the CITY by SEA VIEW as provided herein shall be held and used by the CITY only for the purposes contemplated herein or otherwise provided in such conveyance, and the CITY shall not take or permit to be taken (if within the power or authority of the CITY) any action or activity with respect to such portion of the Property that would deprive SEA VIEW of the material benefits of this Agreement, or would in any manner interfere with the development of the Project as contemplated by this Agreement.
- 13.15. Singular and Plural. As used herein, the singular of any word includes the plural.
- 13.16. Excusable Delays. Performance by any Party of its obligations hereunder shall be excused during any period of "Excusable Delay," as hereinafter defined provided that the Party claiming the delay gives notice of the delay to the other Party as soon as reasonably possible after the same has been ascertained.

For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including

without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (f) damage to work in progress by reason of fire, flood, earthquake, or other casualty; (g) reasonably unforeseeable delay caused by a reasonably unforeseeable restriction imposed or mandated by a governmental entity other than CITY; (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Future Approval or any other action necessary for development of the Property, (a) delays caused by any default by CITY or SEA VIEW hereunder, or (b) delays due to presence or remediation of hazardous materials. The term of this Agreement shall be extended by any period of Excusable Delay.

13.17. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

13.18. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All of the provisions, agreements, rights, power, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, and assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees.

All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its Property hereunder, and each other person succeeding to an interest in such properties.

13.19. Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record any reasonably required instruments and writings, and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement and to evidence or consummate the transactions contemplated by this Agreement.

13.20. Authority to Execute.

13.20.1. The persons signing below on behalf of SEA VIEW warrant and represent that they have the authority to bind SEA VIEW and that all necessary partners, managing members, board of directors, shareholders, or other approvals have been obtained.

13.20.2. The persons signing below on behalf of the CITY warrant and represent that they have the authority to bind the CITY and that all necessary approvals from the City Council have been obtained.

13.20.3. Exhibits. All Exhibits attached to this Agreement are hereby incorporated by reference as if set forth in full.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement
on the day and year set forth below.

CITY OF MALIBU

Dated: _____	By: _____ Mayor of Malibu
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ATTEST:
By: _____ (SEAL)

APPROVED AS TO FORM
By: _____ Counsel for the CITY

SEA VIEW TERRACE	
Dated: _____	By: _____
	Title: _____
Dated: _____	By: _____
	Title: _____

APPROVED AS TO FORM
By: _____ Counsel for the CITY

EXHIBIT 1

**JUSTIFICATION FOR ZONE CHANGE
FROM COMMUNITY COMMERCIAL, “CC”
TO COMMERCIAL VISITOR SERVING, “CV-2”.**

1. THE ORIGINS OF THE EXISTING ZONING:

The owner of the project was present during all of the neighborhood meetings beginning one year from the City of Malibu’s incorporation almost 29 years ago, and can verify how the zoning was established in the commercial sector east of the Malibu Pier: 95% of the parcels fronting on PCH were already developed, and the new City simply zoned the commercial parcels consistent with the then-existing uses and/or uses approved by the California Coastal Commission. For example, the Malibu Beach Inn was the only hotel in the City, and the 16-acre parcel at the northeast corner of PCH and Malibu Canyon Road was approved for a hotel by the Coastal Commission, so they were the only parcels zoned for hotels (CV-2). The subject parcel at 22729 PCH was a gas station, so it was zoned Community Commercial (CC).

2. THERE ARE MANY REASONS THAT SUPPORT CHANGING THE ZONING ON THE OLD ABANDONED GAS STATION AT 22729 PCH AND THE ADJACENT DEVELOPED LOT AT 22741, FROM CC TO CV-2:

A summary of the reasons why the zone change and proposed hotel would be beneficial to the City, the City’s citizens, and all of the people that visit Malibu is on the left-hand side of the table below; the reasons why the zone change and proposed hotel would have a negative impact on the City and its citizens are on the right-hand side of the table.

REASONS THAT SUPPORT THE ZONE CHANGE TO CV-2 AND THE PROPOSED HOTEL	REASONS THAT SUPPORT NOT CHANGING THE ZONE FROM CC TO CV-2
1. The proposed hotel will reduce traffic on PCH.	NO REASONS
2. The hotel will reduce both traffic and congestion, which will reduce the number of cars driving on PCH, and the amount of time the cars are on the street in bumper-to-bumper traffic spewing carbon dioxide into the air.	NO REASONS

<p>3. Traffic safety is increased by the reduction of the number of driveways entering and exiting PCH, which are a primary cause of accidents that hurt people, and cause congestion and pollution. The hotel will eliminate the regular use of one driveway and it will be used only by the Fire Department and for large truck deliveries.</p>	<p>NO REASONS</p>
<p>4. The hotel access and turnaround will permit all truck deliveries to load and offload onsite instead of in the middle of PCH, which will reduce accidents, making PCH safer.</p>	<p>NO REASONS</p>
<p>5. The hotel will have six charging stations for electric cars, which will help reduce pollution in the City and in the world.</p>	<p>NO REASONS</p>
<p>6. The hotel will provide the required very large numbers of required parking spaces onsite. Accordingly, the project will not rely on any offsite parking or parallel parking on PCH which are major causes of accidents and congestion on PCH.</p>	<p>NO REASONS</p>
<p>7. The new hotel would eliminate a visual blight adjacent to the most heavily traveled Scenic Highway in the City by removing the dilapidated and unsightly abandoned Shell Gas station structures. The southerly canopy is 20+-feet-high and less than one foot from the PCH right-of-way.</p>	<p>NO REASONS</p>

<p>8. The Malibu community is deficient in visitor overnight accommodations, and the hotel will help fill that need with a small 5-star hotel in the most dynamic and vibrant commercial sector in all 27 miles of Malibu's beautiful coastline. The new hotel will be within <u>walking</u> distance of many restaurants and the beach. A stoplight and PCH crosswalk are within 200 feet of the proposed hotel. The public beach access is eight feet from the crosswalk.</p>	<p>NO REASONS</p>
<p>9. The hotel will generate much-needed revenue which will permit the City to purchase vacant commercial property and provide needed services for its citizens such as more soccer fields, a skate park, an aquatic center, donations to the Boys & Girls Club, solar panels for the City Hall, etc. The estimated \$1M per year generated by the TO tax will be very beneficial in helping the City meet these goals, objectives, and promises.</p>	<p>NO REASONS</p>
<p>10. The new lower portion of the hotel, reception, parking, and 15 rooms will be set back 48 feet from PCH,6 which will provide a very large area for the onsite staging of the required construction vehicles and eliminate the often experienced congestion caused by construction vehicles closing down one or more lanes on PCH.</p>	<p>NO REASONS</p>

<p>11. The two parcels that have applied for a zone change for a hotel use can provide the required <u>onsite</u> parking and the advanced wastewater treatment system for the proposed 36-room hotel and restaurant, which is a requirement for the hotel; very few parcels east of the Malibu Pier, if any, can meet these requirements.</p>	<p>NO REASONS</p>
<p>12. The hotel project will increase the water availability and pressure in the City's water mains. As a condition of the County Water Department for the hotel project, the hotel will install a new check valve at the corner of Topanga Canyon and PCH that will provide an additional four million gallons of water from two storage tanks at the top of Topanga Canyon. The new check valve will cost \$400,000± and will benefit all of Malibu's businesses and citizens during emergencies.</p>	<p>NO REASONS</p>

The above chart illustrates how the proposed hotel and required zone change will greatly benefit the City's efforts to fulfill its goals and objectives while having no negative impacts on the City's goals and objectives.

EXHIBIT 2

I. **JUSTIFICATION FOR A VARIANCE, WHICH WILL PERMIT THE EXISTING ELEVATOR TO EXTEND HIGHER THAN 28 FEET CONSISTENT WITH ADA LAWS.**

- A. **There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.**

The existing elevator that services the upper building does not extend up to the rooftop deck where the pool, telescopes, chairs, umbrellas, lounges and the wet bar and grill will be located. ADA laws require that disabled persons must have access to the rooftop deck, and to extend the existing elevator is the only practical way to be consistent with the law.

The elevator will extend 8.6± feet higher than the existing top of the elevator; however, the additional height will have very little visual impact since the elevator is over 200 feet from PCH and is set behind an existing 8-foot overhang that will shield most of the view of the elevator structure. It is noted that on two other occasions the City has granted a variance to the 28-foot height limit in order to comply with ADA laws. One of the cases involved the height of an elevator that was less than 20 feet from the PCH right-of-way.

The only hotel in Malibu is also zoned CV-2 and has an entire roof that is approximately 10 feet higher than the 28-foot height limit. Accordingly, the strict application of the zoning ordinance relative to a 28-foot height limit would deprive the property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

- B. **The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.**

The granting of the variance will be beneficial to the public interest, safety, health, and welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone. The extension of the elevator will permit all people to have access to all areas of the hotel even if a person is in a wheelchair or is unable to climb stairs. The ADA laws are compassionate. If the variance is not granted then a major attraction of the proposed hotel would not be enjoyed by anyone.

The area of the elevator is relatively small and will be substantially blocked from the view of the public by the existing 8-foot southerly overhang of the roof, which is 200 feet from PCH.

- C. The granting of the variance will not constitute a special privilege to the applicant or property owner.**

All property owners must comply with ADA laws and the granting of the variance is what is required for the property owner to comply with ADA laws; therefore, compliance with ADA laws is not a special privilege. In addition, the City has a history of granting variances for the 28-foot height limit when the variance is for an elevator that is necessary to provide access to disabled persons.

- D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.**

The granting of the variance is consistent with ADA State laws and the City of Malibu has always intended to comply with State law; therefore the variance is not contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.

- E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.**

The purpose and intent of the proposed CV-2 zoning is to provide a hotel use that will be consistent with California State ADA laws; the height variance for a relatively small structure over 200 feet from PCH will have a very small, if any, impact on the general public; however, it will have an extremely positive impact on disabled persons.

- F. The subject site is physically suitable for the proposed variance or modification.**

The variance will permit an existing elevator shaft to extend up to 8.6± feet higher than it currently does to provide access to an existing and permitted rooftop deck to permit disabled persons to access the deck and comply with ADA laws.

- G. The variance or modification permit complies with all requirements of state and local law.**

The variance is consistent with ADA laws, and the denial of the variance would be contrary to ADA laws.

- H. All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the city. (Ord. 261 § 20, 2004)**

All necessary conditions have been imposed to ensure that the variance will not be detrimental to the health, safety, and welfare of the City.

EXHIBIT 3
22741 PCH

I. JUSTIFICATION FOR VARIANCE FOR FIRE DEPARTMENT PEDESTRIAN EMERGENCY EXIT STAIRS TO ENCROACH INTO EASTERN SIDEYARD SETBACK AREA.

A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

1. A hotel requires different emergency exit requirements than those that apply to an office building; the Fire Department is mandating that there be two pedestrian emergency exit routes from the roof deck area; the elevator does not count as an exit in an emergency. Please note that the proposed stairs will not encroach into the eastern sideyard setback more than the existing and permitted stairs currently extend into the eastern sideyard setback; however, stairs will extend up to the roof deck area.
2. The location of the emergency stair encroachment is adjacent to an area that has no buildings on it; it is the upper portion of the landscaped slope of the McDonald's restaurant and therefore the variance will have no effect on the quiet enjoyment of the restaurant or its visitors. Clearly, there are special circumstances and exceptional characteristics applicable to the existing building and property such that the strict application of the zoning ordinance deprives the property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. The only other hotel in Malibu has a "0" easterly sideyard setback and it is immediately adjacent to a multi-family building.

B. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

1. The stairway from the upper floor deck area is already permitted and extends 1 ft. further into the eastern sideyard more than the revised emergency exit stairs that will extend up to the rooftop deck, and as stated in the application the hotel will not be detrimental to the public interest; to the contrary, the hotel will greatly benefit the goals and objectives of the public in the following ways.
 - a) Reduce traffic on PCH by reducing the number of travel trips which are currently being generated by the existing building tenants.
 - b) Reduce accidents on PCH by reducing traffic and the number of driveways that provide access to and from PCH.

