

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 23-46

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF INITIAL STUDY NO. 17-002 AND NEGATIVE DECLARATION NO. 19-002 PREPARED FOR THE PROJECT PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVAL OF COASTAL DEVELOPMENT PERMIT NO. 23-046 FOR THE CHANGE IN USE FROM MOTEL AND GYM TO BED AND BREAKFAST INN, CONVERSION OF OFFICE SPACE IN THE MALIBU TIDEPool HEALTH CLUB BUILDING INTO A NEW GUEST SUITE AND AUTHORIZATION THE PLANNING DIRECTOR TO SUBMIT A LETTER OF PUBLIC CONVENIENCE OR NECESSITY FOR THE SALE OF ALCOHOL; INCLUDING GENERAL PLAN MAP AMENDMENT NO. 16-001, LOCAL COASTAL PROGRAM AMENDMENT NO. 16-001, ZONING MAP AMENDMENT NO. 15-001 TO REZONE AND CHANGE THE LAND USE DESIGNATION FROM COMMUNITY COMMERCIAL TO COMMERCIAL VISITOR SERVING-ONE FOR THE EXISTING NOBU RYOKAN MOTEL LOT (APN 4452-004-035) AND REZONE FROM COMMUNITY COMMERCIAL TO COMMERCIAL VISITOR SERVING-ONE FOR THE EXISTING MALIBU TIDEPool HEALTH CLUB LOT (APN 4452-004-034), CONDITIONAL USE PERMIT NO. 16-007 TO PERMIT THE CONVERSION OF AN EXISTING LEGAL NON-CONFORMING MOTEL (NOBU RYOKAN MOTEL) AND ADJACENT PRIVATE HEALTH CLUB (MALIBU TIDEPool HEALTH CLUB) INTO A CONJUNCTIVE BED AND BREAKFAST INN AND THE SALE OF ALCOHOL FOR ONSITE CONSUMPTION, AND LOT TIE NO. 21-001 TO HOLD THE TWO LOTS AS ONE FOR THE CONJUNCTIVE USE OF THE PROPERTIES AS A BED AND BREAKFAST INN, LOCATED IN THE COMMUNITY COMMERCIAL ZONING DISTRICT AT 22752 AND 22762 PACIFIC COAST HIGHWAY (NORTH BROADWAY VENTURES LLC AND WAVEBREAK, LLC)

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

SECTION 1. Recitals.

A. On November 2, 2015, an application for Zoning Map Amendment (ZMA) No. 15-001, Local Coastal Program Amendment (LCPA) No. 16-001 and General Plan Map Amendment (GPMA) No. 16-001 was submitted to the Planning Department by applicant, Patrick Perry and Allen Matkins, on behalf of North Broadway Ventures and LLC and Wavebreak, LLC. The application was routed to the City Environmental Health Administrator, City Public Works Department, and Los Angeles County Sheriff's Department (LACSD) for review. Coastal Development Permit (CDP) No. 23-046 was later added to the project for the change in use from motel and gym to bed and breakfast inn.

B. On December 17, 2016, Conditional Use Permit (CUP) No. 16-007 was added to the project.

- C. On March 10, 2021, Lot Tie (LT) No. 21-001 was added to the project.
- D. On December 2, 2021, a Notice of Intent to Adopt an Initial Study and Negative Declaration was published in a newspaper of general circulation within the City of Malibu. The 30-day public review period began on December 2, 2021 and ended on January 3, 2022. The State Clearinghouse public review period for agencies began on December 8, 2021 and ended on January 6, 2022 (SCH# 2021120124). Staff did not receive public comments on the project.
- E. On January 26, 2022, the proposed project was presented to the Environmental Review Board (ERB). The ERB did not have any recommendations regarding the proposed project.
- F. On March 9, 2022, the CDP application was deemed complete for processing.
- G. On July 26, 2023, Planning Department staff conducted a site visit to document site condition and surrounding area.
- H. On October 4, 2023, the applicant posted a Notice of Application for CDP on both parcels.
- I. On October 12, 2023, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- J. On November 6, 2023, the Planning Commission opened the public hearing on the subject application and continued the item to the December 18, 2023 Planning Commission meeting to address additional comments.
- K. On December 18, 2023, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

## SECTION 2. Adoption of Negative Declaration

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposed project. The Planning Department prepared an initial study (Initial Study [IS] No. 17-002) pursuant to CEQA Guidelines Section 15305. The initial study analyzed the proposed project and determined that it will not have a significant impact on the environment; subsequently, Negative Declaration (ND) No. 19-002 was prepared and circulated pursuant to CEQA Guidelines Section 15070.

