

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 21-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU ADOPTING ADDENDUM NO. 1 TO THE CERTIFIED MALIBU CIVIC CENTER WASTEWATER TREATMENT FACILITY PROJECT FINAL ENVIRONMENTAL IMPACT REPORT AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 20-063 AND VARIANCE NO 20-043 FOR THE CONSTRUCTION OF PHASE TWO OF THE CIVIC CENTER WASTEWATER TREATMENT FACILITY INCLUDING THE LOCATION OF A TEMPORARY CONSTRUCTION TRAILER AND OTHER FACILITIES AT THE PLANT SITE; NEW AND MODIFIED COLLECTION AND DISTRIBUTION PIPELINES; PUMP STATIONS AND OTHER ABOVE-GROUND EQUIPMENT; AND RELATED FACILITIES, INCLUDING VARIANCE NO. 20-043 FOR NEW DEVELOPMENT WITHIN 100 FEET OF A STREAM/RIPARIAN ENVIRONMENTALLY SENSITIVE HABITAT AREA, LOCATED AT 24000 CIVIC CENTER WAY IN THE COMMERCIAL VISITOR SERVING-ZONING DISTRICT IN THE CIVIC CENTER WASTEWATER TREATMENT FACILITY INSTITUTIONAL OVERLAY, AND VARIOUS PUBLIC STREETS AND PRIVATE STREET EASEMENTS IN THE CIVIC CENTER, MALIBU COLONY AND SERRA RETREAT AREAS, WITHIN THE APPEALABLE COASTAL ZONE (CITY OF MALIBU)

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

SECTION 1. Recitals.

A. On November 5, 2009, the Los Angeles Regional Water Quality Control Board (LARWQCB) approved Resolution No. R4-2009-007 to ban the discharges from onsite wastewater disposal systems (OWDSs), locally known and referred to in this resolution as OWTSs, in the Malibu Civic Center area. On September 21, 2010, the State Water Resources Control Board approved that same resolution, thereby amending the State Basin Plan. The Basin Plan Amendment went into effect on December 23, 2010. The Basin Plan Amendment included a map and timeline calling for commercial properties to cease discharge by 2015 and residential properties to cease discharge by 2019, among other things.

B. In August 2011, the City and the Water Boards entered into a Memorandum of Understanding (MOU) that detailed the implementation of the City's wastewater treatment plan for the Civic Center area, as defined in the Basin Plan Amendment. The MOU established the timelines for the construction of a centralized wastewater treatment facility and connection to that facility of properties in the Prohibition Area.

C. Malibu Local Coastal Program (LCP) Land Use Plan (LUP) Policy 7.20 states, "Any proposed sewer system shall be submitted to and approved by the Coastal Commission as an LCP amendment prior to issuance of local permits and construction." LCP Local Implementation Plan (LIP) Section 18.10(D) mirrors LUP Policy 7.20.

D. On May 31, 2013, the City filed an application for an LCPA for the Civic Center Wastewater Treatment project.

E. On June 24, 2013, the City Council adopted City Council Resolution No. 13-21 initiating changes to the LCP to create policies and standards for a Civic Center wastewater treatment system, and to update the Land Use and Zoning Maps to change the designation of two parcels that were expected to be the site for the treatment plan for the future Civic Center Wastewater Treatment Facility (CCWTF) project (Assessor Parcel Numbers 4458-028-005 and -020).

F. On November 21, 2013, an application for CDP No. 13-057 and associated entitlements was submitted by the City of Malibu Public Works Department to the Planning Department. The application was for the development of Phase 1 of the CCWTF, which included a wastewater treatment facility, pump stations, collection and distribution system pipelines, percolation ponds and groundwater injection wells, as well as a conditional use permit.

G. On January 12, 2015, the City Council approved Local Coastal Program Amendment (LCPA) No. 13-002, Zoning Text Amendment (ZTA) No. 13-008, Zoning Map Amendment (ZMA) No. 13-003, Coastal Development Permit (CDP) No. 13-057 and Conditional Use Permit (CUP) No. 13-005 for the CCWTF. In addition, the Council certified the Final CCWTF Environmental Impact Report (2015 EIR) and adopted Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program.

H. On May 13, 2015, the California Coastal Commission approved the proposed LCPA, Zoning Text Amendment and Zoning Map Amendment with modifications.

I. In October of 2018, construction Phase 1 of the CCWTF was completed and the project became operational.

J. On November 16, 2020, the City of Malibu Public Works Department submitted Coastal Development Permit No 20-063 for Phase 2 of the CCWTF Project. The application was for the location of a construction trailer and other improvements at the plant site; new and modified collection and distribution pipelines; pump stations and other above-ground equipment; and related facilities, including a Variance (No. 20-043) for new development within 100 feet of a stream/riparian environmentally sensitive habitat area (ESHA). The application was routed to the City Public Works Department, City geotechnical staff, the City Biologist, the Los Angeles County Fire Department (LACFD) and the Los Angeles County Sheriff's Department (LACSD) for conformance review.

K. On December 29, 2020, letters were sent to all affected property owners/easement holders of the proposed project inviting them to join as co-applicants.