- c) Reduce air pollution by reducing traffic and congestion due to accidents.
 - d) Provide nine charging stations that will reduce CO2 emissions which will reduce pollution.
 - e) Provide much-needed visitor-serving overnight accommodations in a commercially-zoned area; not in a quiet residentially-zoned area.
 - f) Reduce existing visual blight by removing the abandoned gas station building and old dilapidated canopies.
 - g) Provide the City with \$1.0M± of revenue every year that can be used to provide recreation facilities for Malibu's citizens and to help purchase commercially-zoned property that will reduce the number of future shopping centers.
2. The project will have no negative impacts on the property and improvements on the surrounding properties.

C. The granting of the variance will not constitute a special privilege to the applicant or property owner.

1. An analysis was conducted of all of the commercial buildings that front on the north side of PCH and are located within 1,000 feet to the west and 1,000 feet to the east of the proposed hotel; see Exhibit F-1. The exhibit shows that 12 out of the 15 buildings (80%) have a zero sideyard setback on one or both sides of the buildings. The buildings that do not have a "0" sideyard setback would require sideyard setback variances on one or both sides of the building with only one exception: the Hertz Car Rental building would not require any sideyard variances but would require a front yard setback variance. The character of the existing neighborhood is "0" sideyard setbacks and/or setbacks that are less than 5% of the width of the commercially-zoned property.
2. If the Los Angeles County Fire Department required some type of additional emergency exit walkway or stairway with respect to any commercial building, the requirement cannot be considered a "special privilege." The new emergency exit stairs that will replace the existing emergency exit stairs will not encroach into the eastern sideyard as much as the existing stairs, and must be installed to meet the Fire Departments mandated safety requirements; this is not a privilege.

- D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.**

The “general purposes and intent of this chapter and the goals, objectives, and policies of the general plan” require SAFETY from fires that can, and do, kill people; the City and the law consider “safety” to be of the highest priority. The subject emergency exit stairs are mandated by the Fire Department only for safety purposes and will be used for no other purpose, and therefore the required encroachment is consistent with the goals, objectives, and policies of the general plan.

- E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.**

The proposed hotel use will require a zone change from CC to CV-2 and that is the only zone which will permit the proposed use, i.e. a small hotel. Without the proposed variance the proposed hotel cannot be constructed because it will not satisfy the minimum safety standards for an emergency exit path in the event of a fire.

- F. The subject site is physically suitable for the proposed variance or modification.**

The subject site is an existing building that is located in the most vibrant and dynamic commercial sector in all of Malibu and is physically suitable for the proposed variance for safety purposes.

- G. The variance or modification permit complies with all requirements of state and local law.**

The requested variance complies with all requirements of state and local laws; i.e. the City has complete authority to grant the variance.

- H. All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the city. (Ord. 261 § 20, 2004)**

All necessary conditions have been imposed on the variance as are reasonable to assure that the variance will meet the minimum safety standards required by the LA County Fire Department.

EXHIBIT 4
22729 PCH

I. **JUSTIFICATION FOR A VARIANCE, WHICH WILL PERMIT A 2.5-FOOT WESTERLY SIDEYARD SETBACK WITH RESPECT TO THE PROPOSED BUILDING AT 22729 PCH.**

A. **There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.**

1. There are only four parcels in the City of Malibu that are zoned for Hotel use, "CV-2", and they are described below.

a) The approved memorial park at the northeast corner of PCH and Malibu Canyon Road. The parcel has no building constructed on it at this time.

b) The Malibu Beach Inn occupies three separate parcels that are not merged.

(1) Tax Assessor Parcel 4452-005-029.

(2) Tax Assessor Parcel 4452-005-030.

(3) Tax Assessor Parcel 4452-005-031.

(i) Parcel b-1 has "0" sideyard setbacks on the west and the east.

(ii) Parcel b-2 has "0" sideyard setbacks on the west and the east.

(iii) Parcel b-3 has a "0" sideyard setback on the east.

The above three lots are tied together with "0" sideyard setbacks for as long as the Malibu Beach Inn building exists, and the three lots have been treated as one parcel with respect to required setbacks; this is identical to the subject two parcels with respect to the backyard setback and the westerly sideyard setback, i.e., if the lots were treated **as one parcel** then the project does satisfy the standard for a sideyard setback and a backyard setback.

The above facts verify that the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

2. At first blush, the requested 2.5-foot sideyard setback variance appears substantial until the reasons for sideyard setbacks are considered and the conditions that the owner of both lots will agree to are considered; i.e. the old gas station on the lower lot at 22729 PCH, and the upper lot at 22741 PCH, will be held together under the same ownership for as long as the buildings exist. Clearly, when the buildings no longer exist, there is no need for a westerly sideyard setback variance; this condition begs the question of what the westerly setback would be if the two lots were considered as one lot.

The lower lot at 22729 PCH is 150 feet wide, and the lot at 22741 PCH includes a 25-foot-wide access drive that is adjacent to the westerly side of the lot at 22729 PCH, resulting in a total width of 175 feet; 15% of 175 is 26.25 feet, and the sideyard setback of the combined lots is 2.5 feet plus 25 feet, for a total of 27.5 feet. Therefore, as long as the lots are tied together for as long as the buildings exist then the intent of the required sideyard setback is fulfilled.

The above facts verify “that there are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.”

3. Sideyard setbacks are required for several reasons:
 - a) To provide Fire Department vehicular and pedestrian access around the building and to the sides of the building to extinguish a fire.
 - b) To provide an area of separation for privacy from the neighbor’s building on the adjacent lot.

In this particular, and special, circumstance both of the above reasons are fully satisfied if the two parcels are tied together and held under the same ownership for as long as the buildings exist.

4. An analysis was conducted of all of the commercial buildings that front on the north side of PCH and are located within 1,000 feet to the west and 1,000 feet to the east of the proposed hotel; see Exhibit F-1. The exhibit shows that 12 out of the 15 buildings (80%) have a zero sideyard setback on one or both sides of the buildings. The buildings that do not have a “0” sideyard setback would require sideyard setback variances on one or both sides of the building with only one exception: the Hertz Rental Car building would not require any sideyard variances but would require a front yard setback variance. The character of the existing neighborhood is sideyard setbacks that equal “0” and/or setbacks that are less than 5% of the width of the commercially-zoned property. SEE EXHIBIT F-1.

CONCLUSION:

1. Since the only hotel in Malibu is constructed on three unmerged parcels, and all three have “0” sideyard setbacks on one or both sides, it is clear that the “strict application of the zoning ordinance deprives the property at 22729 PCH privileges enjoyed by other property in the vicinity and under the identical zoning classification.”
 2. Paragraph A2 above explains that there are “special circumstances and exceptional characteristics applicable to the subject property, including size, ‘location’ and ‘surroundings’,” i.e. the adjacent parcel and the owner’s agreement to tie the parcels together under the same ownership for as long as the buildings exist, results in a westerly sideyard setback of 27.5 feet for all intent and purposes, and this does support the fact “that the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.”
- B. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.**

The granting of the westerly sideyard setback variance will not be detrimental to the public interest, safety, health or welfare; In fact, the granting of the variance is necessary for the proposed hotel to be constructed, and when the hotel is constructed the following public benefits will occur.

1. PUBLIC INTEREST AND SAFETY:

The 36-room hotel will be the only commercial building in Malibu that will actually reduce traffic on PCH, and that will make PCH safer for all travelers on PCH. A very highly respected traffic engineer performed an analysis using established standards on the traffic that is currently being generated on PCH by the existing tenants in the existing building, and it was found that the existing office uses, i.e. the exam prep school, the gym, the salon, the spa, and the doctor’s offices all currently generate more traffic on PCH than the proposed hotel will generate. The hotel will generate 20% - 40% less traffic on PCH than the amount of traffic that is currently generated.

In addition to the above, the current uses of the subject two parcels require two very active driveways that provide access to and from PCH. Driveways that provide access to and from a very busy highway are a major source of accidents. The hotel will reduce the active use of the westerly access driveway, which will increase safety on PCH. The westerly driveway will be used only by Fire vehicles in the event of a fire and by delivery vehicles delivering large packages.

It is also important to acknowledge that all deliveries to the hotel will be unloaded onsite and will not use the center turn lane in the middle of PCH to park a truck with the driver running across PCH with a hand-cart loaded with packages; this is a very dangerous process causing accidents and congestion.

2. PUBLIC HEALTH AND WELFARE:

Several operators of small boutique hotels have performed estimates on the occupancy rate of the 36-room hotel using conservative rental rates, and the results indicate that the tax revenue that the City would receive every year would range between \$900,000 and \$1,100,000. The above money can be used for public purposes such as soccer fields, an aquatic center, baseball fields, a skateboard park, etc. All of these amenities are important elements for public health and welfare.

3. IMPROVEMENT TO VISUAL RESOURCES FROM THE MOST TRAVELED SCENIC HIGHWAY IN THE CITY OF MALIBU:

The construction of the proposed hotel will remove the old Shell gas station building and the visual blight of the dilapidated canopies covering much of the area on the parcel at 22729 PCH. The southerly canopy is 20-feet-high and less than one foot from the PCH right-of-way. The new hotel will set back more than 48 feet from PCH, setting the hotel building back from PCH twice the required front yard setback distance to create a more unobstructed view from PCH, which improves the scenic quality of the most traveled Scenic Highway in Malibu.

4. THE HOTEL WILL NOT BE DETRIMENTAL OR INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN THE SAME VICINITY IN WHICH THE PROPERTY IS LOCATED:

The proposed hotel will be located in the most dynamic and vibrant commercial district in the City of Malibu with Nobu, the Soho House, the Nobu Ryokan, and many restaurants and beach accesses in the area all within a short walk.

There is a substantial demand for additional overnight accommodations in Malibu, and in recent years, that demand has turned many quiet residential communities into hotel and motel-like communities; these “commercial uses” in residential communities is inappropriate because they do not have the required parking, increased wastewater treatment systems, or the required nearby commercial facilities. Airbnb has turned quiet residential communities into motel and hotel uses.

The need for overnight accommodations should be provided in commercially-zoned areas and only when the hotel or motel can satisfy all of the City’s development standards with respect to onsite parking, advanced wastewater treatment systems, etc.

The proposed hotel will help to preserve the character of the residential communities in the City and will provide an opportunity for people to visit Malibu's restaurants and beaches in a hotel with sufficient parking, wastewater treatment facilities and within walking distance from many restaurants and the beach.

There is both a stoplight and public beach access within 200 feet of the proposed hotel. A hotel has a manager on duty all of the time that ensures that the hotel is being operated properly at all times and that the guests are respectful of their neighbors.

C. The granting of the variance will not constitute a special privilege to the applicant or property owner.

As stated in my responses to "A" and "B" above, the hotel will be located on two adjacent parcels of land with a common property line, and the sideyard setback variance for the parcel at 22729 PCH is located adjacent to the 25-foot-wide adjacent access drive to the upper parcel at 22741 PCH, and both parcels will be tied together under the same ownership and for the same purpose, a hotel, for as long as the proposed hotel buildings exist. This is 100% consistent with the setbacks permitted for the only other hotel in Malibu where three parcels were used for a single interdependent use, i.e. the Malibu Beach Inn is constructed over three separate parcels with zero sideyard setbacks on both sides of two parcels and on one side of the third parcel.

D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.

The very special circumstance in which two parcels will be legally tied together under the same ownership for as long as the hotel use and buildings exist, and the fact that the sideyard setback variance is adjacent to a common property line between the two subject parcels results in the variance not being contrary to or in conflict with the general purposes and the INTENT OF THE REFERENCED CHAPTER, nor the goals, objectives, and policies of the general plan. If the parcels were merged the proposed building would be 100% consistent with the required westerly sideyard setback.

E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.

The proposed use will require a zone change from CC to CV-2 and that is the only zone which will permit the proposed use, a small hotel. Without the proposed westerly sideyard setback variance no hotel can be constructed that will be economically viable, and therefore the sideyard setback variance for the parcel at 22729 PCH is consistent with the purpose and intent of the proposed zoning.

F. The subject site is physically suitable for the proposed variance or modification.

As referenced above the subject hotel site is composed of two adjacent parcels of land, and the sideyard setback variance is located adjacent to the property line that divides the two parcels, and in fact, if the parcels were merged instead of tied together no sideyard variance would be required; however, without the variance the proposed hotel cannot be constructed and therefore the site is physically suitable for the proposed variance. The unique location and special conditions which require the two parcels located at 22729 PCH and 22741 PCH to be tied together and under the same ownership for as long as the proposed buildings exist results in the proposed sideyard setback variance being physically suitable for the proposed project parcels.

