



Council Agenda Report

To: Mayor Grisanti and Honorable Members of the City Council

Prepared by: Justine Kendall, Associate Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Lisa Soghor, Assistant City Manager

Date prepared: May 28, 2021 Meeting Date: June 14, 2021

Subject: Appeal Nos. 19-004 and 19-003 - Appeals of Planning Commission Resolution Nos. 19-19 and 19-17 (22853 Pacific Coast Highway, Appellant/Property Owner; MB North Lot (DE) LLC and 22878 Pacific Coast Highway, Appellant/Property Owner; Mani MBI (DE), LLC)

RECOMMENDED ACTION: 1) Adopt Resolution No. 21-24 (Exhibit A), denying Appeal No. 19-003 and denying Coastal Development Permit (CDP) No. 17-092, an application to allow the Malibu Beach Inn to construct a new swimming pool and pool deck with dining service in the location of required parking, remodel and convert approximately 268 square feet of office and storage room into bathroom facilities and an equipment room, and reconfigure the onsite wastewater treatment system (OWTS), Joint Use Parking Agreement (JUPA) No. 17-001 to allow a portion of the property's required onsite parking to be located offsite at 22853 Pacific Coast Highway (PCH) (Hertz Rental Car), and Lot Tie (LT) No. 17-001 to hold 22878 PCH and 22853 PCH as one lot located in the Commercial Visitor Serving – 2 (CV-2) zoning district at 22878 PCH (Mani MBI (DE), LLC); and 2) Adopt Resolution No. 21-25 (Exhibit B), denying Appeal No. 19-004 and denying CDP No. 17-091 which includes JUPA No. 17-001 to allow the Malibu Beach Inn to locate required parking on the Hertz site and LT No. 17-001 to hold 22878 PCH and 22853 PCH as one lot, located in the Community Commercial (CC) zoning district at 22853 PCH (MB North Lot (DE), LLC).

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was not included in the adopted Work Plan for Fiscal Year 2021-2021.

DISCUSSION On March 22, 2021, the City Council 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. The City Council deliberated and directed staff to return with updated resolutions denying both appeals and the entitlements listed above due to the inability to make the required findings. In particular, the Council cannot make the finding required by LIP section 13.9(A), as the project has not demonstrated a legal and safe pedestrian path of travel to the offsite parking that does not exceed 300 feet as required by LIP Section 3.14.5(A)(1). The proposed path does not reach the hotel building which is the use for which the parking is required (parking lot is not the use), nor does the proposed path reach all required parking spaces.

In addition, the finding required by LIP section 13.9(C) cannot be made as the project does not represent the least environmentally damaging alternative. A project which does not displace required parking to an offsite location, such as a pool proposed on the roof or a smaller pool/deck, or the potential use of a shuttle is less environmentally damaging due to the risks posed by relocating parking to an offsite location that requires maneuvering vehicles across PCH, a congested highway in a short distance, the introduction of vehicle and pedestrian traffic to this central artery, and the potential public safety impacts involved.

Furthermore, the proposed project would be dependent on a condition that requires only moving vehicles across PCH, the most significant arterial roadway in the City, exclusively during off-peak traffic hours. This would be nearly impossible to enforce, especially on weekends and after hours. Non-compliance with that condition would create unsafe conditions for both employees and the public, impact the upcoming traffic synchronization project due to valets or employees requesting access to the crosswalk, and negatively impact traffic, circulation, and emergency access. The written findings for denial of the appeals and project are included in the attached resolutions.

EXHIBITS:

- A. City Council Resolution No. 21-24
- B. City Council Resolution No. 21-25

RESOLUTION NO. 21-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 19-003; AND DENYING COASTAL DEVELOPMENT PERMIT NO. 17-092, AN APPLICATION TO ALLOW THE MALIBU BEACH INN TO CONSTRUCT A NEW SWIMMING POOL AND POOL DECK IN THE LOCATION OF REQUIRED PARKING, REMODEL AND CONVERT APPROXIMATELY 268 SQUARE FEET OF OFFICE AND STORAGE ROOM INTO BATHROOM FACILITIES AND AN EQUIPMENT ROOM, AND RECONFIGURE THE ONSITE WASTEWATER TREATMENT SYSTEM, AND TO ALLOW A PORTION OF THE PROPERTY'S REQUIRED PARKING TO BE LOCATED OFFSITE AT 22853 PACIFIC COAST HIGHWAY (PCH); JOINT USE PARKING AGREEMENT NO. 17-001; AND LOT TIE NO. 17-001 TO HOLD 22878 PCH AND 22853 PCH AS ONE LOT LOCATED IN THE COMMERCIAL VISITOR SERVING-TWO ZONING DISTRICT AT 22878 PCH (MANI MBI (DE), LLC)

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

SECTION 1. Recitals.