On December 2, 2021, the City made IS No. 17-002 and ND No. 19-002 available to the public for the required 30-day circulation period, which concluded on January 3, 2022. The State Clearinghouse closed its review period on January 6, 2022.

The Planning Commission has considered IS No. 17-002 and ND No. 19-002. IS No. 17-002 and ND No. 19-002 reflect the independent judgment of the Planning Commission, and has been completed in compliance with CEQA, and is adequate for this project.

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

The Planning Commission further finds that less than significant impacts on the environment are expected from the project. Based on the record as a whole, there is no substantial evidence that the project, as conditioned, will have a significant effect on the environment.

### SECTION 3. Findings.

Based on the evidence contained within the record, including the agenda report for the project and the hearing on November 6, 2023, and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP), including Sections 13.7(B) and 13.9, the Planning Commission adopts and approves the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 23-046 for the change in use from motel and gym to bed and breakfast inn, interior remodel of the Malibu Tidepool Health Club building to convert interior space into a new guest suite and reconfigure the existing gym and kitchen and authorization the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol; including GPMA No. 16-001, LCPA No. 16-001, ZMA No. 15-001 to rezone and change the land use designation from Community Commercial (CC) to Commercial Visitor Serving-One (CV-1) for the existing Nobu Ryokan Motel lot (APN 4452-004-035) and rezone from CC to CV-1 for the existing Malibu Tidepool Health Club lot (APN 4452-004-034), CUP No. 16-007 to permit the conversion of an existing legal non-conforming motel (Nobu Ryokan Motel) and adjacent private health club (Malibu Tidepool Health Club) into a conjunctive bed and breakfast inn and the sale of alcohol for onsite consumption, and LT No. 21-001 to hold the two lots as one for the conjunctive use of the properties as a bed and breakfast inn, located in the CC zoning district at 22752 and 22762 Pacific Coast Highway (PCH).

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

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

LIP Section 13.9 requires that the following four findings be made for all coastal development permits.

1. The proposed bed and breakfast inn use is conditionally permitted in the CV-1 zoning district. With the approval and adoption of the proposed changes to the zoning and land use designation, the proposed use is one that is conditionally permitted within the proposed CV-1 zone and complies with the intent of the zoning provisions set forth in the MMC and the LCP. The project will conform to the MMC upon approval by the City Council and will conform with the LCP upon CCC certification of the LCPA.

2. The project is located between the first public road and the sea. The project site is located along a public road and immediately east of an existing public vertical access way. According to the LCP Park Land Maps, an existing lateral access easement has been recorded for the subject property and the neighboring contiguous properties to the east (22716, 22706, and

22664). The property owner has already offered to dedicate lateral easements from the most seaward building projection to the ambulatory mean high tide line. Therefore, the project is in conformity to the public access and recreation policies of Chapter 3 of the Coastal Act.

3. An IS-ND was prepared in accordance with CEQA guidelines. CEQA guidelines require that a range of reasonable alternatives to the project be described, or to the location of the project, which would feasibly attain most of the basic objectives of the Project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives. Based on LCP conformance review, the project as proposed will not result in any significant adverse impacts.

4. The project, IS No. 17-002 and ND-19-002 were reviewed by the ERB and no recommendations were provided.

**C. Conditional Use Permit No. 16-007 for the Operation of a Bed and Breakfast Inn and Associated Uses and Alcohol Sales (MMC Chapter 17.66)**

1. The proposed bed and breakfast inn project is a conditionally permitted use in the CV land use designation and CV-1 zoning district. Pursuant to MMC Section 17.24.030(A), onsite alcohol sales/consumption is a conditionally permitted use in the CV-1 zoning district. With the approval and adoption of the proposed General Plan land use amendment from CC to CV and the zone change from CC to CV-1, the proposed use is one that is conditionally permitted within the subject zone and complies with the intent of the Zoning provisions of the MMC and the LCP. The proposed project will conform to the MMC upon approval by the City Council and will conform with the LCP upon CCC certification of the LCPA.