G. The variance or modification permit complies with all requirements of state and local law.

There is no state an/or local law that would prevent the City from granting the subject variance, and therefore the variance complies with all requirements of state and local laws; i.e. the City has complete authority to grant the variance.

H. All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the city. (Ord. 261 § 20, 2004)

The variance will be granted with the condition that the parcels of land at 22729 PCH and 22741 PCH will be legally tied together and held under the same ownership as long as the building requiring the sideyard setback variance exist; this is the only condition that is required to ensure that the variance will not be detrimental to the health, safety, and welfare of the City.

EXHIBIT 5

I. JUSTIFICATION FOR A VARIANCE, WHICH WILL PERMIT A ZERO BACKYARD SETBACK WITH RESPECT TO THE PROPOSED BUILDING AT 22729 PCH.

A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

1. There are only four parcels in the entire City of Malibu that are zoned for Hotel use ("CV-2") and are described below.

a) The approved memorial park at the northeast corner of PCH and Malibu Canyon Road.

b) The Malibu Beach Inn occupies three separate parcels that are not merged.

(1) Tax Assessor Parcel 4452-005-029.

(2) Tax Assessor Parcel 4452-005-030.

(3) Tax Assessor Parcel 4452-005-031.

The above three lots are tied together with "0" sideyard setbacks for as long as the Malibu Beach Inn building exists, and the three lots have been treated as one parcel with respect to required setbacks; this is identical to the subject two parcels with respect to the backyard setback and the westerly sideyard setback, i.e., if the lots were treated as one parcel then the project does satisfy the standard for a backyard setback. The above facts verify that the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

2. The zero backyard setback variance is being requested for that part of the hotel that will be located on the parcel at 22729 PCH, i.e. the old Shell gas station; however, a document will be recorded that will legally tie that parcel to the parcel located immediately to the north, i.e. 22741 PCH, which has a vested commercial building located on it, and the two parcels will be tied together and held under the same ownership as long as the proposed building on the lower parcel at 22729 PCH exists.

It is important to note that if the subject two parcels were merged, the total depth of the two parcels from PCH northerly to the northerly property line of the upper parcel is 293.2 feet and the standard 15% backyard setback would be 43.95 feet.

The building on the upper parcel has a backyard setback from the northerly property line of 50.2 feet; therefore if the subject two parcels were merged, there would be no need for a backyard setback variance **or a modification.**

As long as the parcels are tied together and treated as one parcel under the same ownership, as long as the buildings exist, then the project meets the INTENT of the backyard setback development standard, because when the building no longer exists then there is no need for a building setback variance.

3. The backyard setback variance is for the portion of the property located between the old gas station parcel at 22729 PCH, and the upper parcel at 22741 PCH; both parcels will be owned by the same entity as long as the variance will exist i.e., as long as the hotel buildings exist; therefore the variance will have no negative impacts on any of the surrounding parcels or buildings. This fact is a “very special circumstance” resulting from the parcels’ “location” and “surroundings;”

The above facts are very similar to the only other hotel in Malibu which is constructed across three parcels that are tied together and treated as one parcel, but have not been merged.

B. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

1. The granting of the backyard setback variance will not be detrimental to the public interest, safety, health or welfare;

In fact, the granting of the variance is necessary for the proposed hotel to be constructed, and when the hotel is constructed the following public benefits will occur.

a) PUBLIC INTEREST AND SAFETY:

The 36-room hotel will be the only commercial building in Malibu that will actually reduce traffic on PCH, and that will make PCH safer for all travelers on PCH.

A very highly respected traffic engineer performed an analysis using established standards on the traffic that is currently being generated on PCH by the existing tenants in the existing building, and it was found that the existing office uses, the exam prep school, the gym, the salon, the spa, and the doctor’s offices all currently generate more traffic on PCH than the proposed hotel will generate. The hotel will generate 20% - 40% less traffic on PCH than the amount of traffic that is currently generated.

The current uses of the subject two parcels require two very active driveways that provide access to and from PCH. Driveways that provide access to and from a very busy highway are a major source of accidents. The hotel will reduce the active use of the westerly access driveway, which will increase safety on PCH.

b) PUBLIC HEALTH AND WELFARE

Several operators of small boutique hotels have performed estimates on the occupancy rate of the 36-room hotel using conservative rental rates, and the results indicate that the tax revenue that the City would receive every year would range between \$900,000 and \$1,100,000. The above money can be used for public purposes such as soccer fields, an aquatic center, baseball fields, a skateboard park, etc. All of these amenities are important elements for public health and welfare.

c) IMPROVEMENT TO VISUAL RESOURCES FROM THE MOST TRAVELED SCENIC HIGHWAY IN THE CITY OF MALIBU.

The construction of the proposed hotel will remove the old Shell gas station building and the visual blight of the dilapidated canopies covering much of the area on the parcel at 22729 PCH.

The southerly canopy is less than one foot from the PCH right-of-way and is 20 feet high. The new hotel will set back more than 48 feet from PCH, setting the hotel building back from PCH twice the required front yard setback distance to create a more unobstructed view from PCH, which improves the scenic quality of the Scenic Highway.

d) THE HOTEL WILL NOT BE DETRIMENTAL OR INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN THE SAME VICINITY IN WHICH THE PROPERTY IS LOCATED.

The proposed hotel will be located in the most dynamic and vibrant commercial district in the City of Malibu with Nobu, the Soho House, the Nobu Ryokan, and many restaurants and beach accesses in the area.

There is a substantial demand for additional overnight accommodations in Malibu, and in recent years that demand has turned many quiet residential communities into hotel and motel-like communities; these “commercial uses” in residential communities are inappropriate because they do not have the required parking, increased wastewater treatment systems or the required nearby commercial facilities. Airbnb has turned quiet residential communities into motel and hotel uses. The need for overnight accommodations should be provided in commercially-zoned areas and only when the hotel or motel can satisfy all of the City’s development standards.

The proposed hotel will help to preserve the character of the residential communities in the City and will provide an opportunity for people to visit Malibu's restaurants and beaches in a hotel with sufficient parking, wastewater treatment facilities and is in walking distance from many restaurants and the beach. There is both a stoplight and public beach access within 200 feet of the proposed hotel. A hotel has a manager on duty all of the time that ensures that the hotel is being operated properly at all times and that the guests are respectful of their neighbors.

C. The granting of the variance will not constitute a special privilege to the applicant or property owner.

As stated in my responses to "A" and "B", the proposed hotel involves two parcels with a common property line, and the backyard setback variance for the parcel at 22729 PCH is located adjacent to the frontyard setback of the upper developed parcel at 22741 PCH, and both parcels will be tied together under the same ownership and for the same purpose, a hotel, for as long as the proposed hotel building exists. This is 100% consistent with the setbacks permitted for the only other hotel in Malibu, i.e. the Malibu Beach Inn is constructed over three separate parcels with zero sideyard setbacks.

D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.

The very special circumstance in which two parcels will be legally tied together under the same ownership for as long as the hotel use and buildings exist, and the fact that the backyard setback variance is adjacent to a common property line between the two subject parcels results in the variance not being contrary to or in conflict with the general purpose and the INTENT OF THE REFERENCED CHAPTER, nor the goals, objectives, and policies of the general plan.

E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.

The proposed use will require a zone change from CC to CV-2 and that is the only zone which will permit the proposed use, a small hotel. Without the proposed variance no hotel can be constructed that will be economically viable, and therefore the backyard setback variance for the parcel at 22729 PCH is consistent with the purpose and intent of the proposed zoning.

F. The subject site is physically suitable for the proposed variance or modification.

As referenced above the subject hotel site is composed of two adjacent parcels of land and the backyard setback variance is located adjacent to the property line that divides the two parcels.

If the parcels were merged instead of tied together no backyard variance would be required; however, without the variance, the proposed hotel cannot be constructed and therefore the site is physically suitable for the proposed variance because the two parcels will be legally tied together for as long as the buildings exist.

G. The variance or modification permit complies with all requirements of state and local law.

There is no state an/or local law that would prevent the City from granting the subject variance and therefore the variance complies with all requirements of state and local laws; i.e. the City has complete authority to grant the variance.

H. All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the city. (Ord. 261 § 20, 2004)

The variance will be granted with the condition that the parcels of land at 22729 PCH and 22741 PCH will be legally tied together and held under the same ownership as long as the building requiring the backyard setback variance exist; this is the only condition that is required to ensure that the variance will not be detrimental to the health, safety, and welfare of the City.

EXHIBIT 6
22729 PCH

I. JUSTIFICATION FOR A VARIANCE TO ENCROACH INTO THE EASTERLY SIDEYARD SETBACK AREA WITH RESPECT TO THE PROPOSED BUILDING AT 22729 PCH.

A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

1. The variance is required to fulfill the Fire Department's safety access and exit standards.

The hotel design locates the new building on the parcel at 22729 PCH with an easterly sideyard setback of 12.0 feet. The width of the parcel is 150 feet, and 12.0 feet is 80% of the required 10% sideyard setback; this would require a minor modification, not a variance; however, the Fire Department is requiring access to the outside walls of the building, which can only be accomplished with a 4-foot-wide set stairs in the easterly 12-foot-sideyard setback, and because a portion of the stairs will be higher than 3 feet above the finished grade, a variance is being applied for based on the Fire Department's minimum access and emergency exit requirements.

2. In the City of Malibu, there are only four parcels which are zoned for hotel use ("CV-2"), and are described below.

- a) The approved memorial park at the northeast corner of PCH and Malibu Canyon Road. The parcel has no building constructed on it at this time.

- b) The Malibu Beach Inn occupies three separate parcels that are not merged.

- (1) Tax Assessor Parcel 4452-005-029.

- (2) Tax Assessor Parcel 4452-005-030.

- (3) Tax Assessor Parcel 4452-005-031.

- (i) Parcel b-1 has "0" sideyard setbacks on the west and the east.

- (ii) Parcel b-2 has "0" sideyard setbacks on the west and the east.

- (iii) Parcel b-3 has a "0" sideyard setback on the east.

Although there are only three developed parcels that have the identical zoning classification as the proposed hotel, the above facts verify that strict application of the zoning ordinance deprives the subject property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

3. The required sideyard setback for the portion of the hotel at 22729 PCH is 10% of the 150-foot-wide lot width, i.e. 15 feet. The minor modification would reduce the sideyard setback to 80% of 15 feet, i.e. 12 feet.

The minor modification for the easterly sideyard setback from the required 15 feet to the proposed 12 feet can be supported by the character of the commercial neighborhood and the many benefits that the proposed hotel will provide to the citizens of Malibu as specified below.

As referenced under (l) above, the Fire Department is demanding emergency access and exit stairs in the easterly sideyard which are the reason for the variance. An analysis was conducted of all of the commercial buildings that front on the north side of PCH and are located within 1,000 feet to the east and 1,000 feet to the west of the proposed hotel; See Exhibit F-1. The exhibit shows that 12 out of the 15 buildings have a zero sideyard setback on one side or both sides of each building. Two of the buildings that do not have a zero sideyard setback would require a sideyard setback variance on one or both sides of the buildings. There is only one developed parcel out of the 15 developments that would not require a sideyard setback variance, and the building is the small Hertz Car Rental building.

The above statistics show that 80% of all commercial buildings that front on the north side of PCH and are within 1,000 feet of the proposed hotel have one or both sideyard setbacks equal to zero; 93%, or 14 out of the total 15 commercial buildings have sideyard setbacks that would require variances.

The above facts make it clear that granting the requested easterly sideyard setback variance is consistent with the character of the existing commercial neighborhood and “that strict application of zoning ordinance deprives the parcel at 22729 PCH of privileges enjoyed by other property in the vicinity and under the identical zoning classification.”

- B. **The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.**
 1. The granting of the requested easterly sideyard setback variance will not be detrimental to the public interest, safety, health or welfare; In fact, the granting of the variance is necessary for Fire Department mandated access and exit stairs.

a) PUBLIC INTEREST AND SAFETY:

- (1) The proposed 36-room hotel, which cannot be constructed without the requested sideyard setback minor variance, will be the only commercial building in Malibu that will actually reduce traffic on PCH, and that will make PCH safer for all travelers on PCH. A very highly respected traffic engineer performed an analysis on the traffic that is currently being generated on PCH by the existing tenants in the existing building, and it was found that the existing office uses, the exam prep school, the gym, the salon, spa, and doctor's offices all currently generate more traffic on PCH than the proposed 36-room hotel will generate.

