

Council Agenda Report

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

Prepared by: Kelsey Pettijohn, City Clerk

Approved by: Steve McClary, City Manager

Date prepared: August 30, 2023 Meeting date: September 11, 2023

Subject: Second Reading and Adoption of Ordinance No. 509

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 509, an ordinance of the City of Malibu amending Zoning Map Amendment (ZMA) No. 17-002 and Zoning Text Amendment (ZTA) No. 20-001 to effectuate previous amendments made to Local Coastal Program Amendment (LCPA) No. 16-006 for the Sea View Hotel Project as adopted by Ordinance No. 491 on September 13, 2021 and amended by Ordinance No. 508 on July 10, 2023 pursuant to the conditional certification action taken by the California Coastal Commission (CCC) on February 8, 2023 to rezone and change the land use designation of the properties located at 22741 and 22729 Pacific Coast Highway from Community Commercial (CC) to Commercial Visitor Serving-2 (CV-2), a new Seaview Hotel Overlay District with associated development standards, including a proposed floor area ratio of 0.52 for the public benefits provided by the project (the amendments to the ZMA and ZTA are corollary to LCPA and will not be effective until the LCPA is certified by the CCC), and finding the action to require no further environmental review and/or to be exempt from such review under the California Environmental Quality Act (CEQA).

FISCAL IMPACT: As described in the Council's September 13, 2021, staff report, the applicant for ZMA No. 17-002, ZTA No. 20-001, LCPA No. 16-006 and associated Coastal Development Permit (CDP) No. 17-086 would contribute a fee of \$110,000, in-lieu of providing six lower cost overnight visitor accommodations. The City would be able to transfer these funds to a public agency, nonprofit organization, or private entity after entering a Memorandum of Understanding or other contractual agreement that requires use of the funds for construction of lower cost overnight visitor accommodations in the Malibu/Santa Monica Mountains coastal zone area of Los Angeles County or Ventura County and which requires that the accommodations remain lower cost. However, the transfer of funds is not required, and the funds could be deposited into the General Fund

Undesignated Reserve. In addition to the ZMA, ZTA, LCPA and CDP, associated Development Agreement (DA) No. 21-001 stipulated that the applicant would also contribute \$800,000 to the City for public benefits at the time the construction permits are issued for the associated project. Pursuant to General Plan Section 1.5.0, public benefits shall include physical improvements dedicated and reserved for public use, including, but not limited to, open space, wetlands, trails and walkways, parks, athletic fields, and civic or public buildings (such as senior centers, youth facilities, city hall, etc.). These funds would total \$910,000 and must be deposited into a General Fund Designated Reserve for a public benefit purpose. In 2021, the applicant forecasted that the project would generate over \$1.0 million in Transient Occupancy Tax (TOT) revenue annually; however, this projection was not confirmed by staff at the time as nightly room rates or the occupancy projections were unknown.

The CCC's actions on February 8, 2023, modified the LCPA and included additional financial contributions associated with the project. CCC Modification No. 3 to the LCPA included an \$800,000 fee to be paid by agreement between the CCC and the applicant to fund new lower cost overnight visitor accommodations elsewhere in the Malibu/Santa Monica Mountains coastal zone. The CCC described that the payment could be directed toward a public project to implement affordable visitor-serving accommodations in the area. In addition, the CCC described a commitment made by the applicant to provide \$250,000 to a nonprofit organization that provides free surf lessons and transportation to beaches in the Malibu area for children in underserved communities in the general Los Angeles area. These additional fees totaling \$1,050,000 would be submitted directly to the CCC and Los Courage Camps per the CCC's proposed modifications.

In total, the applicant will be contributing \$1,960,000.

WORK PLAN: This item was not included in the Adopted Work Plan for FY 2022-2023. This project is part of normal staff operations. Staff continue to work on ongoing projects and normal business while the FY 2023-24 Work Plan is finalized.

DISCUSSION: On August 28, 2023, the Council introduced on first reading Ordinance No. 509.