2. The project is located within the commercial corridor of the city and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. The intensity and density of the proposed use is commensurate with that of the surrounding development. The project as designed and conditioned, will not have significant adverse visual impacts and will not impair the integrity and character of the zoning district.

3. The subject site is physically suitable for the proposed bed and breakfast inn and for providing alcohol service. The existing commercial development can accommodate the proposed visitor-serving commercial through the conversion of the existing motel use at 22752 PCH (Ryokan Motel) and the expansion into the private health club at the adjacent 22762 PCH (Tide Pool) to be operated conjunctively as a bed and breakfast inn. The proposed project is located within the commercial corridor of the City and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. The intensity and density of the proposed use is commensurate with that of the surrounding development. The proposed bed and breakfast inn project is suitable for providing alcohol services.

4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood. The project is located within the commercial corridor of the City and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. The intensity and density of the proposed use is commensurate with that of the surrounding development. Providing alcohol

service in association with a bed and breakfast inn is a compatible land use. The proposed bed and breakfast inn project is suitable for the consumption of alcoholic beverages.

5. The proposed bed and breakfast inn is a conditionally permitted use in the CV land use designation and CV-1 zoning district. With the approval and adoption of the proposed changes to the zoning and land use designation, the proposed use is one that is conditionally permitted within the proposed CV-1 zone and complies with the intent of the zoning provision of the MMC. The proposed project is located within the commercial corridor and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. Providing alcohol service is compatible with existing and future land uses. The proposed bed and breakfast inn is suitable for the consumption of alcoholic beverages. The proposed project is also located within the commercial corridor of the City and the surrounding development is comprised of restaurants, motels, and other commercial development. The restaurants in the surrounding zoning district also provide alcohol service. The intensity and density of the proposed use is commensurate with that of the surrounding development.

6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety. Adequate public services and utilities are available to serve the project. Utilities are available to serve the proposed project. Existing utilities already serve the existing motel and private health club on the project site. On December 14, 2017, the City Environmental Health Administrator reviewed the project and found it to meet the minimum requirements of the Malibu Plumbing Code, MMC and LCP. The subject system will meet all applicable requirements, and operating permits will be required. The proposed project does not affect solar access or adversely impact existing public and private views. The project can be accommodated by converting the use of the existing commercial development on the property with limited physical modifications. The proposed bed and breakfast inn is located within a commercial corridor and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. The intensity and density of the proposed use is commensurate with that of the surrounding development.

7. Adequate public services are available to serve the project. Access to the proposed project is from PCH, an existing public highway. The existing vehicle access from two existing driveways on PCH will remain as is. A driveway on the east is used to access 15 parking spaces on an at grade parking area at 22752 PCH (Ryokan Motel lot). A driveway on the west is used to access 10 parking spaces on an at grade parking area at 22762 PCH (Tide Pool lot).

8. The General Plan land use of the property is currently CV for the Tide Pool parcel and CC for the existing motel site. The project includes an amendment to change the land use designation of the motel site to CV, consistent with the Tide Pool parcel. The request for a conditionally permitted bed and breakfast inn with the sale of alcohol for onsite consumption on the subject property is consistent with the goals, objectives, policies, and general land uses of the Malibu General Plan and with the CV land use designation. The proposed visitor-serving bed and breakfast inn supports the General Plan's objective to permit the development of commercial visitor-serving facilities at suitable locations [LU Goal 3: LU Objective 3.2]. The bed and breakfast inn, including the sale of alcohol for onsite-consumption, would contribute to the visitor-serving areas for use by tourists. The property will not be physically altered by the conditionally permitted bed and breakfast inn use. Therefore, the proposed bed and breakfast inn, including the sale of alcoholic beverages for onsite consumption use is in alignment with the General Plan's objective

for visitor-serving facilities in suitable locations and to limit development impacts on the City's natural and environmental resources.