The hotel will generate 20% to 40% less traffic on PCH than the amount of traffic that is currently generated by the existing uses.

- (2) The proposed hotel will reduce the number of driveways providing access to and from PCH, which will reduce accidents on PCH, which will make PCH safer, reduce congestion, and reduce pollution caused by carbon dioxide emissions.

b) PUBLIC HEALTH AND WELFARE

- (1) The proposed 36-room hotel, which cannot be constructed without the requested sideyard setback minor modification, will be the only commercial building in Malibu that will actually reduce traffic on PCH, and that will make PCH safer for all travelers on PCH. A very highly respected traffic engineer performed an analysis on the traffic that is currently being generated on PCH by the existing tenants in the existing building, and it was found that the existing office uses, the exam prep school, the gym, the salon, spa, and doctor's offices all currently generate more traffic on PCH than the proposed 36-room hotel will generate. The hotel will generate 20% to 40% less traffic on PCH than the amount of traffic that is currently generated.

- (2) The proposed hotel will reduce the number of driveways providing access to and from PCH, which will reduce accidents on PCH, which will make PCH safer, reduce congestion, and reduce pollution caused by carbon dioxide emissions.

- (3) Several operators of small boutique hotels have performed estimates on the occupancy rate of the 36-room hotel assuming a conservative rental rate; the results indicate that the tax revenue that the City would receive would be approximately \$1M every year.

The above money can be used for public purposes such as soccer fields, an aquatic center, baseball fields, a skateboard park, etc. All of these amenities are important elements to public health and welfare. The revenue will not be generated if the hotel is not constructed due to a denial of the requested sideyard setback variance.

c) IMPROVEMENTS TO VISUAL RESOURCES ALONG THE MOST TRAVELED SCENIC HIGHWAY IN THE CITY OF MALIBU.

The construction of the proposed hotel will remove the old Shell gas station building and the visual blight of the dilapidated canopies covering much of the area on the parcel at 22729 PCH. The southerly canopy is less than one foot from the PCH right-of-way and is 20 feet high.

The new hotel will set back 48 feet from PCH; setting the hotel building back twice the required front yard setback will visually open up the PCH scenic corridor. PCH is the most traveled Scenic Highway in Malibu.

d) THE SIDEYARD SETBACK VARIANCE WILL NOT BE DETRIMENTAL OR INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN THE SAME VICINITY IN WHICH THE PROPERTY IS LOCATED.

The proposed hotel will be located in the most dynamic and vibrant commercial district in the City of Malibu with Nobu, the Soho House, the Nobu Ryokan, and many restaurants and beach access all within walking distance of the hotel. There is a substantial demand for additional overnight accommodations in Malibu, and in recent years, that demand has turned many quiet residential communities into motel-like communities; these “commercial uses” in residential communities are inappropriate because they do not have the required parking, increased wastewater treatment systems or the required nearby commercial facilities. Airbnb has turned quiet residential communities into motel and hotel uses without the required onsite facilities. The need for overnight accommodations should be provided in commercially-zoned areas. The proposed hotel will help to preserve the character of the residential communities. A hotel has a manager on duty all of the time that ensures that the hotel is being operated properly at all times and that the guests are respectful of their commercial and residential neighbors to the north.

THE PROPOSED HOTEL AND ALL OF THE BENEFITS REFERENCED ABOVE CANNOT BE CONSTRUCTED WITHOUT THE SUBJECT SIDEYARD SETBACK VARIANCE.

C. The granting of the easterly sideyard setback variance will not constitute a special privilege to the applicant or property owner.

As stated in the response to “A” and “B” above, 93% of the commercial buildings within 1,000 feet to the east and to the west of the proposed hotel neither have sideyard setbacks on one or both sides of the building, nor would require sideyard setback variances. These facts make it clear that the granting of the sideyard setback variance does not constitute a special privilege to the applicant or the property.

D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.

The proposed minor modification is not in conflict with the goals, objectives, and policies of the general plan as described below.

1. The Malibu City General Plan emphasizes that projects should be consistent with the character of the neighborhood.

As verified above, only one of the 15 commercial developments within 1,000 feet to the east and 1,000 feet to the west is consistent with the sideyard setback standard; 80% of the 15 commercial buildings have “0” sideyard setbacks on the eastside or westside or both sides of the building on the lot, and only one building would not require a sideyard setback variance on one or both sides. 14 out of 15 buildings define the character of the commercial neighborhood.

2. Not only is the proposed sideyard setback variance consistent with the character of the neighborhood, but it is a requirement for the construction of the hotel, and the hotel provides the following benefits to the City:
 - a) Reduces traffic on PCH;
 - b) Reduces accidents on PCH;
 - c) Eliminates visual blights adjacent to the primary Scenic Highway in the City of Malibu;
 - d) The hotel building will be set back from PCH twice the required front yard setback distance, which increases the visual perception of open space;
 - e) Provides needed overnight accommodations in the most appropriate facility, a hotel, with constant supervision, and in the most appropriate location;
 - f) Provides \$1M± to the City every year that can be used to pay for facilities that will satisfy City goals and objectives for recreational facilities such as soccer fields, an aquatic center, a skate park, etc.

The constant stream of money can also be used for the City Hall solar panels and more cars for the City's volunteer officers.

E. The modification request is consistent with the purpose and intent of the zone(s) in which the site is located.

The proposed use will require a zone change from CC to CV-2 and that is the only zone which will permit the proposed use, a small hotel. Without the proposed sideyard setback variance, no hotel can be constructed that will be economically viable and therefore the variance for the parcel at 22729 PCH is consistent with the purpose and intent of the proposed zoning.

The location of the parcel at 22729 PCH is in the heart of the most dynamic and vibrant commercial sector in Malibu and the most appropriate location for a boutique hotel.

F. The subject site is physically suitable for the proposed variance or modification.

As referenced above a sideyard setback minor modification is very consistent with the character of the commercial neighborhood where the subject parcel is located, and the only reason that a variance is required is to provide the Los Angeles County Fire Department with its required pedestrian access and emergency exit stairs.

It is noted that the subject sideyard is immediately adjacent to McDonald's restaurant northerly graded slope, which will not impact McDonald's drive-thru; however, the stairs are to the north of the drive-thru.

G. The modification permit complies with all requirements of state and local law.

There is no state and/or local law that would prevent the City from granting the subject sideyard setback minor modification and therefore it complies with all requirements of state and local laws; i.e. the City has complete authority to grant the variance.

H. All or any necessary conditions have been imposed on the modification as are reasonable to assure that the modification will not be detrimental to the health, safety, and welfare of the city. (Ord. 261 § 20, 2004)

There are no conditions necessary to ensure that the modification will not be detrimental to the health, safety, and welfare of the City.

EXHIBIT 7
22729 PCH

I. **JUSTIFICATION FOR A VARIANCE WHICH WILL PERMIT PARKING OF CARS IN THE FRONT YARD SETBACK AREA.**

A. **There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.**

1. THE PARCEL'S SHAPE:

The parcel is adjacent to the north side of PCH and is substantially wider than it is deep. The Malibu Municipal Code ("MMC") states that structures cannot be constructed in the front yard setback. If the parcel were much deeper and flatter, it would be possible to provide the required parking and the proposed building northerly of the front yard setback area; however, the parking spaces must be 20 feet long on both sides of the 25-foot-wide-access lane, and the landscaping must be 5 feet wide adjacent to PCH, which is a total of 70 feet. Additionally, the proposed hotel use required two parking spaces for each room plus parking spaces for all of the hotel employees and they all must be onsite; the fact that the width of the parcel along PCH is 150 feet while the depth is only 122.4 feet means that in order to meet the City's parking requirement there must be parking in the frontyard setback area.

2. THE PARCEL'S TOPOGRAPHY:

The topographic features of the parcel are unique and justify the variance. Although the area of the parcel that is adjacent to PCH is flat, and can accommodate parking; there is a very steep slope supported by a 10+-foot-high retaining wall in the northerly 27-foot portion of the parcel. The referenced slope and retaining wall are the result of the parcel's natural topography and will eliminate any possibility of parking cars in the area, and is one of the reasons cars must be parked in the front yard setback area, which is flat.

3. Denying the variance will deprive the property of privileges enjoyed by other properties in the vicinity and under identical classification. The Malibu Beach Inn is constructed on three parcels, and these parcels are the only parcels in the vicinity of the proposed hotel with a CV-2 zoning designation, and the parking spaces in the hotel are located in the front yard setback area of all three parcels.

4. It is also noted that all other commercially-zoned parcels in excess of 1000 feet of the proposed hotel along both sides of PCH all have parking spaces within the front yard setback area of the parcels. Please see EXHIBIT F-1.

Therefore, the denial of the requested variance would deprive the property of privileges enjoyed by all other commercially-zoned property in the vicinity of the subject parcels.

B. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The granting of the variance to allow parking in the front yard setback area will be beneficial to the public interest because it is necessary for the approval of the hotel, which will result in the following five benefits to the public interest:

1. Reduces traffic on PCH. This is extremely beneficial to the public interest.
2. Reduces the number of driveways providing access to and from PCH, which will make PCH safer and less congested; this is beneficial to the public interest.
3. The hotel will provide \$1M± of additional revenue each year to the City to be used to improve City facilities for its citizens and the general public;
4. The above \$1M± of additional revenue every year will not only help to construct recreational facilities in the City which are desperately needed, but those facilities would likely be constructed on commercially zoned property, which will drastically reduce the amount of private commercial buildings that would be built in Malibu. Note: \$1M a year with a capitalization rate of 3.5% for municipal bonds will generate an additional \$28M that can be used to pay for the land the City has acquired.
5. Provide needed overnight accommodations for the general public, and for the many guests that come to Malibu to visit people that live in Malibu.

C. The granting of the variance will not constitute a special privilege to the applicant or property owner.

As referenced above, **ALL** commercial property owners **for more than 1000 feet from the subject parcel** along both sides of PCH have parking spaces within the front yard setback area so the granting of the variance would not constitute a special privilege to the subject property owner; however, not granting the variance would deny the property owner from a privilege that is enjoyed by **ALL** other commercial property owners in the same vicinity.

D. The granting of such variance or modification will not be contrary to or in conflict with the general purpose and intent of this chapter, nor to the goals, objectives, and policies of the general plan.

The granting of the variance will enable the City to accomplish the goals, objectives, and policies of the general plan including making Malibu a safer place to live, eliminate visual blight and provide the facilities that the citizens of Malibu want and need. The proposed variance to permit parking in the front yard setback is necessary to provide parking for the proposed 36-room hotel which will, in turn, reduce traffic on PCH, which will make Malibu safer; it will also reduce two currently very active driveways on PCH to one active driveway, which will make PCH safer. Furthermore, the hotel will eliminate the old abandoned gas station building and existing canopies (the latter has been defined by the Planning staff as a “visual blight” along the most traveled Scenic Highway in the entire City!). The proposed hotel will generate \$1M± every year, which will provide the City with a consistent source of revenue with which to acquire commercially-zoned land, and to build recreation facilities for its citizens and neighboring communities; simultaneously, this would reduce the amount of land available for commercial development that would, if not acquired by the City, create more traffic in the future, making PCH more hazardous and negatively impacting Malibu’s objective of keeping Malibu a rural residential community.

E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.

The purpose and intent of the proposed CV-2 zoning is to provide a hotel use that will increase the number of overnight accommodations in the City of Malibu. There is currently only one hotel in the City of Malibu, and five motels in 24 miles of the most beautiful coastline in the world. The variance is compatible and consistent with how all other existing commercially zoned parcels are being used on both sides of PCH for a minimum of 1000 feet on the west and on the east sides of the proposed project.

F. The subject site is physically suitable for the proposed variance or modification.

The site is physically suited for the proposed variance because the area in the front yard setback has been used by the previous gas station to park cars for over 65 years.

G. The variance or modification permit complies with all requirements of state and local law.

There are no state or local laws that would prevent or are in conflict with the City's authority to grant the variance.

H. All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the city. (Ord. 261 § 20, 2004)

All necessary conditions have been imposed on the variance as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the city. In fact, the variance is necessary to meet the parking requirement for the proposed hotel and it has been verified that the hotel project will reduce traffic and congestion on PCH, will make PCH safer, will eliminate a visual blight adjacent to a Scenic Highway, and will generate revenue that can be used by the City to provide recreational facilities for its citizens and neighboring communities, which will benefit the welfare of the City.