L. On January 7, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

M. On January 8, 2021, a Notice of Coastal Development Permit application was posted at 24000 Civic Center Way (The treatment plant site), and at the entrances of Malibu Colony and the Serra Retreat neighborhoods.

N. On February 1, 2021, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record, including the certified 2015 for the CCWTF and Addendum No. 1 thereto.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has exercised its independent judgment and analyzed the project. The Planning Commission finds that the project will not create any new significant impacts or increase the severity of impacts as compared to those that were identified in the Final CCWTF EIR, which was certified by the City of Malibu on January 12, 2015; and that none of the conditions described in CEQA Guidelines Section 15162 have occurred. The project will not cause new significant impacts not identified in the certified 2015 EIR or result in a substantial increase in the severity of previously identified significant impacts. No substantial changes have occurred with respect to the circumstances under which the approved project is undertaken which would require major revisions of the 2015 EIR due to the involvement of new significant environmental effects or an increase in severity of identified effects. There is no new information that shows that the revised project will cause new significant environmental impacts that were not already analyzed in the certified 2015 EIR. Therefore, pursuant to CEQA Guidelines Section 15164, an addendum to the 2015 EIR (Addendum No. 1) was prepared and no supplemental environmental review is required beyond this Addendum. The certified 2015 EIR and Addendum No. 1 were considered prior to approval of the project. Together they are determined to adequately satisfy all the requirements of CEQA.

SECTION 3. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to the LIP, including Sections 13.7(B) and 13.9, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 20-063 and Variance No. 20-043 for Phase 2 of the CCWTF including the location of a temporary construction trailer and other improvements at the plant site; new and modified collection and distribution pipelines; pump stations and other above-ground equipment; and related facilities, including a variance for new development within 100 feet of a stream/riparian ESHA.

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

**A. General Coastal Development Permit (LIP Chapter 13)**

1. The project includes construction of Phase 2 of the CCWTF project to expand wastewater treatment service and recycled water distribution as directed by the Water Boards and specified in the MOU. The service area for Phase 2 includes areas within the Civic Center area as well as residential areas in Malibu Colony and the Serra Retreat communities. Phase 2 includes improvements to the wastewater treatment plant and the installation of pump stations, pipelines and other collection and distribution systems in public and private roadways.

The Phase 2 Project has been reviewed for conformance with the LCP and MMC by the Planning Department, the City geotechnical staff, the City Biologist, the City Public Works Department, the LACFD and the LACSD. The project meets all development regulations of the CCWTF Institutional Overlay and the LCP with the exception of certain above-ground equipment that will be located within 100 feet of stream/riparian ESHA. However, the improvements will be entirely within the rights-of-way of existing public and private streets and will not negatively impact wetland or riparian resources. Thus, the project conforms with the City of Malibu LCP and all of its findings can be made.

2. Portions of the project are located between the first public road and the sea; however, the project will be located entirely within the roadbed and shoulder and will not impact public access and recreation in that the proposed development will not block existing public trails or recreation areas. Therefore, the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

3. The 2015 CCWTF EIR included an alternatives analysis which included conceptual alignments for Phases 2 and 3. The project as approved was determined to be the least environmentally damaging feasible alternative. As outlined in Addendum No. 1 to the 2015 EIR, the proposed Phase 2 Project substantially conforms with the original project with slight variations due to additional engineering and project definition since 2015. The project includes improvements at the treatment plant site and within existing public and private roadways and will not create new or modified environmental impacts. In addition, the project as a whole will improve environmental quality in the area by centralizing wastewater treatment and eliminating the need for individual onsite wastewater treatment systems (OWTS) which have been determined by the Water Boards to cause environmental damage. In addition, the project will provide recycled water for landscaping and other non-potable uses which will reduce reliance on limited potable water supplies. Therefore, the project is the least environmentally damaging alternative.

4. The project includes improvements at the treatment site and within previously graded and paved roadway and shoulder areas. Therefore, pursuant to LIP Sections 4.4.4(D) and (E), the project is exempt from review by the Environmental Review Board.

Where streams exist, new development is required to provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Pump Stations 1 and 3 will include small scale above-ground facilities within the 100-foot stream/riparian buffer of Malibu Creek. Above-ground features at each pump station will include a vent pipe, backup generator, transformer, switchboard/ meter, and electrical panel all located within the existing roadways. The location of pump stations at these locations is necessary to implement wastewater treatment standards as required by the Water Boards. However, the facilities will be located entirely within the graded roadway and shoulder areas and the project will not impact environmentally sensitive areas.

**B. Variance No. 20-043 for Development within 100 feet of a Stream/Riparian ESHA (LIP 4.6.1)**

1. The project is unique in that it is a public utility project intended to improve the environment and quality of life within Malibu by diverting wastewater to a centralized facility and eliminating the need for individual OWTs. The intent of the 100-foot buffer from a stream/riparian area is to provide native vegetation buffer areas to serve as transitional habitat and provide physical distance from human intrusion. Strict application of the 100-foot buffer requirement could require the placement of Pump Stations 1 and 3 outside of the roadway/shoulder area in currently undisturbed habitat areas which could potentially impact native plant or wildlife species. Placement of the pump stations within existing roadways will ensure the project does not impact native habitat areas or ESHA resources associated with Malibu Creek.