9. Bed and breakfast inns and alcohol service are conditionally permitted uses in the CV-1 zoning district. As conditioned, the proposed use complies with all applicable requirements of State and local law. The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the LACSD.

10. Bed and breakfast inns and alcohol service are conditionally permitted uses in the CV-1 zoning district. The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the LACSD. As conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare.

11. The proposed project is not located in an area determined by the City to be at risk from earth movement, flooding or liquefaction. Therefore, the proposed project is not at risk from earth movement, flooding, liquefaction, or other potential hazards.

#### SECTION 4. Local Coastal Program Amendment No. 16-001 Findings

LCP Amendment (LCPA No. 16-001) to amend Appendix 2 (Maps).

Based on the evidence in the whole record, the Planning Commission hereby finds as follows:

1. The proposed bed and breakfast inn use is conditionally permitted in the CV-1 zoning district. With the approval and adoption of the proposed changes to the zoning and land use designation, the proposed bed and breakfast use is one that is conditionally permitted within the proposed CV-1 zone and complies with the intent of the zoning provisions of the LCP. Additionally, the project will conform to the LCP upon CCC certification of the LCPA.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas. LUP Chapter 2 incorporates the public access policies set forth in the Coastal Act, including Public Resources Code Section 30210.

The proposed LCPA, does not impede public access to the beach, impact coastal resources, impact scenic views, or disrupt environmentally sensitive habitat areas as the proposed project does not involve any new construction or improvements outside of the existing building footprint and is not designated as ESHA. Therefore, the overall text amendment is consistent with Chapter 3 of the Coastal Act.

The proposed amendment also furthers the following relevant LUP policies and sections:

The relevant Coastal Act Policies regarding New Development are provided in LUP Chapter 5. The following LUP policies and sections apply and provide in pertinent part as follows:

- a. A.2. Visitor serving commercial uses shall be allowed in all commercial zones in the City and shall be given priority over other non-coastal dependent development.
- b. 5.11 Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent uses. All uses shall be consistent with protection of public access and ESHA.

The relevant Coastal Act Policies regarding Public Access and Recreation, and visitor serving recreational facilities and commercial uses such as hotels and motels are provided in LUP Chapter 2. The following LUP policies and sections apply and provide as follows:

- a. 30222 The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.
- b. 2.33 Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.
- c. 2.37 Priority shall be given to the development of visitor-serving commercial and/or recreational uses that complement public recreation areas or supply recreational opportunities not currently available in public parks or beaches. Visitor-serving commercial and/or recreational uses may be located near public park and recreation areas only if the scale and intensity of the visitor-serving commercial recreational uses is compatible with the character of the nearby parkland and all applicable provisions of the LCP.

#### SECTION 5. General Plan Map Amendment No. 16-001 Findings

GPMA No. 16-001 will change the land use designation of the motel site from CC to CV-1.

Based on the evidence in the whole record, the Planning Commission hereby finds as follows:

1. The GPMA will make the land use designation for the project site consistent with the LCP and the zoning designation for the property.
2. The General Plan land use designations in the area surrounding the project site are primarily commercial, with some residential. The Ryokan Motel land use designation is CC, which is intended to provide resident serving needs on land that is suitable for concentrated commercial activity but does not allow for the proposed bed and breakfast inn. The Tide Pool land use designation is CV, which is intended general commercial uses as well as for hotels, motels and bed and breakfast inns. Therefore, the GPMA is proposed to change the land use designation of the Ryokan Motel to CV, a land use designation that allows for bed and breakfast inns.
3. The project is located within the commercial corridor of the City and the surrounding development is comprised of restaurants, motels, and other commercial development, as well as multi-family residential development. The intensity and density of the proposed use is commensurate with that of the surrounding development.

4. The GPMA is consistent with the objectives, policies, general land uses and program specified in the General Plan.

LU OBJECTIVE 4.4 of the General Plan provides for successful businesses appropriate for to Malibu. To fulfil this LU Policy 4.4.3 provides: “The City shall regulate design of new bed and breakfast inns to foster “country-inn type” establishments and regulate the size and design of other hotel development to ensure development compatible with a rural residential community and discourage convention hotel developments by limiting on the same site ancillary uses such as banquet and meeting rooms and limiting restaurants to a capacity necessary to serve guests of the hotel only.”