ATTACHMENT: Ordinance No. 509

ORDINANCE NO. 509

AN ORDINANCE OF THE CITY OF MALIBU AMENDING ZONING MAP AMENDMENT NO. 17-002 AND ZONING TEXT AMENDMENT NO. 20-001 TO TITLE 17 (ZONING) OF THE MALIBU MUNICIPAL CODE TO EFFECTUATE PREVIOUS AMENDMENTS MADE TO LOCAL COASTAL PROGRAM AMENDMENT NO. 16-006 FOR THE SEA VIEW HOTEL PROJECT AS ADOPTED BY ORDINANCE NO. 491 ON SEPTEMBER 13, 2021 AND AMENDED BY ORDINANCE NO. 508 ON JULY 10, 2023 PURSUANT TO THE CONDITIONAL CERTIFICATION ACTION TAKEN BY THE CALIFORNIA COASTAL COMMISSION ON FEBRUARY 8, 2023 IN ORDER TO OBTAIN FINAL CERTIFICATION OF THE SUBMITTED LOCAL COASTAL PROGRAM AMENDMENT APPLICATION TO REZONE AND CHANGE THE LAND USE DESIGNATION OF THE SUBJECT PROPERTIES FROM COMMUNITY COMMERCIAL TO COMMERCIAL VISITOR SERVING-2, A NEW SEAVIEW HOTEL OVERLAY DISTRICT WITH ASSOCIATED DEVELOPMENT STANDARDS, INCLUDING A PROPOSED FLOOR AREA RATIO OF 0.52 FOR THE PUBLIC BENEFITS PROVIDED BY THE PROJECT (GREY GRANITE, LLC; LAS TUNAS BEACH, LLC; AND SEA VIEW TERRACE, LLC); AND FINDING THE ACTION TO REQUIRE NO FURTHER ENVIRONMENTAL REVIEW AND/OR TO BE EXEMPT FROM SUCH REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Findings.

A. On September 13, 2021, the City Council adopted Ordinance No. 491 approving Local Coastal Program (LCP) Amendment (LCPA) No. 16-006, Zoning Map Amendment (ZMA) No. 17-002, Zoning Text Amendment (ZTA) No. 20-001, and Development Agreement No. 21-001 to amend the LCP Land Use Map and Malibu Municipal Code (MMC) Zoning Map to revise the zoning designation from Community Commercial (CC) to Commercial Visitor Serving-2 (CV-2), amend the LCP Local Implementation Plan (LIP) and MMC and to create a new Seaview Hotel Overlay District with associated development standards, including the proposed floor area ratio of 0.52 for the public benefits provided by the project for 22741 and 22729 Pacific Coast Highway (PCH).

B. On February 8, 2023, the California Coastal Commission (CCC) took action to conditionally certify the City's LCPA for Ordinance No. 491, with amendments (CCC LCPA No. LCP-4-MAL-21-0073-2).

C. On April 24, 2023, the City Council received a status update regarding the LCPA, reviewed the CCC's amendments for conditional certification and considered staff's requests to either prepare an ordinance to accept the modified LCPA or prepare a resolution to withdraw the City's submitted LCPA with the City Council's stated findings. The City Council took no action

and directed staff to work with the applicant for the Seaview Hotel LCPA and the CCC to see if action could be taken that would potentially make the LCPA acceptable to the City Council.

D. On May 22, 2023, the City Council made a motion to bring back the LCPA to receive a report on the status and provide the City Council an opportunity to provide direction.

E. On June 12, 2023, the City Council received a status update regarding the LCPA and directed staff to prepare an ordinance accepting the modified LCPA.

F. On July 10, 2023, the City Council adopted Ordinance No. 508 amending LCPA No. 16-006 as adopted by Ordinance No. 491 (Exhibits A, B and C to Ordinance No. 491) pursuant to the conditional certification action taken by the CCC on February 8, 2023 in order to obtain final certification of the submitted LCPA application to amend the LCP Land Use Map to revise the zoning designation from CC to CV-2, amend the LCP Local Implementation Plan (LIP) and to create a new Sea View Hotel Overlay District with associated development standards, including the proposed floor area ratio of 0.52 for the public benefits provided by the project for 22741 and 22729 PCH.