2. The City Biologist has determined that the encroachment into the 100-foot riparian buffer would not adversely impact ESHA resources located along Malibu Creek. The improvements would be located entirely within the roadway right-of-way and would not disturb any natural areas. In addition, the entire project is an effort to expand wastewater treatment capacity in the area and eliminate the need for individual OWTs and improve environmental quality. Therefore, the project will not be detrimental to the public interest, safety, health or welfare, or be detrimental or injurious to property in the vicinity.

3. The granting of the proposed variance will not constitute a special privilege to the applicant or property owner. The applicant is the City of Malibu which is undertaking the project to improve water quality in the area and satisfy the requirements of the State Water Boards. The location of Pump Stations 1 and 3 within the 100-foot buffer is necessary to enable property owners to connect to the wastewater treatment system and eliminate the need for individual OWTs which have additional environmental costs.

4. The variance would not conflict with the general purposes and intent of the LCP and would in fact be more aligned with the purposes of the LCP to protect the environment and quality of life in the City of Malibu.

5. As outlined above, Pump Stations 1 and 3 will include small scale above-ground facilities within the 100-foot stream/riparian buffer of Malibu Creek. However, they will be entirely within the graded roadbed/shoulder area and will not impact stream or riparian resources.

6. The requested variance is not associated with stringline standards. Therefore, this finding does not apply.

7. The plant site is within the CCWTF Institutional Overlay which specifically allows wastewater treatment use. The LCP does not provide development standards for the pipelines, pump stations, or related facilities. The proposed variance would not authorize an unpermitted use or activity.

8. As outlined in the agenda report, the Phase 2 Project involves improvements to the existing CCWTF plant site and the installation of pipelines, pump stations and related facilities within existing street rights-of-way. All areas are previously developed and many of the facilities will be located underground. As such, the subject site is suitable for the proposed variance and this finding can be made.

9. The City Biologist, City geotechnical staff, City Public Works Department, LACFD, and LACSD reviewed the proposed project and determined it is in conformance with State and local requirements. Therefore, the proposed project complies with all applicable requirements of State and local law.

10. The proposed project does not include or encroach upon public parking. Therefore, this finding does not apply.

**C. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)**

1. The proposed project does not include residential development. Therefore, this finding does not apply.

3. The proposed project is consistent with all applicable provisions of the LCP. The project would occur within the CCWTF plant site and within existing public roadways and private roadway easements. The project has been reviewed by the City Biologist who determined that the Phase 2 Project is consistent with City goals and policies and can proceed through the planning process. The City Biologist determined that Phase 2 will eliminate and/or minimize some of the biological impacts identified in the original project. In addition, the City Biologist determined that all previously approved mitigation measures will not necessarily apply to all portions of the project and that mitigation measures that do apply would ensure that impacts to ESHA would not result. The project complies with LIP Section 4.7.

**D. Native Tree Protection (LIP Chapter 5)**

1. Improvements on the CCWTF plant site including after-the-fact approval of modular storage buildings will not result in any impacts to protected trees. Implementation of the project could affect the root zones of native trees that are along the edge of the road and could require trimming of protected trees for construction. Implementation of project conditions and Mitigation Measures BIO-8, BIO-9, BIO 11, BIO-12 and BIO-16 would require focused tree surveys, construction monitoring, construction techniques incorporated, and compliance with LCP policies related to tree protection which would minimize potential impacts to native trees.

2. Evidence in the record demonstrates that, with the incorporation of project conditions and mitigation measures, the project will have less than significant adverse impacts on protected native trees.

3. Evidence in the record demonstrates that, with the incorporation of Mitigation Measures BIO-8, BIO-9, BIO-11, BIO-12, and BIO-16 pertaining to focused tree surveys, construction monitoring, construction techniques incorporated, and compliance with LCP policies related to tree protection, Pump Stations 1 and 3 would not conflict with LIP Chapter 5 regarding Native Tree Protection.

**E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

1. Pacific Coast Highway and Malibu Canyon Road are designated as scenic roadways per the LCP. The treatment plant site is minimally visible from Pacific Coast Highway and is visible from a distance from a portion of Malibu Canyon Road. The site is also visible from the private viewing areas of the multifamily residences across Civic Center Way. Depending upon the

vantage point the site is viewed from, the appearance of the treatment plant site will be slightly modified as a result of the project, primarily due to the construction of two Biological Reactor Trains and after-the-fact approval of storage buildings. However, the overall appearance of the facility would remain essentially the same and the project would not negatively affect any scenic area, scenic road or public viewing area.

Phase 2 collection and distribution system facilities and pump stations would occur primarily at or below ground level, and when not at ground level would not be of scale to affect scenic vistas. Phase 2 facilities would be designed in compliance with the LIP and LCP/Zoning Code, and this finding can be made.

2. Evidence in the record demonstrates that the proposed project is considered the least environmentally damaging alternative and will in fact contribute to the improvement of the environment.

3. Evidence in the record demonstrates that the proposed project is not expected to have significant adverse visual impacts, there are no feasible alternatives that would avoid or lessen significant adverse visual impacts.