5. The existing commercial development can accommodate the proposed visitor-serving commercial use through the conversion of the existing motel use at 22752 PCH (Ryokan Motel) and the expansion into the private health club at the adjacent 22762 PCH (Tide Pool) to be operated conjunctively as a bed and breakfast inn. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

#### SECTION 6. Zoning Map Amendment No. 15-001 Findings

The proposed Zoning Map Amendment No. 15-001 will change the zoning from CC to CV-1.

Based on the evidence in the whole record, the Planning Commission hereby finds as follows:

1. The zoning map amendment is consistent with the objectives, policies and general land uses in the General Plan, as amended by the LCP amendment.
2. The zoning map amendment will allow the MMC to be amended and be consistent with the amended LCP zoning map, and is only a corollary of that action.
3. The zoning map amendment is necessary for the proposed LCP amendment and will only be approved if the LCP amendment is approved, and on the condition that the zoning map amendment only takes effect if the LCP amendment is certified by the CCC.

#### SECTION 7. Determination of Public Convenience or Necessity.

According to the State Department of Alcoholic Beverage Control, the project site is located within a census tract that has an over-concentration of licenses; therefore, a Letter of Public Convenience or Necessity is required. Based on CUP findings in Section 3 of this resolution, the Planning Commission finds that the proposed use will not be detrimental to the public health, safety, or general welfare and is compatible with the land uses presently on the subject property and in the surrounding neighborhood. The Planning Commission hereby recommends that the City Council authorizes the Planning Director to prepare and submit a Letter of Public Convenience or Necessity for the proposed use to the State Alcoholic Beverage Control Department.

#### SECTION 8. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby recommends to the City Council the adoption of IS 17-002 and ND No. 19-

002 and approval of CDP No. 23-046, CUP No. 16-007, GPMA No. 16-001, ZMA No. 15-001, and LCPA No. 16-007, subject to the following conditions.

SECTION 9. Conditions of Approval.

*Standard Conditions*

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the project described herein. The scope of work approved includes:
  - a. The conversion of a legal nonconforming motel (Nobu Ryokan Motel) and adjacent private health club (Tidepool Health Club) to be operated conjunctively as a bed and breakfast inn with a total of 17 guestrooms with kitchen facilities, a 300 square foot gym; and a 600 square foot swimming pool;
  - b. The sale of alcoholic beverages for onsite consumption by guests only; and
  - c. Discretionary Request:
    - i. GPMA No. 16-001 to change the land use designation for the Ryokan Motel lot from CC to CV;
    - ii. ZMA No. 15-001 to change to zoning for both lots from CC to CV-1;
    - iii. LCPA No. 16-007 to change the land use designation for both lots from CC to CV-1; and
    - iv. CUP No. 16-007 for the operation of a bed and breakfast inn use in the commercial visitor serving zoning district and alcohol service.
3. Except as specifically changed by conditions of approval, the proposed use must be operated in substantial conformance with the approved scope of work, as described in Condition No. 2 and depicted on plans on file with the Planning Department date stamped **August 24, 2023**. The proposed development shall further comply with all conditions of approval stipulated in this Resolution and Department Review Sheets attached hereto. In the event project plans conflict with any condition of approval, the condition shall take precedence.
4. 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.
5. The applicant shall digitally submit a complete set of plans to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.

6. 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.
7. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
8. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Environmental Health Administrator, City Public Works Department, and LACSD, as applicable. Notwithstanding this review, all required permits shall be secured.
9. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.
10. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals have been exhausted.
11. 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.
12. Condition No. 3 of CDP No. 13-066 is hereby amended to read as follows:  
  
“Use of the existing pool is restricted to guests of the proposed bed and breakfast inn. Use of the pool by any other person or for any other purpose is not authorized under this approval.”