EXHIBIT 8
22729 PCH

LANDSCAPED AREA VARIANCE DISCUSSION

The LCP development standards for commercial development is stated on page 76 of Malibu's LIP, Section 3.8, subsection 5-B.

“B. 40% of the lot area shall be devoted to landscaping. An additional 25% of the lot area shall be devoted to open space. Open space areas may include courtyards, patios, natural open space, and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.”

I. THE ORIGIN OF THE COMMERCIAL DEVELOPMENT STANDARDS RELATIVE TO LANDSCAPE AND OPEN SPACE AREAS.

It is relevant to discuss the reasons that the commercial development standards relative to the landscape and open space requirements were adopted over 25+ years ago by the City Council. The City Council, elect, held public community meetings during a nine month period before the City actually incorporated. During the community meetings, residents and owners of land in each of Malibu's different communities expressed zoning concerns and what they wanted and did not want. The applicant was present at 85% of the community meetings the year before the County would let Malibu incorporate, and was present at all of the City Council meetings when the commercial development standards were created during the two years after the incorporation on March 28th, 1991.

In 1991, The original City Council focused on the many acres of relatively flat vacant commercially zoned property in the Civic Center and the vacant commercially zoned property close to the Point Dume shopping center. The City Council was concerned that some of these areas would be turned into “retail strip centers,” i.e. wall-to-wall one-story retail stores fronting on a seven-foot-wide concrete access walk and a large asphalt parking lot with very little landscaping or open space to reduce and soften the appearance of property-line-to-property-line hardscape, which is the “strip center” appearance. There are examples of this type of shopping center in Malibu that were constructed in the 60s and 70s. Accordingly, the City Council, at the time, created the landscape and open space commercial development standards to ensure that there would not be any new strip centers in Malibu. The very restrictive development standards were created for one-story retail shopping centers open to the general public, and not for multi-level hotels open only to the hotel guests. This is understandable because at the time there was only one vacant parcel zoned for a hotel in the entire 24 miles of Malibu. It is noted that there existed only one hotel at the time of incorporation, and the 47-room Malibu Beach In remains the only hotel in entire City.

II. INTERPRETATION OF THE LANDSCAPE AND OPEN SPACE DEVELOPMENT STANDARD.

There is some disagreement on exactly what this development standard actually means; The total “lot area” of the subject lot at 22729 PCH is 18,283 square feet, and if the actual lot area is exchanged with the words “lot area,” the development standard would read as follows:

“B. 40% of 18,283 square feet shall be devoted to landscaping. An additional 25% of 18,283 square feet shall be devoted to open space. Open space areas may include courtyards, patios, natural open space, and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.”

Forty percent of 18,283 square feet is 7,313.2 square-feet so as long as 7,313.2 square feet of the project is landscaped, the development standard is fulfilled. In recent decisions on other projects, the Planning staff, Planning Commission, City Council, and the citizens of Malibu have focused on the purpose and the INTENT of this development standard which has been interpreted by the Planning Department as providing “Scenic and visual benefits,” including the “reduction in the appearance of hardscape onsite.”

III. RECENT DECISIONS BY THE CITY PLANNING COMMISSION, THE CITY COUNCIL, AND THE CITIZENS OF MALIBU THAT ARE RELEVANT.

The term “landscape area” is not defined in Malibu’s LCP, so it is appropriate to consider how the term has been defined and applied in the City of Malibu by looking at the Planning Staff recommendations on other commercial projects, and how the Planning Commission and City Council have voted on the staff recommendations. After reviewing the City’s Planning staff recommendations on other projects, it is clear that the Planning Staff is focusing on the intent of the landscape and open space development standards. The intent as stated in the following approved project is the “reduction of the appearance of hardscape onsite.”

1. The City’s Planning staff recommendation on the Santa Monica College’s request for a variance stated that a “green roof will provide scenic and visual benefits, reducing the appearance of hardscape onsite, which is consistent with the intent of the requirement.” The entire paragraph is cited below.

Staff recommends that the Commission find that a variance to reduce the required landscaping requirement is necessary and that such a variance is appropriate for this project. The project site is constrained by existing development that must remain in place and be integrated into the project design, specifically, the parking areas and drive aisles, combined with the square footage required for the proposed college campus and sheriff substation. the green roof will provide many of the benefits of landscaping and serve many of the purposes of the landscape requirement. Due to the upslope residential properties, the green roof will provide scenic and visual benefits, reducing the appearance of hardscape onsite, which is consistent with the intent of the requirement. The variance findings can be made.”

Simply stated, “because the parking areas and drive aisles, combined with the square footage required for the proposed college campus and sheriff substations,” and because the green roof can be seen by the upslope residential properties reducing the appearance of hardscape onsite, the project fulfills the intent of the requirement that 25% of the lot area be landscaped. The applicant agrees with the staff; however, it is important to note that the Santa Monica College project provided other benefits to the Malibu Community which were mentioned by the Planning Commissioners and the City Council during both bodies’ review of the project, which was referenced as additional reasons to approve the project and support the variance.

2. The citizens of Malibu also believe it is appropriate to consider the intent of the landscape and open space development standards as verified when they voted to support the project

referred to as “The Whole Foods and the Park Specific Plan (WFPSP).” The project required a vote of the Malibu citizens because it involved a “Specific Plan.” The project fulfilled its requirement to landscape 40% of the project’s lot area by counting vegetated walls and tree canopies to fulfill more than 70% of the landscaped area requirement; most people would agree that large trees and walls that are covered with green vegetation reduce the “appearance of hardscape onsite, which is consistent with the intent of the requirement,” and is consistent with the Staff’s recommendations and the approvals by the Planning Commission and City Council, as referenced above.

IV. THE PROPOSED HOTEL.

With respect to the proposed hotel project, there are similar area constraints as was mentioned in the Santa Monica College project, and like that project the hotel has incorporated similar and effective ways to reduce the appearance of hardscape onsite.

1. A hotel in Malibu has more requirements for parking spaces than most all other commercially-zoned projects. Most guests will arrive at a 5-star boutique hotel driving one car and requiring only one parking space; however, the City standards require that hotels provide two parking spaces for every hotel room, and parking spaces for the restaurant and all of the hotel employees; the proposed hotel, with 36 rooms, must provide a total of 87 parking spaces.

The hotel will provide 90 parking spaces. Hotel operators have said it would be extremely rare if even half of the hotel guests came in two cars to occupy one room. The size of each parking space plus a share of the 25-foot-wide access aisle is equal to 290 square feet, and if this area were landscaped instead of being paved, it would equal 1.58% of the lot area. If only 16 spaces were used for landscaping, then the project could provide 40% of the lot area landscaped on the ground level of the parcel. However, the City has always made the required amount of parking spaces a priority over the landscaping and open space area requirements; any potential possibility that a project may require offsite parking involving multiple exiting from PCH, and entering onto PCH, which will cause traffic congestion and increase the potential for accidents.

2. The Los Angeles County Fire Department refused to approve the restaurant in the basement as a result of the Fire Department’s calculation of the very high number of occupants that “could” be in the restaurant which will serve liquor, as well as the other areas of the basement, i.e. 70 to 80 people, and as a consequence, the restaurant and kitchen were raised to the ground level; this area was proposed to be a total landscaped area on the ground level; the total landscaped area on the ground is now 2,731.45 square feet. To maximize the visual effect of the landscaped area, all of the landscaped areas next to PCH and within the parking area will include large, mature trees. 2,731.45 represents 14.94% of the ground level of the hotel.
3. The proposed hotel landscaping plan will increase the landscape buffer between the only public transportation corridor adjacent to the hotel, PCH, by converting the previously proposed 9 concrete parking spaces to grass, which will be irrigated with recycled wastewater from the hotel’s advanced wastewater treatment facility.

The valet parking crew will be told to park cars on the grass turf as a last resort; the 1,602 square foot area will be constructed with turftrack. Turftrack, unlike grasscrete, looks like a

100% grass lawn; the black plastic hexagon system that will support a car and protect the root system of the grass is very narrow and occupies only 5% of the surface area, and will not be seen; 95% of the area will be grass, and will grow and completely cover the lower support modules.

Although the area will not be striped, on the very rare occasion when a car must be parked on the grass for a short time, the professional valet parkers will not need the spaces to be designated. This grass is in the optimum location with respect to “providing scenic and visual benefits and reducing the appearance of hardscape onsite.” The area increases the landscaped area adjacent to PCH; this grass area is equal to 8.76% of the total lot area. See Page 17 for a review of Turftrack and a picture of the turftrack. The landscape plan is shown on Exhibits P-1, P-2 and P-3.

4. The Planning staff stated in its recommendation on the Santa Monica College project that the proposed “green roof” will provide many of the benefits of landscaping, and serve many of the purposes of the landscape requirement. Due to the upslope residential properties that will see the green roof, it will provide scenic and visual benefits, reducing the appearance of hardscape onsite, which is consistent with the “intent of the requirement.”

With respect to the hotel, the most seaward portions of the decks adjacent to each of the hotel rooms will be landscaped with trees and beautiful plants, and these landscaped areas can be seen by the upslope residential properties to the north of the hotel. The trees will be clearly visible to all of the travelers on PCH, which will reduce and soften the hardscape appearance of the hotel, consistent with the referenced staff report on the Santa Monica College project; the landscaped decks “will provide scenic and visual benefits, reducing the appearance of hardscape onsite, which is consistent with the intent of the requirement.” The subject landscaped areas on the decks represent 13.83% of the total lot area.

5. Similar to the Santa Monica college project, the roof of the second level of rooms will be green, and because it can be seen by the upslope residential properties, the “green roof will provide many of the benefits of landscaping, and serve many of the purposes of the landscape requirements,” which is consistent with the staff’s recommendation on the Santa Monica College project. As stated by the staff, and approved by the Planning Commission and City Council, “Due to the upslope residential properties, the green roof will provide scenic and visual benefits, reducing the appearance of hardscape onsite, which is consistent with the intent of the requirement.” The second level hotel room roofs are 25’-6” deep and 135’-2” wide, for a total of 3,447.6 square feet, which represent 18.85% of the total lot area.
6. The “Whole Foods and the Park Specific Plan (WFPSP)” project fulfilled a portion of the required landscaped area by vegetating vertical walls, and the citizens of Malibu voted to approve the project and the Specific Plan. It is reasonable that if a concrete wall is totally landscaped with green vegetation it will reduce the appearance of hardscape, which the Planning Staff has stated is consistent with the “intent of the requirement that 40% of the lot area be landscaped.” The citizens support for the Specific Plan sets a precedent for other projects with respect to what qualifies as part of the 40% of the lot area that must be landscaped. As long as government is “for the people and by the people,” the architects of projects should be able to rely on all of the design features of the referenced Specific Plan.

The proposed hotel project will landscape the surface of 943 square feet of the project’s perimeter walls with thick vines that cling to the surface of the walls. Trees and shrubs will

also be planted adjacent to the walls to give the landscaped walls depth. The surface of the walls are clearly visible from PCH and will substantially reduce the “appearance of hardscape onsite.” The walls represent 5.15% of the area of the lot. Additionally, the walls will have a row of trees in front of the walls to add depth to the landscaped area. This area is equal to 5.15% of the total lot area.

7. Finally, the proposed hotel will eliminate the 20+ foot-high abandoned Shell Gas station canopies that are located over the old concrete pump aisles. The southerly canopy is within 12” of the PCH sidewalk. These canopies and the old metal building have been described as a “visual blight” by the City’s Planning Staff. Clearly, the removal of these canopies, the old metal building, and the concrete pump aisles, as well as the replacement of these structures with landscaping adjacent to PCH will provide “scenic and visual benefits” which is consistent with the “intent” of the landscape requirement.”
8. It is also noted that the hotel will be setback from PCH double the required front yard setback, which will widen and open the visual corridor for the many travelers on PCH; i.e. the most important “scenic corridor” in the entire City.
9. SUMMARY:
 - A. Landscaped areas at the ground level of the lot.
% OF LOT AREA = 23.7%
 - B. Vegetating 943 square feet of vertical walls on the east and west property lines that can be clearly seen from PCH, and planting trees adjacent to the walls. This will reduce the appearance of hardscape and is equal to 5.15% of the lot area.
% OF LOT AREA = 5.15%
 - C. Landscaping of the seaward portion of the room decks with plants and trees that will be seen from PCH.
% OF LOT AREA = 13.83%
 - D. The second level green roof is consistent with the Santa Monica College green roof, which was supported by the City as providing scenic and visual benefits by reducing the appearance of hardscape onsite as viewed by the upslope residential properties.
% OF LOT AREA = 18.85%
 - E. The removal of the only structures in Malibu that have been described by the City Planning Department as, which includes the abandoned old Shell Gas station and building. The removal of these structures will clearly represent a “scenic and visual benefit” which is consistent with the intent of the landscape requirement. (This summary is in a chart on page 16.)