G. On August 3, 2023, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold public hearings on August 28, 2023 to consider the proposed Ordinance amending ZMA No. 17-002 (Exhibits B and C to Ordinance No. 491) and ZTA No. 20-001 and (Exhibit D to Ordinance No. 491) to effectuate previous amendments made to LCPA No. 16-006 for the Sea View Hotel Project as adopted by Ordinance No. 491 on September 13, 2021 and amended by Ordinance No. 508 on July 10, 2023 pursuant to the conditional certification action taken by the CCC on February 8, 2023 to rezone and change the land use designation of the properties located at 22741 and 22729 Pacific Coast Highway from CC to CV-2, a new Seaview Hotel Overlay District with associated development standards, including a proposed floor area ratio of 0.52 for the public benefits provided by the project.

H. On August 28, 2023, the City Council held a duly noticed public hearing on the proposed Ordinance amending ZMA No. 17-002 (Exhibits B and C to Ordinance No. 491) and ZTA No. 20-002 (Exhibit D to Ordinance No. 491) as adopted by Ordinance No. 491, reviewed and considered written reports, public testimony, and related information. In addition, the Council introduced on first reading and adopted the Ordinance.

I. On September 11, 2023, the City Council held a duly noticed public hearing on the proposed Ordinance amending ZMA No. 17-002 (Exhibits B and C to Ordinance No. 491) and ZTA No. 20-001 and (Exhibit D to Ordinance No. 491) as adopted by Ordinance No. 491, reviewed and considered written reports, public testimony, and related information and conducted a second reading of the Ordinance. If the City Council adopts the ZMA and ZTA as amended herein, the amendments will not be effective until LCPA No. 16-006 is certified by the CCC.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in California Environmental Quality Act (CEQA), the City Council has analyzed the amended ZMA and ZTA herein and makes the following findings. Pursuant to Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City Council as necessary for the preparation and adoption of an LCPA. The proposed Council action is to adopt corollary amendments to the Title 17 (Zoning) of the MMC to effectuate previous amendments made to LCPA No. 16-006 as adopted by Ordinance No. 491 on September 13, 2021 and amended by Ordinance No. 508 on July 10, 2023 pursuant to the conditional certification action taken by the CCC on February 8, 2023 (CCC LCPA No. LCP-4-MAL-21-0073-2).

Further, the City Council's action, including without limitation, direction to prepare an Ordinance were adequately covered in Initial Study (IS) No. 21-001 and Mitigated Negative Declaration (MND) No. 21-001 for the Sea View Hotel (SCH #2012041087), adopted by the City Council on September 13, 2021 (Resolution No. 21-45). The City Council's action is not a separate "project" for CEQA purposes but rather a subsequent discretionary action related to a previously approved project (CEQA Guidelines § 15378(c)). Additionally, pursuant to CEQA Guidelines Section 15162, and based on the review of the entire record, including without limitation, the IS/MND, the City Council finds that the proposed action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the IS/MND due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that shows the project will have one or more significant effects not discussed in the IS/MND. Pursuant to CEQA Guidelines §15162(b), the City Council finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the City Council's action is merely a step toward furtherance of the original project for which environmental review was performed, no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

SECTION 3. ZMA No. 17-002 Findings.

The amendments to the MMC will effectuate previous amendments made to LCPA No. 16-006 for the Sea View Hotel Project as adopted by Ordinance No. 491 on September 13, 2021 and amended by Ordinance No. 508 on July 10, 2023 pursuant to the conditional certification action taken by the CCC on February 8, 2023. The ZMA will allow the maps of the MMC to be amended consistent with amended LCPA No. 16-006 and is only corollary of that action. Based on evidence in the whole record, the City Council hereby finds that the proposed ZMA meets the requirements of and is in compliance with the General Plan as follows and hereby amends the Zoning Map as set forth in Exhibits A and B:

A. The ZMA is consistent with the objectives, policies and general land uses in the General Plan, as amended by the LCPA.