### **Site-Specific Conditions**

13. No off-site sale of alcohol shall be permitted. Alcohol shall only be served for room service and within the deck for bed and breakfast inn guests.
14. This CUP permits the sale and consumption of alcoholic beverages. The property owner / bed and breakfast inn operator shall obtain all necessary approvals from ABC. Once obtained, the applicant is required to provide the Planning Department a copy of the issued ABC license.
15. A copy of the current ABC license shall be kept on the premises of the establishment and be presented to City staff, including the City’s Planning Director and Code Enforcement staff, law enforcement officers or their duly authorized representatives, upon request.

16. At all times during the conduct of the permitted use, the permittee shall maintain and keep in effect valid licensing approval from ABC. Should such licensing be denied, expire or lapse at any time in the future, the approval of alcohol sale pursuant to this permit is subject to modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).
17. The approved hours of operation for the sale or serving of alcoholic beverages are limited to 10:00 a.m. to 10:00 p.m., Sunday through Thursday, and 10:00 a.m. to 11:00 p.m., Friday and Saturday.
18. No live entertainment is permitted on the property except in compliance with an approved temporary use permit provided it can be demonstrated that the noise generated from the event would be in compliance with Condition No. 20 and off-street parking spaces can be secured to accommodate the number of people expected in the event. Amplified sound may be permitted provide it is consistent with Condition Nos. 20 and 45.
19. The property owner / operator shall adhere to a “good neighbor” policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons’ compliance with the City’s noise and smoking regulations and all conditions of approval for the subject use relating to parking, smoking, litter, noise, loitering, etc.
20. Noise emanating from the premises shall not be plainly audible at a distance of five feet of any residential unit between the hours of 10:00 p.m. and 7:00 a.m., as required by MMC Section 8.24.050(L).
21. The onsite kitchen may only serve food and beverages to bed and breakfast inn guests.
22. The bed and breakfast inn operator must adhere to all laws related to the sale of alcohol. Violations of such laws may be cause for modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).
23. No other new signage is permitted under this application; a sign permit shall be submitted and approved by the Planning Department prior to installation of any new sign.
24. The landscaping plan must be revised to include a detail depicting a barrier encircling root balls to be used for all the California Sycamore trees in order to minimize potential root damage to the sidewalk and parking lot. The planting of the California Sycamore trees must be in compliance with this detail.
25. The swimming pool shall only be used by guests of the facility and no use of any kind shall be allowed later than 10:00 p.m. All pool lights must be turned off for the night no later than 10:00 p.m.
26. Special events involving non-guests shall require a temporary use permit.
27. Prior to the effective date of the coastal development permit, the property owner must pay the lower cost overnight accommodations in lieu fee in compliance with LIP Section 12.10 for the proposed increase of one room.

**Conditional Use Permit**

28. This conditional use permit may be reviewed by the Planning Director (predecessor and/or designee) and/or Planning Commission on an as-needed basis at the discretion of the Planning Director (predecessor and/or designee) or Planning Commission. Should it be determined that a review is required, the applicant shall pay the Planning Department staff site inspection fee in effect at the time of request for a site inspection. A staff planner will conduct a site visit to verify compliance with the provisions set forth in this resolution. If necessary, the Planning Director will determine whether the conditional use permit may be brought back to the Planning Commission for additional conditions to mitigate and/or prevent nuisances that were identified during the site inspection or made aware of by members of the public. Possible mitigation measures can include:
  - a. Modifying the hours of operation;
  - b. Incorporate noise mitigating measures / devices;
  - c. Traffic safety measures;
  - d. Land use intensification or reconfiguration of shared parking that would result in a parking demand greater than approved under this application; or
  - e. Other measures deemed necessary by the Planning Commission.
29. The property owner and operator shall not use the parking lot for any use other than the uses and activities explicitly permitted for the subject parcel or as permitted by a temporary use permit or filming permit. In the event the required parking is not provided onsite, the property owner shall provide a parking plan to the satisfaction of the Planning Director that all offsite parking has been secured. All parking for staff shall be provided onsite no matter what is occurring on the property.
30. The property owner and operator must secure an off-site parking area to accommodate vehicles for all events that overlap with other uses that will generate a parking demand in excess of the proposed parking spaces. A shuttle service must be provided between the off-site parking area and the subject property.
31. The conditions under which this conditional use permit may be modified by the City without the consent of the property owner or operator if the Planning Commission finds that the use is creating a nuisance.
32. A conditional use permit that is valid and in effect and was granted pursuant to the provisions of the MMC, shall run with the land and continue to be valid upon change of ownership of the land or any lawfully existing building or structure on the land.
33. This conditional use permit shall no longer be valid and in effect with the demolition of all buildings, including a major remodel constituting new development requiring a new CDP.
34. The conditional use permit may be revoked if the Planning Commission finds that one or more of the following conditions exists:
  - a. The conditional use permit was obtained in a fraudulent manner.
  - b. The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.
  - c. One or more of the conditions found within this resolution have not been substantially met.