4. Evidence in the record demonstrates that the project as conditioned will not have significant adverse scenic and visual impacts. With the incorporation of mitigation measures outlined in the Mitigation Monitoring and Reporting Plan (MMRP) (Attachment A), potential impacts to sensitive resources (e.g., native tree protection) have been mitigated to a less than significant level.

#### **F. Hazards (LIP Chapter 9)**

1. Evidence in the record demonstrates that the proposed project will neither be subject to, nor increase the instability of the site or structural integrity, from geologic, flood, or fire hazards due to project design, location or other reasons.

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

3. Evidence in the record demonstrates that the proposed project is considered the least-environmentally damaging alternative and will in fact contribute to the improvement of the environment.

#### **F. Wastewater Treatment Systems Standards (LIP Chapter 18)**

1. The project involves the expansion of the CCWTF which became operational in 2018. As required by the MOU with the Water Boards, Phase 2 will expand treatment capacity to additional areas including Civic Center, Malibu Colony and the Serra Retreat areas. Phase 2 wastewater flows will increase by 169,359 gallons per day (gpd) which is slightly less than anticipated by the original project. The project would not serve a capacity of development that exceeds the amount allowed by the LCP.

2. Evidence in the record demonstrates that the project is consistent with the LCP. In addition, the Phase 2 improvements have been designed to meet the waste discharge requirements (WDR) established by the LARWQCB, which would consider water quality objectives established in the Basin Plan and Ocean Plan (i.e., the statewide water quality control plan that established policies and standards involving marine waters), recycled water treatment objectives set forth in Title 22 of the California Code of Regulations, and the Total Maximum Daily Load (TMDL) for nutrients that has been established for Malibu Creek and Malibu Lagoon. The WDR will also include water quality monitoring and testing requirements to meet requirements of the Prohibition as well as the regulations mentioned herein.

The project will expand wastewater collection and recycled water distribution pipelines to the property line of individual parcels within Phase 2. Individual property owners will be responsible for the improvements needed on their particular parcels to connect to the system by November of 2024. The project and its implementation will be consistent with all regulatory requirements.

3. The proposed collection and distribution systems would distribute Title 22 disinfected effluent (recycled water) from the wastewater treatment facility to various land uses for reuse purposes as well as to groundwater injection wells for protection against seawater intrusion. As outlined in the Addendum to the CCWTF Final EIR, no significant impacts on groundwater and surface water, including the ocean, would occur.

The project will not result in any significant impacts to stream or riparian habitats and all construction would be more than 100 feet from stream/riparian areas, with the exception of Pump Stations 1 and 3, which would be just inside the 100-foot buffer of Malibu Creek. However, all improvements would be located in existing roadway or shoulder area and would not negatively impact riparian habitat or water quality.

Standard conditions of approval are identified to be implemented during construction and operation, including requiring that a final grading and drainage plan be approved prior to issuance of grading permits. The plan must include an Erosion and Sediment Control Plan (ESCP) that outlines best management practices (BMPs) to minimize runoff and implement erosion and sediment controls. Therefore, the project, including any proposed new or modified method of effluent disposal, is consistent with policies requiring protection of marine resources, riparian habitat and water quality.

#### SECTION 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CDP No. 20-063 and Variance No. 20-043 subject to the conditions listed below and the Mitigation Measures included in the attached Mitigation Monitoring and Reporting Plan. All conditions contained in City Council Resolution 15-05 which approved CDP No. 13-057 and CUP No. 13-005 are incorporated by reference and remain in full force and effect, except as changed by this resolution.

SECTION 5. Conditions of Approval.

Standard Conditions

1. The scope of work approved includes construction of Phase 2 of the CCWTF project to provide tertiary treated, Title 22 recycled water for reuse and/or injection into the Civic Center Gravels of the Malibu Valley Groundwater Basin or percolation into the Winter Canyon groundwater system as follows:

Treatment Plant Site

- a. Installation of a construction trailer/field office at one of two locations on the south side of the treatment site within the existing fencing;
- b. Construction of Biological Reactor Train No. 3 and associated equipment;
- c. Construction of the Biological Reactor Train 4 structure only, including slab, perimeter walls, deck, and access hatches;
- d. Various additions and improvements including: chemical tank replacements and modifications; addition of one Membrane Bioreactor (MBR) tank; construction of Recycled Water Pump Station (RWPS) and Piping Improvements; addition of three Ultraviolet (UV) reactors; replacement of three Equalization (EQ) Basin Pumps and addition of one Pump; and addition of one Influent Pump and addition of one Membrane Thickener (MBT) tank and one MBT Permeate pump.

Collection and Distribution System

Installation of 26,000 linear feet of sewer pipeline (gravity, forcemain, and laterals) and 26,000 linear feet of recycled water pipelines in public and private roadways in the Civic Center, Malibu Colony and Serra Retreat areas as shown on Figure 2 of the agenda report.