For the record, the hotel has landscaped 4,333.45 square-feet of the ground level of the lot, which is equal to 23.7% of the lot area, and has landscaped 2,528.8 square-feet of the deck areas that are open to the sky, and which is equal to an additional 13.83% of the lot area; the two percentages total of 37.57% of the lot area, and will landscape 943 square-feet of the face of the walls located on the east and west property lines of the project, which will significantly reduce the appearance of hardscape, and equals 5.15% of the area of the lot. The three percentages equals 42.68%. The green roof is not counted in this calculation. A summary of all of

the landscaped areas is provided on page 13.

WHY IS THE APPLICANT FILING FOR A VARIANCE?

Although the project satisfied the development standard requiring that areas equal to 40% of 18,283 square feet be landscaped, and the areas that the project proposes to landscape have been accepted by the citizens of Malibu, the Planning Commission and the City Council as being consistent with the intent of the commercial landscaping standard, as specified by the Planning Staff, i.e. “providing scenic and visual benefits” and “the reduction in the appearance of hardscape onsite”; there are some people that believe the standard requires that 40% of the entire lot area be devoted to landscaping and no other use! The applicant does not agree with this interpretation, and no commercial project has ever been approved by the City that is consistent with this strict interpretation; however, in an abundance of caution, the applicant will provide the required information that will justify the approval of a variance. The City has a long history of considering the totality of a project when determining if a variance should be approved, including benefits to the citizens of Malibu and the general public, such as consistency with the character of the neighborhood, visual impacts to scenic highways, safety, traffic congestion, and monetary benefits that can be used to provide the citizens with desired facilities; it is anticipated that all aspects of the proposed hotel will be considered as they have been with respect to other projects that have been approved.

I. JUSTIFICATION FOR A VARIANCE WHICH WILL PERMIT A MODIFICATION OF THE STRICT LITERAL INTERPRETATION OF THE COMMERCIAL DEVELOPMENT STANDARD TO INCLUDE LANDSCAPED DECKS ADJACENT TO THE HOTEL GUEST ROOMS, AND LANDSCAPED WALLS TO REDUCE THE HARDSCAPE AS VIEWED FROM PCH.

A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

1. The unique CV-2 zoning will permit the property to be used to construct a hotel, and hotels require more parking than almost all other commercially-zoned parcels and parking spaces occupy areas of the lot that could be landscaped if less parking were required.

In Malibu, CV-2 zoning, and hotels, **ARE** a special “circumstance” because there is only one hotel in the entire 27-miles of coastline in Malibu. A hotel use is also unique because it requires more parking spaces than all other commercial uses with the only exception being a large restaurant or theater. If the proposed hotel did not require so much parking the project would be able to satisfy the 40% landscaping requirement on the ground level; however, because the City’s priority is to reduce traffic on PCH and make PCH safer, fulfilling the standard for the required number of parking spaces takes priority over landscaping requirements. The only existing hotel in Malibu has landscaped less than 8% of the lot area instead of the 40% required by the development standard; accordingly, the “denial of the variance would deprive the proposed hotel project from privileges enjoyed by other property in the vicinity and under the identical zoning classification.”

2. The configuration of the lot.

The lot configuration and its size also contributes to the projects inability to dedicate 40% of the ground level lot area to landscaping; if the lot configuration was different and the lot was much larger, subsurface parking could then be used to meet the required parking which would allow more of the ground level area to be used for landscaping. The configuration of the subject lot does not permit enough room for subterranean parking. The lot is only 122.44 feet deep and 150 feet wide, and the access apron from PCH requires 25 feet of the 150-foot width. The easterly 25' is also required for fire truck access.

In order to make a smooth transition from the upper elevation of the access drive apron down to a level 10 feet below the existing ground level, a car requires a minimum of 80 feet; after adding in the 25-foot access apron which includes a 25-foot turning radius, 105 feet of the 150-foot-wide lot is taken, leaving approximately 45 feet of level subterranean surface for parking cars. The parking spaces at both ends of the garage will require 10-foot-wide parking spaces, and the 10-foot-high retaining walls will require one additional foot, which limits each side of a subterranean parking garage to four spaces on one side of the access lane, and four spaces on the other side of the access lane for a total of only eight spaces.

Three additional above-ground spaces, including the handicapped space, could be put on the north side opposite the PCH access, and the total number of parking spaces would increase to 11 parking spaces; however, the hotel requires a minimum of 23 spaces plus the Fire Department's above-ground drive-through access. As a result of the size and configuration of the lot, subsurface parking will not result in less ground level parking and therefore the ground level landscaping cannot be increased.

3. For safety purposes, the seven electric charging stations require ground level parking that diminishes areas that could be used for ground-level landscaping.

B. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

1. The variance is being requested because some people may believe that the strict literal interpretation of the commercial development standard requires that 40% of the lot area be devoted to only landscaping and no other use, and the project does not meet this strict interpretation; however, the project does fulfill the intent of the standard by landscaping areas of the project that together equal 42.68% and which is consistent with the Planning Staff's stated recommendations on other projects that have parking space constraints and the size, configuration, and topography of the lot does not permit subsurface parking. If the green roof above the upper guest rooms are counted, as in the Santa Monica College project, the percentage rises from 42.68% to 61.53%.

✪ Not only are the landscaped areas consistent with the intent of the landscaped standard because they “reduce the appearance of hardscape,” but the proposed boutique hotel will also provide many other benefits to the City and public that should be considered and which will result in the project having a very positive impact on the public interest, safety, health and welfare, and the project will not be detrimental or injurious to the surrounding properties’ improvements.

- a. The purpose of the landscaping standard can be found in the definition of “landscaping,” which is to plant vegetation such as flowers, trees, etc., to make the property more attractive. The Planning staff has stated in its analysis of other projects that the purpose and intent of landscaped areas relative to proposed projects in Malibu are to “provide scenic and visual benefits, reducing the appearance of hardscape onsite.”

Assuming that a variance is required, if a project cannot devote 40% of the ground level area to landscaping and only landscaping, then the approval of the project is dependent on the approval of the requested variance, and if the variance is approved the very unsightly abandoned gas station canopies and old metal buildings will be removed, which will make the project property and the entire PCH Scenic Corridor much more attractive, which is exactly what the landscaping standard was supposed to accomplish; This is beneficial to the public interest, not detrimental.

- b. The project’s total area that is dedicated to landscaping with real plants and trees is 42.68%; this percentage excludes the green roof on the second level of rooms that can be seen from the upslope residential properties.

An analysis of all of the commercially-developed lots that front on the north side of PCH within a 1,000-foot radius of the proposed project verified that not one of the 15 projects has landscaped 40% of the lot area; the average landscaped areas of the 15 commercially-developed lots is 14.36%. The proposed project will actually landscape 23.7% of its ground level area. See the chart below. The hotel is consistent with the character of the neighborhood. The project and the variance will not be inconsistent or detrimental to the property and improvements in the same area as the proposed project.

2. The project will add between \$900K and \$1.1 M each year to the City to be used to improve City facilities for its citizens and the general public; this annual flow of money is certainly not detrimental to the welfare of Malibu’s citizens and the general public.
3. With respect to “safety,” the project will actually reduce traffic on PCH and reduce the number of ingress and egress driveways entering onto and exiting from PCH by 50%. Traffic engineers all agree that the number of access driveways to and from a busy street is a primary cause of accidents, so the project will make PCH safer.
4. The design for the hotels access and turnaround area will permit supply trucks to unload onsite instead of in the center turn lane in the middle of PCH, which causes accidents. The requirement that all supply trucks must unload onsite is a unique safety feature of the proposed hotel. This will substantially increase safety on PCH.

5. The approval of the hotel will eliminate the unsightly canopies that cover the gas pump islands of the abandoned Shell Gas Station, for which the Planning Department has designated as a “visual blight” adjacent to PCH, i.e. a designated Scenic Highway. The entire purpose of landscaping is to make the project and the area more attractive, and the elimination of the only structures in Malibu that the Planning Department has defined as a “visual blight” accomplishes the primary objective of landscaping, i.e. it will make the area more attractive.

6. The location of the hotel is in the most dynamic and vibrant commercial district in Malibu, and is in the very best location for a small hotel; it is in walking distance to the beach, restaurants, and pier, and a stop light and crosswalk is within 200 feet of the hotel; therefore the hotel is consistent with the character of the commercial neighborhood.

C. The granting of the variance will not constitute a special privilege to the applicant or property owner.

All of the 15 commercial developments that front on the north side of PCH within 1,000 feet to the west and 1,000 feet to the east of the proposed hotel do not devote 40% of the lot area to landscaping as referenced in the table below.

The Commercial Development	% of Lot Devoted To Landscaping	% of Lot Devoted To Open Space
BUILDING #1 22601 PCH “PC GREENS”	4.28%	33.50%
BUILDING #2 22611 PCH	22.40%	.90%
BUILDING #3 22619 PCH	29.32%	.53%
BUILDING #5 22653 PCH	35.90%	5.53%
BUILDING #6 22669 PCH REHAB	24.07%	23.80%
BUILDING #7 22725 PCH “MCDONALD’S”	8.71%	5.66%

The Commercial Development	% of Lot Devoted To Landscaping	% of Lot Devoted To Open Space
BUILDING #8 22751 PCH "COUNTRY CHICKEN"	12.77%	8.08%
BUILDING #9 22761 PCH	20.01%	17.45%
BUILDING #10 22775 PCH "ZUMA J"	1.57%	8.37%
BUILDING #11 22809 PCH "OFFICE BUILDING"	6.05%	48.22%
BUILDING #12 22811 PCH "V"	3.35%	71.75%
BUILDING #13 22821 PCH	20.50%	4.03%
BUILDING #14 22837 PCH "ROY"	5.46%	76.68%
BUILDING #15 22823 PCH "HERTZ"	.76%	14.03%

✪ The above table indicates that **not one** of the commercial buildings within 1,000 feet of the proposed hotel provide 40% of its lot area devoted to landscaping, and 12 of the 15 commercial developments, i.e. 86%, have less ground level landscaping than the proposed hotel at 22729 PCH. Of the 15 lots within 1,000 feet of the proposed hotel, the average ground level area dedicated to landscaping is 15%. If only the ground level landscaping for the hotel is counted, it equals 23.7% of the hotel lot; if the landscaped portion of the decks are also counted, which will add to the attractiveness of the entire hotel, the landscaped areas equals 37.53%, which is more than 2.5 times the average landscaped areas of the 15 commercial projects within 1,000 feet of the proposed hotel, and only 2.47% less than the 40% lot area requirement.

D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.

The goals, objectives, and policies of the general plan include making Malibu a safer place to live, eliminate visual blight, eliminate pollution, and provide the facilities that the citizens of Malibu want and need; the proposed hotel will accomplish all of these goals and objectives.

The project will provide the following benefits to the City of Malibu.

1. The elimination of visual blight adjacent to the most traveled designated scenic highway in the entire City;
2. Reducing traffic and congestion on PCH, which will reduce carbon dioxide emissions and make PCH safer;
3. Reduce the number of access drives exiting and entering PCH which will make PCH safer;
4. Substantially increasing money flowing to the City every year, so the City can provide needed services and facilities to its citizens;
5. Providing overnight accommodations that are needed for the many guests who visit Malibu's residents, and which will fill the loss of overnight accommodations that will be experienced when the Short Term Rental Ordinance is passed.

ALL OF THE ABOVE BENEFITS ARE CONSISTENT WITH THE INTENT OF THIS CHAPTER, AND THE GOALS, OBJECTIVES, AND POLICIES OF THE GENERAL PLAN.

E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.