35. The conditional use permit is subject to Planning Commission revocation should the use for which the conditional use permit was granted cease for six successive calendar months, except in the case of a natural disaster.

*Trash Storage Areas*

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

*Outdoor Material Storage*

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

*Alcohol Services*

41. This CUP permits the sale and consumption of alcoholic beverages with an approved ABC license. The property owner/tenant shall obtain all necessary approvals from ABC. Once obtained, the applicant is required to provide the Planning Department a copy of the issued ABC license.
42. A copy of the current ABC license shall be kept on the premises of the establishment and be presented to City staff, including the City's Planning Director and Code enforcement staff, law enforcement officers or their duly authorized representatives, upon request.
43. At all times during the conduct of the permitted use, the permittee shall maintain and keep in effect valid licensing approval from ABC. Should such licensing be denied, expire, or lapse at any time in the future, the approval of alcohol sale pursuant to this permit is subject to modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).
44. The property owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties, and to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and all conditions of approval for the subject use relating to parking, smoking, litter, noise, loitering, etc.
45. Noise emanating from the premises shall not be audible at a distance of five feet of any residential unit between the hours of 10:00 P.M. and 7:00 A.M., as required by MMC Section 8.24.050(L).

46. Amplified sound outdoors is prohibited, except that ambient music is allowed in the swimming pool and deck areas, as long as it is not audible within five feet of any neighboring building, and the applicant prepares a noise study.
47. The property owner/tenant shall comply with the requirements set forth in MMC Chapter 9.28 (Plastic Bag Ban). No retail establishment, restaurant, vendor, or nonprofit vendor shall provide plastic bags or compostable bags to customers. This requirement applies to plastic or compostable bags provided at the point of sale for the purpose of carrying away goods.
48. No restaurant, food packager, retail food vendor, or nonprofit food provider shall provide prepared food to its customers in any food packaging that utilizes expanded polystyrene. "Expanded polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.
49. The property owner / tenant shall comply with the requirements set forth in MMC Chapter 9.24 (Ban on Plastic Food Packaging and Other Plasticware). No retail establishment, restaurant, vendor or nonprofit shall provide plastic beverage straws, plastic stirrers, or plastic cutlery to customers.
50. Staff shall inspect the property as needed after approval of the CUP to verify compliance with the conditions of approval.
51. The Planning Department shall conduct a review of bed and breakfast inn operations and compliance with conditions of approval. The report shall be presented to the Planning Commission five years after CUP approval.

### **Sheriff's Department**

52. The tenant must adhere to all laws related to the sale of alcohol. Violations of such laws may be cause for modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C).

### ***Deed Restrictions***

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

***Lot Tie Agreement***

54. The property owner(s) are required to execute and record a covenant and agreement to hold the subject properties identified as 22752 and 22762 PCH as one parcel to guarantee that no portion of the bed and breakfast inn or the private health club shall be sold separately for the life of the use. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning approval and effective date of the use.

***Fixed Conditions***

- 55. This conditional use permit shall run with the land and bind all future owners of the property.
- 56. 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 6. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 18<sup>th</sup> day of December 2023.



\_\_\_\_\_  
KRAIG HILL, Planning Commission Chair

ATTEST:



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REBECCA EVANS, Recording Secretary

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 23-46 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 18<sup>th</sup> day of December 2023 by the following vote:

AYES:	3	Commissioners: Hill, Mazza, Peak
NOES:	2	Commissioners: Leonard, Smith
ABSTAIN:	0	
ABSENT:	0	



\_\_\_\_\_  
REBECCA EVANS, Recording Secretary