Pump Stations

Installation of five pump stations and ancillary equipment, such as backup generators and transformers sited in above-ground storage cabinets with all equipment sited in paved or disturbed areas as much as possible, as shown on Figure 2 of the agenda report. Pump stations include the following:

- Pump Station No. 1 – Malibu Creek Pump Station
- Pump Station No. 2 – Crumpacker Road Pump Station
- Pump Station No. 3 – Malibu Lagoon Pump Station
- Pump Station No. 4 – Malibu Colony Pump Station 2
- Pump Station No. 5 – Malibu Colony Pump Station 1

Reuse/Dispersal Systems

The dispersal of additional unused recycled water into existing percolation ponds at the Treatment Plant Site and injection wells on the north side of Malibu Road. No new facilities would be constructed.

Variance No. 20-043

Variance for new development within 100 feet of a stream/riparian ESHA as described and conditioned herein.

2. Subsequent submittals for this project shall be in substantial compliance with the plans on file dated **August 31, 2020** (50% Construction Plans - Treatment Facility Expansion) and **December 11, 2020** (65% Construction Plans – Pipelines and Pump Stations) with the Planning Department. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
3. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions of approval set forth herein. The applicant shall file this form with the Planning Department prior to the issuance of any development permits.
4. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
5. The CDP shall expire if the project has not commenced within three (3) years after issuance of the permit, unless a time extension has been granted. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request. In the event of an appeal, the CDP shall expire if the project has not commenced within three years from the date the appeal is decided by the decision-making body or withdrawn by the appellant.
6. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
7. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Biologist, City Coastal Engineer, City Environmental Health Administrator, City geotechnical staff, City Public Works Department, Los Angeles County Waterworks District No. 29 and LACFD, as applicable. Notwithstanding this review, all required permits shall be secured.
8. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.
9. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission (CCC), have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
10. The property owner must submit payment for all outstanding fees payable to the City prior to issuance of any building permit, including grading or demolition.

11. No other changes to the conditions contained in CDP No. 13-057 are made by this amendment and all other findings, terms and/or conditions contained in CDP No. 13-057, including the expiration date, shall remain in full force and effect.
12. All other conditions of CDP No. 13-057 are incorporated herein by reference.
13. The property owner shall comply with all provisions of the MMC and LIP.

*Project-Specific Conditions*

14. The City of Malibu and contractor shall implement all mitigation measures specified in Addendum No. 1 to the Certified CCWTF Project EIR pursuant to the Mitigation Monitoring and Reporting Plan included as Exhibit A to this resolution which are applicable to this Phase 2 CDP.
15. The applicant shall obtain all required permits from responsible agencies.
16. Pipelines and ancillary infrastructure, such as but not limited to, pump stations and generators not located on the treatment plant site, shall be located underground whenever feasible and/or in disturbed areas as much as possible, especially under existing paving, to avoid ESHA, native trees, trails, public recreational use areas and visual impacts.
17. For pipelines and ancillary infrastructure, such as but not limited to pump stations and generators not located on the treatment plant site, any temporary impacts to ESHA from excavation, trenching or other construction disturbance shall be fully restored. Permanent impacts to or loss of ESHA shall be offset by payment of an in lieu fee in accordance with LIP Section 4.8.1(C). The applicant shall provide a preliminary calculation of any impact areas for review and approval by the City Biologist as part of the CDP application and a final calculation prior to issuance of a grading permit for the development affecting the ESHA resources.
18. Gates, fencing and walls shall comply with LIP Section 3.4.4.
19. Structures and equipment shall be designed to minimize visual impacts using methods including, but not limited to: locating development below ground level where possible; utilizing landscape screening to soften views of the development and allow it to blend with the surrounding environment; and incorporating design measures like walls, fencing, and building and lighting orientations that help to contain operational sounds and odors, screen site development from nearby properties and public viewing areas, and avoid offsite light spill.
20. The property owner/applicant or their successor shall obtain an encroachment permit from Caltrans prior to commencement of any work within the Pacific Coast Highway public right-of-way.

*Cultural Resources*

21. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in MMC Section 17.54.040(D)(4)(b) shall be followed.
22. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

*Construction and Demolition*

23. The property owner/applicant or their successor shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include, but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste Reduction and Recycling Plan (WRRP) shall be submitted to the Environmental Sustainability Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion goal.
24. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.
25. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.

*Colors and Materials*

26. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
  - a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
  - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
  - c. All windows shall be comprised of non-glare glass.

27. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.
28. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

#### *Lighting*

29. Exterior lighting must comply with the Dark Sky Ordinance and shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view.
30. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property(ies) shall not produce an illumination level greater than one foot candle.
31. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded directed downward and inward so there is no offsite glare or lighting of natural habitat areas. High intensity lighting of the shore is prohibited.
32. Motion sensor lights shall be programmed to extinguish ten minutes after activation.