The purpose and intent of the proposed CV-2 zoning is to provide a hotel use that will increase the number of overnight accommodations in the City of Malibu. There is currently only one hotel in the City of Malibu, and five motels in 27 miles of the most beautiful coastline in the world. The variance is compatible and consistent with how all other existing commercially zoned parcels are being used in Malibu, and more specifically, within the specific commercial zone on the north side of PCH within 1,000 feet of the proposed hotel as verified by the table in response to "C" above.

F. The subject site is physically suitable for the proposed variance or modification.

The site is physically suitable for the proposed variance because the variance is consistent with the character of the neighborhood. Not one of the commercial projects within 1,000 feet to the east and 1,000 feet to the west devote 40% of the project's lot area to landscaping; 86 % of the 15 commercially-developed lots within 1,000 feet of the proposed hotel have devoted less of the ground level area to landscaping than the proposed hotel.

- G. **The proposed hotel is 100% consistent with the character of the area where it will be located.**

The proposed hotel fulfills the intent of the landscaping development standard, “to make the hotel more attractive” for the general public and the guests of the hotel; if the landscaped areas on the decks adjacent to each of the guest rooms were counted, and the 100% vegetated green walls are included (as they have been by the City in other projects); the total landscaped area would be 42.68% of the lot area, and would provide more landscaped area than all of the commercial developments within 1,000 feet of the proposed hotel.

- H. **The variance or modification permit complies with all requirements of state and local law.**

There are no state or local laws that would prevent or are in conflict with the City's authority to grant the variance.

- I. **All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the City. (Ord. 261 § 20, 2004)**

THE PROPOSED HOTEL WILL INCREASE THE HEALTH, SAFETY, AND WELFARE OF THE CITY.

As stated above, the hotel will reduce the amount of traffic currently being generated by the existing uses of the property as verified by the traffic engineer recommended by the City's Public Works Department; when traffic is reduced, then the level of safety on PCH is increased for the citizens of Malibu and the millions of people that visit the City every year. In addition to the above, Caltrans has found that access driveways leading from and onto PCH increase the risks of accidents. Accidents and more traffic cause more congestion resulting in cars spending more time on PCH, which results in more CO₂ spewing into the air, which is unsafe for the travelers on PCH, the City, and the world! The current use of the proposed hotel site has two access and egress driveways. The proposed hotel will have one access drive, reducing the number of accesses to and from PCH by 50%. The second existing access driveway will only be used for emergencies and Fire Department access. No other project in Malibu's history has reduced the number of access driveways on PCH, or the amount of traffic on PCH.

IF THE PROJECT IS DENIED BECAUSE OF THE REQUESTED VARIANCE, ALL OF THE BENEFITS TO THE CITY STATED IN THIS DOCUMENT OF REDUCING TRAFFIC ON PCH, REDUCING ACCIDENTS ON PCH, REDUCING CONGESTION ON PCH, AND REDUCING CARBON DIOXIDE EMISSIONS, REDUCING VISUAL BLIGHT NEXT TO PCH, PROVIDING \$1.0±M ANNUALLY TO THE CITY, ETC., WILL NOT OCCUR.

LANDSCAPED AREA SUMMARY

LOCATION	AREA (ft ²)	PERCENT OF LOT AREA	
I. GROUND LEVEL	2,731.45	14.94%	} 42.68% = TOTAL
GROUND LEVEL GRASS - TUFFTRACK	1,602.00	8.76%	
II. LANDSCAPED GUEST'S ROOM DECKS	2,528.00	13.83%	
III. VEGETATED WALLS ON EAST AND WEST PROPERTY LINE	943.0	5.15%	
IV. THE SECOND LEVEL OF THE HIGHEST ROOF WILL BE GREEN, AND IT IS VISIBLE FROM THE UPSLOPE RESIDENTIAL COMMUNITY	3,447.6	18.85%	} 18.85% = TOTAL

EXHIBIT 9
22729 PCH

I. JUSTIFICATION FOR A VARIANCE, WHICH WILL PERMIT GRADING ON SLOPES STEEPER THAN 40%.

- A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.**

There are topographic features and safety issues that justify and require that construction occurs on slopes that are steeper than 40%. From a topographic consideration, Malibu is in fact where the mountains extend down to the sea. 100% of PCH in the area where the project site is located could not have been constructed without excavation into the toe of the mountains and cutting into slopes that range from 40% to 70%; in a similar manner, 100% of all of the parcels on the north side of PCH within 1,000 feet of the parcel at 22729 PCH could not have been built on unless the owners cut into the steep slopes that descend down toward PCH. Every building has a steep slope greater than 40% that was excavated to create a flat area. Most of the owners on the north side of PCH within 1,000 feet of the proposed hotel constructed retaining walls to support the steep hillside.

- B. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.**

The granting of the variance to allow the existing 10-foot-high retaining wall to be removed and replaced with a wall that is consistent with current safety standards is a necessity for any use of the parcel. The flat area of the subject property was created by excavating a very steep slope and replacing the slope with a 9 to 10 foot high retaining wall and a 50% slope on the north side of the wall. The slope is so steep the owners had to put concrete on the surface of the slope to ensure its stability. The 10" solid grouted concrete block wall and gunited slope that was constructed 62 years ago are inconsistent with any of today's safety standards, and although it has not failed yet the wall must be demolished and replaced with retaining walls that do meet current geotechnical and structural engineering safety standards.

Therefore, the excavation and construction on slopes greater than 40% will not be detrimental to the public interest, safety, health, or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone in which the property is located.

- C. The granting of the variance will not constitute a special privilege to the applicant or property owner.**

As referenced above, 100% of all the owners of all commercially-zoned properties on the north side of PCH for more than 1,000 feet on both sides of the subject parcel have excavated into slopes greater than 40% to create a flat pad area. Accordingly, the granting of the variance will not constitute a special privilege to the property owner.

- D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.**

The existing retaining wall that supports a vertical cut of 10 feet and a very steep slope on the north side of the wall does not meet any of the safety standards that are applied today; the entire wall and the area north of the wall must be completely demolished and a new structure must be constructed consistent with the current safety standards. Therefore, the excavation of and the construction on slopes greater than 40% is not in conflict with the general purposes and intent of the MMC or the LCP, nor the goals, objectives, and policies of the general plan.

- E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.**

The existing 10±-foot-high wall must be removed and replaced because it was constructed in a manner that does not satisfy current safety standards, and therefore the grading on slopes greater than 40% is consistent with the existing and proposed commercial use.

- F. The subject site is physically suitable for the proposed variance or modification.**

It would not be possible to construct a commercial building on the property without removing the northerly retaining wall and steep ascending slope and constructing structures that are consistent with Malibu's geologic and soils engineering safety standards, and therefore the parcel is physically suitable for the proposed variance.

- G. The variance or modification permit complies with all requirements of state and local law.**

There are no state and local laws that would prevent or are in conflict with the City's authority to grant the variance; however, there are state safety laws that require the variance to be granted.

- H. All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the City. (Ord. 261 § 20, 2004)**

The City Geology Department and Health Department have imposed the necessary conditions on the variance which are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the City. It is noted that the variance is required in order to be consistent with the safety requirements of the City, as the existing retaining wall and steep slope are not consistent with the City's minimum safety standards and this safety hazard cannot be rectified without the variance.

EXHIBIT 10
22729 PCH

SITE PLAN REVIEW FOR STRUCTURES OVER 18 FEET

The proposed hotel satisfies all of the criteria required to permit the height of the structures to be higher than 18 feet above the existing soil elevation, or finished soil elevation, whichever is lower.

I. PARCEL AT 22741 PCH.

The portion of the hotel that will be on the upper parcel in accord with an interior remodel was the result of an agreement with the City and was fully inspected and permitted by the City. The height of the existing building will not change, with one exception; the elevator will extend to the rooftop deck to satisfy ADA state laws, and the required variance is justified. See Exhibit #2 attached.

II. PARCEL AT 22729 PCH.

The portion of the hotel at the lower level will be a new structure and is consistent with the height standards for commercial development:

- A. No portion of the new building that has a roof that slopes less than 25% is higher than 24 feet above the existing soil or the finished soil elevation, whichever is lower.
- B. No portion of the building is higher than 28 feet as measured from the existing soil elevation or finished soil elevation, whichever is lower. The portions of the building that are higher than 24 feet have roofs that are sloping at 25% or greater.
- C. VISUAL IMPACTS:

1. Travelers on PCH.

The proposed hotel structure will be 46 feet set back from PCH, which is double the required front yard setback prior to the merging of Parcels A and B; the portion of the building that is 46 feet from PCH is the deck of the first level of hotel rooms, which are less than 14 feet high. The first structure that is higher than 14 feet is 74 feet set back from PCH. No other building within 1000 feet of the proposed hotel has a front yard setback of more than 40 feet except Nobu and the Soho House.

2. Neighboring Properties.

The proposed hotel will have no negative impacts on any primary views of the McDonald's restaurant to the east of the buildings, or to the Country Chicken restaurant to the west of the building. In fact, the proposed building will have no negative impacts on the primary views of any commercial buildings or homes in the area, including the five homes that are more than 100 feet above, and to the north, behind the proposed building.

EXHIBIT 11
22729 PCH

PAST INTERPRETATION OF “OPEN SPACE” AREAS AND POSSIBLE VARIANCE

The LCP development standards for commercial development required that a certain percentage of the lot area be devoted to “open space.” The standard is stated on page 76 of Malibu’s LIP, Section 3.8, Subsection 5-B.

“B. 40% of the lot area shall be devoted to landscaping. An additional 25% of the lot area shall be devoted to open space. Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.”

There is some disagreement on exactly what this development standard actually means. The total “lot area” of the subject lot at 22729 PCH is 18,283 square feet, and if the actual lot area is exchanged with the “lot area” the development standard would read as follows:

“B. 40% of 18,283 square feet shall be devoted to landscaping. An additional 25% of 18,283 square feet shall be devoted to open space. Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.”

Forty percent of 18,283 square feet is 7,313.2 square-feet so as long as 7,313.2 square feet of the project is landscaped, the development standard is fulfilled. The Planning staff, Planning Commission, City Council, and the citizens of Malibu have focused on the purpose and the INTENT of this development standard which is providing “Scenic and visual benefits,” including “reducing the appearance of hardscape onsite.” Twenty-five percent of 18,283 square feet is 4,570.75 square feet, and the standard states that the project shall devote 4,570.75 square feet to “open space”; parking lots, buildings, exterior hallways, and stairways shall not qualify as open space.

I do not recall that the Planning staff, the Planning Commission, or the City Council providing a statement of the intent of the open space part of the standard similar to what has been provided in the “landscape” part of the subject LIP standard. However, it is clear that “courtyards and patios” are not similar to landscape areas which are meant to reduce the appearance of hardscape onsite. Courtyards and patios are hardscape and are meant to be used by the visitors to a commercial development. In the past, the roof area above subterranean garages, which is a building, have been landscaped or used as a patio or deck, and have been accepted as fulfilling the landscaped area, or the open space area requirements; however, a roof is part of a building.

Webster’s dictionary defines “patio” as:

1. A courtyard or inner area open to the sky, as in Spanish and Spanish-American architecture.
2. A paved area, as one adjacent to a house, with chairs, tables, etc. for outdoor lounging, dining, or the like.”

The above definition does not require that courtyards and patios be visible to the general public outside the boundaries of the subject lot. In fact, Spanish courtyards are surrounded by the house buildings and are generally private areas. It is clear that courtyards and patios are meant to be used and enjoyed by the patrons to a shopping center or the guests to a hotel.

Clearly, areas adjacent to “buildings” that provide courtyards which are not open to the sky would not qualify as “open space”; however, large patios adjoining hotel rooms, and that are “open to the sky, with chairs, tables, etc. for outdoor lounging, dining or the like” is 100% consistent with the dictionary’s definition of patio and should be counted as part of the required 4,750.75 square feet of required courtyard or patio area. With respect to the proposed hotel, the project includes the following courtyards and open space:

- A. 1,313.8 square feet of guest’s reception area and other open space areas are on the ground level and equal 7.18% of the lot area.
- B. 5,205.8 square feet of guests patio area, open to the sky, not including the landscaped areas of the patios, are equal to 28.47% of the lot area. Areas A and B equal 35.65% of the lot area.
- C. The total open space area is equal to 35.65% of the lot area.

WHY IS THE APPLICANT FILING FOR A VARIANCE?