B. The ZMA will allow the MMC to be amended and be consistent with the amended LCP zoning map, and is only a corollary of that action.

C. The ZMA is necessary for the proposed LCPA and will only be approved if the LCPA is approved, and on the condition that the ZMA only take effect if the LCPA is certified by the CCC.

SECTION 4. Zoning Map Amendments.

A. That the Zoning Map (Exhibit A) be modified as follows, which amends the proposed regulations included in Ordinance No. 491 (Exhibit B to Ordinance No. 491), corollary to amendments made to LCPA No. 16-006 in Ordinance No. 508:

Depict the Sea View Hotel Overlay District site as two parcels and add corresponding addresses and assessor parcel numbers (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017).

B. That the Sea View Hotel Overlay District Map (Exhibit B) be modified as follows, which amends the proposed regulations included in Ordinance No. 491 (Exhibit C to Ordinance No. 491), corollary to amendments made to LCPA No. 16-006 in Ordinance No. 508:

Depict the Sea View Hotel Overlay District site as two parcels and add corresponding addresses and assessor parcel numbers (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017) to differentiate which parcels are subject to the Sea View Hotel Overlay District.

SECTION 5. ZTA 20-001 Findings.

Pursuant to MMC Section 17.74.040, the City Council hereby makes the following findings:

A. The subject ZTA is consistent with the objectives, policies, general land uses and programs specified in the General Plan. The proposed amendment serves to enhance the Malibu General Plan Mission Statement, protect public safety and preserve Malibu's natural and cultural resources. The amendments to the MMC will effectuate previous amendments made to LCPA No. 16-006 for the Sea View Hotel Project as adopted by Ordinance No. 491 on September 13, 2021 and amended by Ordinance No. 508 on July 10, 2023 pursuant to the conditional certification action taken by the CCC on February 8, 2023. The ZTA will allow the text of the MMC to be amended consistent with amended LCPA No. 16-006 and is only corollary of that action.

B. The City Council held a public hearing, reviewed the subject ZTA for compliance with the City General Plan and MMC and finds that the ZTA is consistent with the General Plan and MMC on the condition that the ZTA only take effect if LCPA No. 16-006 is certified by the CCC.

SECTION 6. Zoning Text Amendments.

A. That the title of MMC Section 17.42.020(M) (Sea View Hotel Overlay District) (Exhibit D to Ordinance No. 491) be modified as follows, which amends the proposed regulations included in Ordinance No. 491, corollary to amendments made to LCPA No. 16-006 in Ordinance No. 508:

M. Sea View Hotel Overlay District (22729 Pacific Coast Highway/APN 4452-022-010 and 22741 Pacific Coast Highway/APN 4452-022-017)

B. That Subsection 1 of MMC Section 17.42.020(M) (Development Standards for Project Site) (Exhibit D to Ordinance No. 491) be modified as follows, which amends the proposed regulations included in Ordinance No. 491, corollary to amendments made to LCPA No. 16-006 in Ordinance No. 508:

1. Development Standards for Project Site

| | |
|-----------------------------------|---|
| YARDS/SETBACKS | <i>No changes</i> |
| PROJECTIONS INTO YARDS | |
| | <p>The provisions of MMC Section 17.40.030(B) apply with the following additional provision:</p> <ul style="list-style-type: none"> • Access and exit stairs required by the Fire Department, and existing retaining walls may project without limit into required side yards. |
| SITE DEVELOPMENT CRITERIA | |
| Maximum Floor Area Ratio (F.A.R.) | <i>No changes</i> |
| Minimum Onsite Landscaping | <p>The provisions of MMC Section 17.40.080(A)(8)(b) shall not apply. The Sea View Hotel landscaping criteria are as follows:</p> <p>A minimum of 8,977 square feet of landscaping at ground level. Additionally, there shall be a minimum of 2,528.6 square feet of plants in planters on the southerly seaward areas of the various decks.</p> |