#### *Biology/Landscaping*

33. The Project Engineer and City Biologist will work together to approve all work, equipment staging and materials staging areas. No new areas of disturbance for lay down areas, parking, staging, or other support areas shall be developed. Previously disturbed areas will be utilized to support these work zones. Work areas shall be clearly marked in the field to prevent impacts outside of the designated work areas.
34. Within six months of any site preparation, construction, or other site disturbance associated with the Project, a focused bat roost habitat assessment shall be conducted. The assessment shall include the Pacific Coast Highway Bridge or County Waterline bridge depending on which bridge option is selected for PL-16, and any mature trees occurring within 100 feet of any element of the Project construction of infrastructure, and trees proposed for removal. The bat maternity season (typically April 1-August 31) shall be avoided to the greatest extent feasible. If the maternity season cannot be avoided, then a focused bat survey, utilizing current ultrasonic technology, shall be conducted by a qualified biologist acceptable to the CDFW and the City. If active maternity roosts are identified, no work will continue in those areas until such time as the City authorizes re-initiation of the work in consultation with CDFW.
35. A biological monitor, approved by the City, shall be present for all construction activities within ESHA or placing piping on the PCH Pacific Coast Highway Bridge or County Waterline Bridge over Malibu Creek. Within five days prior to any work being initiated at a work site for the first time, or in the event work is stopped at a given work site for more

than five days and is re-initiated, the biological monitor shall complete a preconstruction survey to ensure wildlife species unlikely to escape on their own are not present, ensure that construction is not intruding into any environmentally sensitive areas, and that no special-status biological resources are being impacted. The biological monitor shall track compliance with the EIR biological mitigation measures and any other permit conditions that may pertain to biological resources. The monitor shall keep a daily activity log and provide the daily logs to the City Biologist on a weekly basis. Any and all violations or notable events shall be reported to the City immediately.

36. Construction activities shall avoid the nesting season for birds, generally accepted to be (February 1 (January 1 for raptors) through September 15). Should avoidance be infeasible, beginning 30 days prior to construction, a qualified biologist, approved by the City, shall conduct weekly surveys for nesting birds in all work zones and a 500-foot buffer area, with the final survey being no less than five days from the start of construction. If there is a delay of more than five days between when the nesting bird survey is performed and vegetation removal or other construction begins, it will be necessary to reconfirm whether any new nesting has occurred between the time the first nesting bird survey was performed and ground disturbance. Standard buffers for active nests are 300 feet for passerine species and 500 feet for raptors. If an active nest is identified, an appropriate buffer will be established, as determined by a qualified biologist, in consultation with CDFW, based on the sensitivity of the species and the nature of the construction activity. The contractor will be notified of active nests and directed to avoid any activities within the buffer zone until the nests are no longer considered to be active by the qualified biologist.
37. Any work resulting in materials that could potentially be discharged into jurisdictional features will adhere to strict BMPs and the requirements set forth in regulatory agency (ACOE, RWQCB, or CDFW) permits/agreements to prevent potential pollutants from entering any jurisdictional feature. Applicable BMPs to be applied will be included in SWPPP and/or WQMP. At a minimum, barriers (straw bales or sedimentation fences) will be erected between the construction site or bore sites and Winter Canyon Creek (part of Phase 1 project) prior to construction or drilling, as appropriate, to prevent released material from reaching Winter Canyon Creek (part of Phase 1 project) and associated habitats.
38. To the extent feasible, all trees that must be removed to enable construction of facilities shall be removed outside the breeding seasons for birds and bats. The City will retain a tree removal specialist to remove all trees during times when birds and bats are not breeding. In order to further minimize impacts to potentially occurring bats, a two-step process for removal of any tree that cannot be avoided shall be implemented. This will involve removing all branches less than two inches in diameter from trees that will be removed, to create a disturbance that will encourage bats to choose another roosting site after foraging that night. The following day the tree would be completely removed.
39. All construction activities that occur within or adjacent to an ESHA (including near Malibu Creek at Cross Creek Road and piping placement on the Pacific Coast Highway Bridge or County Waterline bridge) will have a biological construction monitor present. All construction activities that occur within 100 feet of an ESHA will be evaluated by the City Biologist to determine if biological monitoring of the construction activity is warranted. Biological construction monitoring would occur as needed to ensure that no direct or

indirect impacts to ESHAs occur. At a minimum, a daily monitoring log would be prepared documenting construction compliance with the biological EIR mitigation measures, and any other subsequent measures that may be added.

40. Construction fencing shall be installed prior to the beginning of construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas. The locations of construction fencing shall be determined by the City Biologist and Project Engineer. Placement will ensure no impacts occur to protected native trees or sensitive habitats.
41. The Final EIR concluded the original project would remove two protected California walnut trees and cause temporary impacts on three protected trees on the CCWTF site. Further, construction activities throughout the CCWTF site and installation of pipelines within ROWs could affect trees that are not approved for removal. Project implementation could affect root zones of native trees that are along the edge of the road and could require trimming of protected trees for construction. The Final EIR concluded this would be a potentially significant impact, however, would be reduced to less than significant with MM BIO-7 through MM BIO-16 incorporated. In addition, the LCPA/ZTA adopted with the original project requires that the project be designed to avoid impacts to protected trees to the greatest extent possible and if impacts cannot be avoided, a tree protection plan in accordance with LIP Section 5.3 and payment of in lieu fees pursuant to LIP Section 5.5.2(b) would be required.
42. Similar to the original project, Phase 2 pipelines and pump stations would be sited to avoid ESHA to the greatest extent possible, and temporary impacts to ESHAs from construction would be restored or otherwise mitigated in compliance with LIP Section 4.7.
43. To ensure that potential temporary impacts will not affect the health of trees that remain onsite, the following shall be implemented, as applicable:
  - Drainage shall be directed away from the root zones of all native trees.
  - Poisonous chemicals or materials that could be deleterious to tree health shall be discarded in approved storage containers.
  - Tree trunks shall not be used as winch supports, anchors, or signposts or for any other function.
  - The storage of vehicles, building materials, refuse, or excavated soil materials shall not occur within the protected zones of trees.
  - The use, access, or parking of heavy vehicles or equipment (e.g., backhoes, tractors) shall not occur within the protected zones of trees.
44. Prior to construction along the pipeline alignment and in collection and distribution system areas, a qualified biologist or arborist shall conduct a focused native tree survey in these areas to determine if there are any other protected native trees within the direct impact area. If it is apparent that any protected native trees not previously identified would require removal, these trees shall be reported to the City, and all mitigation measures in the tree protection plan shall be implemented for these trees pursuant to LIP Chapter 5.
45. Any construction-related activity (e.g., pruning) that encroaches into the tree protection zone of a native tree must be done using only hand-held tools. Prior to encroachment into the tree protection zone, the tree must be inspected by a qualified arborist to ensure that the