Although the dictionary’s definition and the common sense interpretation of what qualifies as a patio or courtyard seem clear, there are some people that have stated that the development standard does not mean 25% of the lot area, i.e. 25% of 18,283 square feet must be provided as open space, but that 25% of 18,823 square feet of the actual ground must be dedicated to open space and no other use! The applicant does not agree with this interpretation; however, there are people that do, so in an abundance of caution the applicant will provide the required information that will justify the approval of a variance.

The City has a long history of considering the totality of a project when determining if a variance should be approved, including benefits to the citizens of Malibu, and the general public such as consistency with the character of the neighborhood, visual impacts to scenic highways, safety, traffic congestion, and monetary benefits that can be used to provide the citizens with desired facilities.

If the Planning Staff believes that the project areas used for open space require a variance, the variance can be justified because the project fulfills all eight of the FINDINGS required to justify a variance.

- I. JUSTIFICATION FOR A VARIANCE WHICH WILL PERMIT A MODIFICATION OF THE COMMERCIAL DEVELOPMENT STANDARD TO INCLUDE THE PATIO AREAS ON THE DECKS ADJACENT TO THE HOTEL GUEST ROOMS.
 - A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.
 - 1. The commercial development standard requires that the area dedicated to “open space” be 25% of the lot area. Some people have interpreted the referenced development standard as meaning that 25% of the ground level area must be dedicated to open space, and since this is not possible the applicant is filing for this variance in order to provide for all possible interpretations of the areas that can be used to satisfy the 25% area requirement.

As referenced above, Webster's dictionary defines "patio" as:

1. A courtyard or inner area open to the sky, as in Spanish and Spanish-American architecture.
2. A paved area, as one adjacent to a house, with chairs, tables, etc. for outdoor lounging, dining, or the like."

If it is assumed that the required open space areas must be on the ground floor of the parcel, then there are circumstances and exceptional characteristics applicable to the lot at 22729 PCH such that the strict application of the zoning ordinance will deprive the subject parcel of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

- a. There are only four parcels in the entire City of Malibu with the proposed identical zoning. Three of the parcels are tied together where the Malibu Beach Inn is located, the only hotel in Malibu. The other parcel that is zoned CV-2 is not developed.

With respect to the Malibu Beach Inn, the development does not satisfy the City's required number of parking spaces for a 47-room hotel, it does not satisfy the City's landscaped area requirements, regardless of how the requirement is interpreted and the hotel has less than 4% of its ground level area dedicated to open space, i.e. the restaurant deck area, and a small portion of the entry walkway.

- b. The number of parking spaces required for a hotel is extremely high and includes two parking spaces for each room and parking spaces for all of the hotel employees and the restaurant.

Due to the topography, and the size and configuration of the lot at 22729 PCH, it is not possible to park cars in a subterranean garage, which would leave more ground level area for courtyards and patios.

The City has established a precedent that fulfilling the required number of parking spaces onsite takes priority over providing areas for landscaping and patios for the guests to enjoy; this priority is based on reduced safety and increased traffic congestion that occurs when valet personnel must leave the parcel where a restaurant or hotel is located and drive on PCH to find offsite parking spaces.

Accordingly, it is not possible to allocate 25% of the ground level area to open space due to the very high number of parking spaces required for a hotel use. Since the guests to the hotel will enjoy the patios and landscaped areas on the decks immediately adjacent to each of their rooms to a much greater extent than any patio areas on the ground level, very little of the ground level area was allocated to open space, only 7.18% of the lot area.

However, the ground level open space coupled with the referenced deck patios equals 35.65% of the lot area, and does satisfy the intent of the open space requirement as defined by the dictionary, “ a paved area, with chairs, tables, etc. for outdoor lounging, dining, or the like.”

- B. The granting of such a variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.
1. The variance is being requested because a variance may be necessary to obtain approval of the guest room decks as open space. The applicant has met with many boutique hotel operators and they have all said that 35 rooms are the very minimum number of rooms required if the hotel is to be successful, especially with a TOT of 12%. The hotel will have 36 rooms and that results in a very large requirement for onsite parking, which occupies a very large amount of ground floor area. If the hotel is approved, the City and its citizens will receive many benefits. The hotel will have very positive impacts on the public interest, public safety, public health, and welfare. The project will not be detrimental or injurious to the surrounding properties improvements.
 - a. The purpose of the open space standard can be found in the definition of “open space” provided by the Malibu LIP, which is courtyards, patios, and natural open space. The approval of the project is dependent on the approval of the relatively small variance required to locate 17.82% of the required area for open space on the decks that are immediately adjacent to each of the guest rooms; if the variance is approved it will be very beneficial to the public interest.

To clarify, 1,313.8 square feet of the lot’s ground level area will be used as open space, and this equals 7.18% of the total lot area. 5,205.8 of the patios adjacent to the guest rooms will be dedicated to open space, and this area equals 28.47%. The open space that is on the guests’ patios is very important because the large patios are one of the reasons people will want to be guests of the hotel. Total of all areas used as open space equals 35.65% of the total lot area; this is 10.65% more than required.

The decks will have jacuzzis, fire pits, lounge chairs, tables and chairs, and each room will have its own high-powered telescope so guests may easily see dolphins, whales, diving pelicans, and surfers. The project will also reduce the amount of traffic on PCH and will reduce the number of ingress and egress driveways exiting from and entering onto PCH as currently exists; these project design features increase the safety, health, and welfare for all members of the public that travel on PCH.

- b. There are 15 commercially-developed lots in the area that fronts on the north side of PCH within 1,000 feet to the east and 1,000 feet to the west of the proposed hotel. The project’s total lot area that is dedicated to open space is 35.65%, and only 3 of the 15 commercial projects in the area have dedicated more area to open space.

The project and the variance will not be inconsistent or detrimental to the property and improvements in the same area as the proposed project. In fact, the project is consistent with the character of the commercially-zoned community; See the chart attached.

2. The project will add between \$900K and \$1.1 M each year to the City to be used to improve City facilities for its citizens and the general public; this annual flow of money is certainly not detrimental to the welfare of Malibu's citizens or the general public.
3. With respect to "safety," the project will actually reduce traffic on PCH and reduce the number of ingress and egress driveways entering onto and exiting from PCH by 50%. Traffic engineers all agree that the number of access driveways to and from a busy street is a primary cause of accidents, so the project will make PCH safer.
4. The approval of the hotel will eliminate the unsightly canopies that cover the gas pump islands of the abandoned Shell Gas Station, for which the Planning Department has designated as a "visual blight" adjacent to PCH, which is a designated Scenic Highway.
5. The location of the hotel is in the most dynamic and vibrant commercial district in Malibu, and is in the very best location for a small hotel; it is in walking distance to the beach, restaurants, and pier, and a stop light is within 200 feet of the hotel, with a crosswalk that leads directly to the beach!

C. The granting of the variance will not constitute a special privilege to the applicant or property owner.

5 of the 15 commercial developments that front on the north side of PCH within 1,000 feet to the west and 1,000 feet to the east of the proposed hotel devote less percentage of the ground level area to open space compared to the proposed hotel. If the patios that are adjacent to the guest rooms are included as being consistent with the intent of the open space development standard, then the hotel will provide more open space than 12 of the 15 projects in the vicinity of the proposed hotel. The only developed CV-2 properties, i.e. the Malibu Beach Inn provides less than 4% of its lot area to open space; as a consequence, the subject variance will not constitute a special privilege to the applicant or property owner.

D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives, and policies of the general plan.

The goals, objectives, and policies of the general plan include making Malibu a safer place to live, eliminate visual blight, and provide the facilities that the citizens of Malibu want and need; the proposed hotel will accomplish all of these goals and objectives.

The project will provide the following benefits to the City of Malibu.

1. The elimination of visual blight adjacent to a designated scenic highway;
2. Reducing traffic and access drives on PCH, which will make PCH safer and reduce congestion;

3. A reduction in traffic and congestion also reduces carbon dioxide pollution;
4. Substantially increasing money flowing to the City every year, so the City can provide needed services and facilities to its citizens;
5. Providing overnight accommodations that are needed for the many guests who visit Malibu's residents, and which will fill the loss of overnight accommodations that will be experienced when the Short Term Rental Ordinance is passed.

ALL OF THE ABOVE IS CONSISTENT WITH THE INTENT OF THIS CHAPTER, AND THE GOALS, OBJECTIVES, AND POLICIES OF THE GENERAL PLAN.

E. The variance or modification request is consistent with the purpose and intent of the zone(s) in which the site is located.

The purpose and intent of the proposed CV-2 zoning is to provide a hotel use that will increase the number of overnight accommodations in the City of Malibu. There is currently only one hotel in the City of Malibu, and five motels in 27 miles of the most beautiful coastline in the world. The variance is compatible and consistent with how all other existing commercially zoned parcels are being used in Malibu, and more specifically, within the specific commercial zone on the north side of PCH. The location of the proposed hotel is in the most dynamic and vibrant commercial sector in the entire city with many restaurants and the Malibu Pier within a short walk. Additionally, there is a stop light and crosswalk on PCH within 200 feet from the proposed hotel that will take guests to a 10-foot-wide public access to the beach.

F. The subject site is physically suitable for the proposed variance or modification.

The site is physically suitable for the proposed variance because the variance is consistent with the character of the neighborhood; and consistent with the only other developed property in Malibu that are zoned CV-2. Additionally, the proposed hotel fulfills the intent of the open space development standard, "to provide courtyards and patios to be enjoyed by the guests that visit the hotel." If the patios within the decks adjacent to each room are added to the ground level courtyard patio, the area would equal 35.65% of the subject lot area, and this is 10.65% more than the required 25%.

G. The variance or modification permit complies with all requirements of state and local law.

There are no state or local laws that would prevent or are in conflict with the City's authority to grant the variance.

- H. **All or any necessary conditions have been imposed on the variance or modification as are reasonable to assure that the variance will not be detrimental to the health, safety, and welfare of the City. (Ord. 261 § 20, 2004)**

THE PROPOSED HOTEL WILL INCREASE THE HEALTH, SAFETY, AND WELFARE OF THE CITY.

As stated above, the hotel will reduce the amount of traffic currently being generated by the existing uses of the property as verified by the traffic engineer recommended by the Director of the City's Public Works Department; when traffic is reduced, the level of safety on PCH is increased for the citizens of Malibu and the millions of people that visit the City every year.

In addition to the above, Caltrans has found that access driveways leading from and onto PCH increase the risks of accidents, which is unsafe. Accidents and more traffic cause more congestion resulting in cars spending more time on PCH, which results in more CO₂ spewing into the air, which is unsafe for the travelers on PCH, the City, and the world! The current use of the proposed hotel site has two access and egress driveways. The proposed hotel will have one access drive, reducing the number of accesses to and from PCH by 50%. The second existing access driveway will only be used for emergencies and Fire Department access. No other project in Malibu's history has reduced the number of access driveways on PCH, or the amount of traffic on PCH.

IF THE PROJECT IS DENIED BECAUSE OF THE REQUESTED VARIANCE, ALL OF THE ABOVE BENEFITS TO THE CITY WILL NOT OCCUR.

EXHIBIT 12

CDP APPLICATION 12-086 INCLUDES THE FOLLOWING LCP AMENDMENT AND PROPOSED DEVELOPMENT AGREEMENT:

The proposed Local Coastal Program amendment will modify a section of the Land Use Plan and a section of the Implementation Plan, as follows:

1. The Land Use Plan will be amended as follows: the designated land use of two parcels of land, Los Angeles County Tax Assessor parcels 4452-022-017 and 4452-020-010, will be changed from a Community Commercial use, “CC”, to a Visitor Serving Use, “CV-2.” The intent of the land-use change is to allow for the construction of a hotel.
2. The City of Malibu’s LCP Land Use Plan, Section 30244, subsection C-2, under the heading “Commercial Visitor Serving (CV)”, will be amended to delete the maximum limit for the Floor Area Ratio provided the proposed land use complies with the following conditions:
 - a. The land use category is CV-2 and the parcel of land will be used for a hotel.
 - b. The proposed hotel use will result in the reduction in the amount of traffic generated on Pacific Coast Highway in the City of Malibu when compared to the subject parcel’s current use as verified by a traffic engineer with a valid California State license.
 - c. The applicant enters into a “Development Agreement” in which the applicant offers the City of Malibu twice the amount of public benefits and amenities as specified in Malibu’s LCP Local Implementation Plan, Section 3.8, subsection A, 5-f, in accord with the “Avoided Cost of Development Model.”