| | |
|-----------------------------|--|
| Minimum Onsite Open Space | <p>The provisions of MMC Section 17.40.080(A)(8)(b) shall not apply. The Sea View Hotel open space criteria are as follows:</p> <p>A minimum of 1,313.8 square feet of private recreational area at ground level and first level reception area and 21,494 square feet at guest deck patios, not already included in landscape area, are required.</p> |
| HEIGHT | |
| Maximum Height Projections | <p>The provisions of MMC Section 17.40.080(A)(1)(a) shall not apply. The Sea View Hotel height requirements are as follow:</p> <ul style="list-style-type: none"> • New structures which have sloping roofs that slope less than 25% shall be no higher than 24 feet above the natural grade or finished grade, whichever results in a lower building height, excluding basements. • New structures which have sloping roofs that slope 25%, or more, shall be no higher than 28 feet above the natural grade or finished grade, whichever results in a lower building height, excluding basements. Areas such as elevator shafts in order to comply with ADA laws, the wooden deck above the existing tile rooftop deck, the fire exit stairs required by the Fire Department, the safety railing around the decks, and the sound wall as described in the Mitigated Negative Declaration are excluded from the referenced height restrictions. Seven-foot overhangs to eliminate sun from hitting south facing windows are excluded from the height standards. |
| SITE OF CONSTRUCTION | <i>No changes</i> |

| PARKING AND ACCESS | |
|---|---|
| Parking Requirements | <p>The provisions of MMC Sections 17.48.020 and 17.48.030 shall not apply. The Sea View Hotel parking requirements are as follows:</p> <ul style="list-style-type: none"> • 1.5 parking spaces per hotel room. • 1 space for each, per-shift employee • 1 space for each 100 square feet of gross floor area used for consumption of food or beverages. • 1 space for each 5 fixed seats, or for every 35 square feet of assembly area where there are no fixed seats in meeting rooms or other assembly areas. |
| Parking Location | <i>No changes</i> |
| Layout and Paving | <p>The provisions of MMC Section 17.48.050(C), (D) and (E) are modified or shall not apply as follows:</p> <ul style="list-style-type: none"> • The provision of MMC Section 17.48.050(D)(5) shall not apply. Tire stops are not required for valet parking spaces. • The provisions of MMC Sections 17.48.050(C) and (E) shall not apply. |
| MONUMENT SIGN AND GENERAL SIGN REQUIREMENTS | |
| | <i>No changes</i> |

C. That Subsection 2 of MMC Section 17.42.020(M) (Permitted Uses) (Exhibit D to Ordinance No. 491) be modified as follows, which amends the proposed regulations included in Ordinance No. 491, corollary to amendments made to LCPA No. 16-006 in Ordinance No. 508:

2. PERMITTED USES

The following permitted, conditionally permitted, and prohibited uses shall apply to the Sea View Hotel Overlay District. Permitted and conditionally permitted uses that are a component of the hotel development are subject to the custom development standards of this Sea View Hotel Overlay District. Permitted or conditionally permitted uses that are not a component of the hotel development are subject to all applicable policies and provisions of the MMC, including the Commercial Development Standards in MMC Section 17.40.080.

a. Permitted Uses: The uses and structures permitted within Sea View Hotel Overlay District are as follows:

i. All uses permitted in the Commercial Visitor Serving-2 (CV-2) land use zoning district, as specified in the MMC.

ii. Restaurants that are open to the general public.

No changes to iii. through xiv.

No changes to Subsection b.

c. Conditionally Permitted Uses. The following uses may be permitted subject to additionally obtaining a Conditional Use Permit in accordance with the requirements of the MMC:

i. All conditionally permitted uses in the Commercial Visitor Serving-2 (CV-2), land use zoning district, as specified in the LCP.