activity will not result in loss or worsen the health of the tree. This includes around any native trees (if present) potentially occurring within the collection and distribution system areas.

46. A qualified arborist or biologist shall monitor native trees that are within or adjacent to the construction area. The monitor shall be present during installation of exclusionary fencing and shall ensure that construction personnel or equipment do not encroach into sensitive areas. The monitor shall also oversee work with hand tools in the protected zone and check the exclusionary fencing weekly to ensure that the fencing remains intact during all construction phases of the Project. This includes directing construction personnel when the fencing needs repair or replacement.
47. Pursuant to LIP Chapter 5, Section 5.6.1, each affected protected tree that is not removed, but encroached upon shall be monitored annually for a period of not less than 10 years. An annual monitoring report shall be submitted for review by the City for each of the 10 years. The monitoring report shall include measurements of the tree (i.e., DBH, approximate height, and canopy width) and the relative health of each of the replacement trees, including notes regarding any damage from fire, disease, insects, or other vectors that affect health. If at any time the health of a replacement tree begins to decline beyond recovery, that tree shall be replaced in kind with an equal healthy replacement.

Monitoring reports shall be provided to the City annually and at the conclusion of the 10-year monitoring period to document the success or failure of the mitigation. If performance standards are not met by the end of 10 years, the monitoring period shall be extended until the standards are met. If any of the trees is lost or its health or vigor is worsened as a result of the proposed wastewater treatment facility, the impact shall be mitigated through replanting at a ratio of 10:1 on-site, off-site mitigation, or an in-lieu fee, consistent with LIP Chapter 5.

48. The use of pesticides, including insecticides, herbicides, rodenticides or any toxic chemical substance which has the potential to significantly degrade biological resources shall be prohibited throughout the City of Malibu. The eradication of invasive plant species or habitat restoration shall consider first the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls. Herbicides may be selected only after all other non-chemical methods have been exhausted. Herbicides shall be restricted to the least toxic product and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and use for a limited time.
49. Prior to final Planning inspection or other final project sign off (as applicable), the applicant shall submit to the Planning Director for review and approval a certificate of completion in accordance with MMC Chapter 17.53. The certificate shall include the property owner's signed acceptance of responsibility for maintaining the landscaping and irrigation in accordance with the approved plans and MMC Chapter 17.53.
50. No portion of the project development shall be placed within the protected zone of a protected native tree.
51. Invasive plant species, as determined by the City of Malibu, are prohibited.

52. Construction fencing shall be placed within five feet of the southern limits of grading. Construction fencing shall be installed prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.
53. No new landscaping is proposed with this project; therefore, none is approved. Should the applicant intend to plant any new vegetation with a potential to exceed six feet in height or an area of 2,500 square feet or more, a detailed landscaping plan shall be submitted for review and approval prior to any planting.
54. Grading and/or demolition shall be scheduled only during the dry season from April 1 – October 31. If it becomes necessary to conduct grading activities from November 1 – March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.

#### *Public Works*

#### STREET IMPROVEMENTS

55. Asphalt pavement shall be removed to neatly saw cut edges. Trench spoils shall be removed from the job site. Asphalt shall be replaced to same thickness as to the existing pavement plus (1) inch and no less than a minimum of (4) inches thick. All pavement edges must be "T" cut or grinded (12) inches on each side of trench. All grinding must be (2) inches deep. All edges shall be tack coated to ensure pavement smoothness with minimal tolerance from new to existing pavement.
56. Contractor to provide two-sack Portland cement slurry backfill for all trenches within the paved roadway. Slurry backfill shall be placed up to the bottom of the new asphalt surface allowing for the contractor to match existing asphalt plus (1) inch. Native soil backfill with a minimum 95% relative compaction is required for all trenches within non-paved sections.

#### GRADING AND DRAINAGE

57. Grading permits shall not be issued between November 1 and March 31 each year LCP Section 17.2.1. Projects approved for grading permit shall not receive grading permits unless the project can be rough graded before November 1. **A note shall be placed on the project that addresses this condition.**
58. Exported soil from a site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with the City's Local Implementation Plan (LIP), Section 8.3. **A note shall be placed on the project that addresses this condition.**
59. A Grading and Drainage plan shall be approved containing the following information prior to the issuance of grading permits for the project.

- The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks).
  - The limits of land to be disturbed during project development shall be delineated on the Grading plan and a total area shall be shown on the plan. Areas disturbed by grading equipment beyond the limits of grading, Areas disturb for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated.
  - The grading limits shall include the temporary cuts made for retaining walls, buttresses, and over excavations for fill slopes and shall be shown on the grading plan.
  - If the property contains trees that are to be protected they shall be highlighted on the grading plan.
  - If the property contains rare and endangered species as identified in the Resources study the grading plan shall contain a prominent note identifying the areas to be protected (to be left undisturbed). Fencing of these areas shall be delineated on the grading plan if required by the City Biologist.
  - Private storm drain systems shall be shown on the Grading plan. Systems greater than 12-inch diameter shall also have a plan and profile for the system included with the grading plan.
  - Public Storm drain modifications shown on the Grading plan shall be approved by the Public Works Department prior to the issuance of the Grading permit.
60. A digital drawing (AutoCAD) of the project's private storm drain system, public storm drain system within 250 feet of the property limits, and post-construction BMP's shall be submitted to the Public Works Department prior to the issuance of grading or building permits. The digital drawing shall adequately show all storm drain lines, inlets, outlet, post-construction BMP's and other applicable facilities. The digital drawing shall also show the subject property, public or private street, and any drainage easements.
61. The applicant shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template. A note shall be placed on the project plans that address this condition.

## STORMWATER

62. Prior to the approval of any permits and prior to the applicant submitting the required Construction General Permit documents to the State Water Quality Control Board, the applicant shall submit to the Public Works Department for review and approval an Erosion and Sediment Control Plan (ESCP). The ESCP shall contain appropriate site-specific construction site BMPs and developed and certified by a Qualified SWPPP Developer (QWD). All structural BMPs must be designed by a licensed California Engineer. The ESCP must address the following elements:
- a. Methods to minimize the footprint of the disturbed area and to prevent soil compaction outside the disturbed area.
  - b. Methods used to protect native vegetation and trees.
  - c. Sediment/Erosion Control.
  - d. Controls to prevent tracking on and off the site.
  - e. Non-storm water controls.

- f. Material management (delivery and storage).
- g. Spill Prevention and Control.
- h. Waste Management
- i. Identification of site Risk Level as identified per the requirements in Appendix 1 of the Construction General Permit.
- j. Landowner must sign the following statement on the ESCP:  
“I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate and complete. I am aware that submitting false and/or inaccurate information, failing to update the ESCP to reflect current conditions, or failing to properly and/or adequately implement the ESCP may result in revocation of grand and/or other permits or other sanctions provided by law.”

63. A State Construction activity permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the WDID number prior to the issuance of grading or building permits.

*Geology – Pending Geology Review*

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

*Fixed Conditions*

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

*Additional Conditions*

68. During construction activities, the contractor shall follow standard soil sampling procedures and shall report to the City any contaminants identified during testing. Contaminants shall be reported to the public within 30 days.

69. During treatment plant operation, periodic testing of emergency power generators associated with pump stations shall not occur when Webster Elementary School and Our Lady of Malibu School are in session.
70. Air quality testing and reporting shall occur on an ongoing basis during treatment plant operations.
71. Prior to the issuance of any development permit, the applicant/property owner shall provide a pre-construction assessment of the existing condition of project roadways. A copy of this assessment shall be kept on file with the City. The applicant/property owner shall be responsible for repairs of any damage to the road that may result during the construction phase of the proposed project. Any obvious damage to the road that becomes apparent during the construction phase (including, but not limited to, potholes, cracks and ripples) shall be immediately repaired by the applicants/property owner. Prior to a Planning Department final inspection, the applicant/property owner shall submit a post-construction assessment of the road to demonstrate compliance with this condition. A photo survey shall be utilized to complete this assessment.
72. At no time shall any eastbound lane along Pacific Coast Highway be closed for construction staging related to this project between the hours of 7:00 a.m. and 9:00 a.m.
73. Prior to the commencement of work, the applicant shall submit a copy of their Construction Management Plan. The Construction Management Plan shall include a dedicated parking location for construction workers, not within the public right of way.
74. A construction staging plan shall be reviewed and approved by the Planning Director prior to plan check submittal.
75. The applicant/property owner shall obtain all required permits, if any, including any necessary permits from the U.S. Army Corps of Engineers, prior to commencement of construction.
76. For the transportation of heavy construction equipment and/or material, which requires the use of oversized-transport vehicles on State highways, the applicant / property owner is required to obtain a transportation permit from the California Department of Transportation.
77. This coastal development permit shall run with the land and bind all future owners of the property.
78. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

SECTION 7. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 1<sup>st</sup> day of February 2021.

  
JEFFREY JENNINGS, Planning Commission Chair

ATTEST:

  
KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at [www.malibucity.org/planningforms](http://www.malibucity.org/planningforms). If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-05 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 1<sup>st</sup> day of February 2021 by the following vote:

AYES: 5 Commissioners: Hill, Mazza, Smith, Weil, Jennings,  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

  
KATHLEEN STECKO, Recording Secretary