No changes to ii through x.

SECTION 7. Effective Date.

The Ordinance will take effect and be in force 30 days after adoption or on the date that the CCC takes action to unconditionally certify LCPA No. 16-006, whichever occurs later.

SECTION 8. Severability.

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of this Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 9. Certification.

The City Clerk shall certify the passage and adoption of this Ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2023.

BRUCE SILVERSTIEN, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, Interim City Attorney

Exhibit A

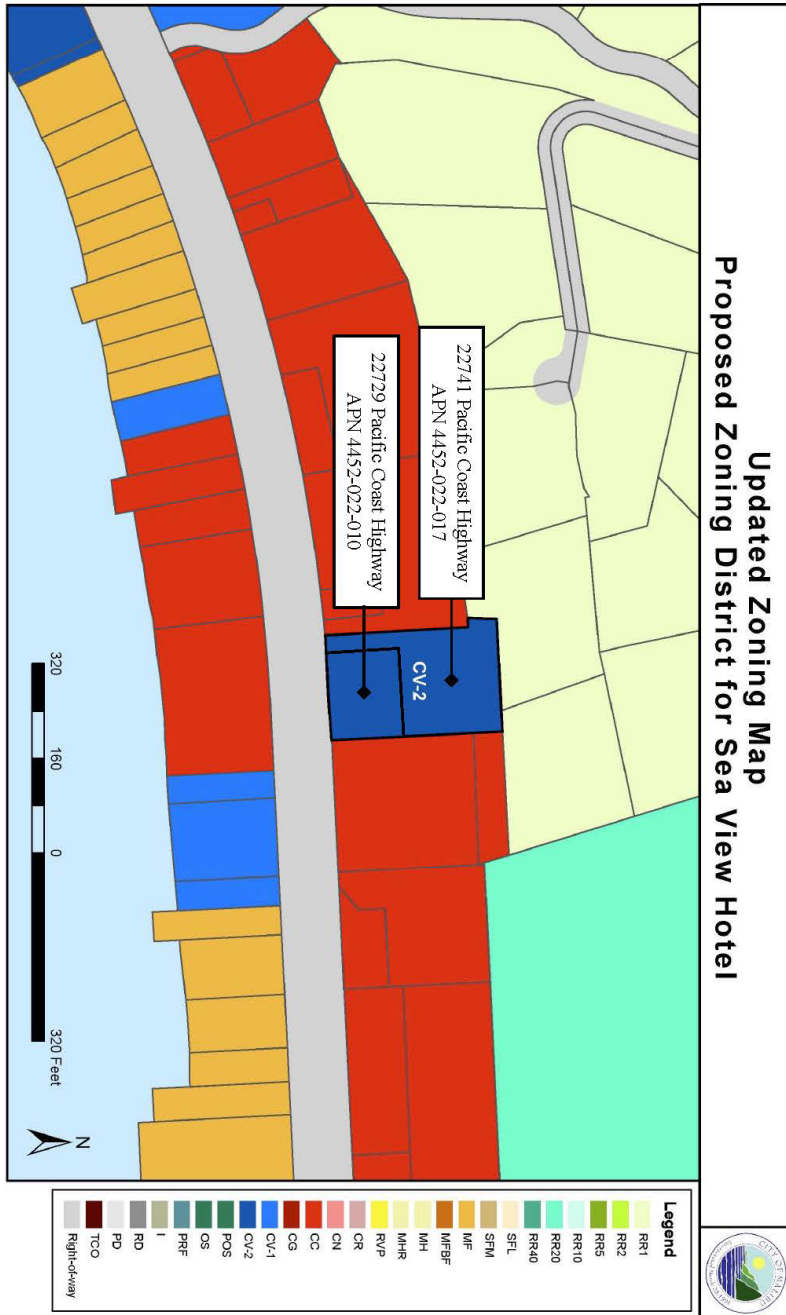


Exhibit B