A. On October 15, 1987, the California Coastal Commission (CCC) issued Coastal Development Permit (CDP) No. 05-87-576 for the construction of a 3 story, 32-foot in height, 47-room hotel, along with a viewing deck and seawall, with 52 parking spaces (including tandem) including the use of valet parking at 22878 Pacific Coast Highway (PCH).

B. On June 19, 2006, the Planning Commission adopted Resolution No. 06-46 approving CDP No. 06-011 and Conditional Use Permit (CUP) No. 06-001 permitting the construction of the porte-cochere, interior remodel of the hotel to accommodate an ancillary restaurant with a 196 square foot kitchen and 42 seats within a total of approximately 563 square feet of dining area, including indoor and outdoor seating on the western portion of the existing patio, and installation of a new wastewater treatment system (OWTS) to replace a failed OWTS in the western parking lot. The restaurant was conditioned to serve hotel guests and invitees only.

C. On August 6, 2015, an application for Administrative Plan Review (APR) No. 15-065 and Conditional Use Permit Amendment (CUPA) No. 15-004 was submitted to the Planning Department by the applicant, Burdge and Associates Architects, Inc., on behalf of property owner, Mani MBI(DE), LLC. The application was routed to the City Biologist, City Coastal Engineer, Environmental Health Administrator, City Geotechnical staff, City Public Works Department, and Los Angeles County Fire Department (LACFD) for review.

D. Staff determined that, after the submittal of project revisions, the project scope was no longer exempt from a CDP. As a result, on October 4, 2017, an application for CDP No. 17-092 was submitted to the Planning Department by the applicant, Burdge and Associates Architects, Inc., on behalf of property owner, Mani MBI (DE), LLC. The applicant also submitted Variance (VAR) No. 15-041, VAR No. 17-037, Lot Tie (LT) No. 17-001, and a Joint Use Parking Agreement (JUPA) No. 17-001. The application was routed to the City Biologist, City Coastal Engineer, Environmental Health Administrator, City Geotechnical staff, City Public Works Department, and LACFD for review.

E. On October 12, 2017, 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.

F. On November 2, 2017, the applicant submitted CUP No. 17-012 to address the amortization provisions of Malibu Municipal Code (MMC) Section 17.60.040(C)(4).

G. On November 6, 2017, the Planning Commission continued the item to a date uncertain.

H. On November 9, 2017, 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.

I. On December 4, 2017, the Planning Commission continued the item to the December 18, 2017, Regular Planning Commission hearing.

J. On December 18, 2017, 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. At that meeting the item was continued to a date uncertain to allow the applicant time to address the issues raised at that hearing.

K. On July 12, 2018, 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.

L. On August 6, 2018, the Planning Commission continued the item to the August 20, 2017, Regular Planning Commission hearing.

M. On August 20, 2018, the Planning Commission continued the item to the November 5, 2018, Regular Planning Commission hearing.

N. On November 5, 2018, the Planning Commission continued the item to the November 19, 2018, Regular Planning Commission hearing.

O. On November 15, 2018, the November 19, 2018 Regular Planning Commission meeting was cancelled due to the Woolsey Fire.

P. On December 27, 2018, 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 and all interested parties.

Q. On January 22, 2019, the Planning Commission continued the item to the March 4, 2019, Regular Planning Commission hearing.

R. On March 4, 2019, 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. At that meeting the Planning Commission directed staff to return with a resolution approving the CUP application for the continued operation of the hotel and restaurant and separate resolution denying the construction of the pool, pool deck, and associated development as well as the JUPA.

S. On April 15, 2019, revised Planning Commission Resolution No. 19-17 was presented to the Planning Commission as a consent item. The Planning Commission adopted Planning Commission Resolution No. 19-17 to deny CDP No. 17-092, JUPA No. 17-001 and LT No. 17-001 and adopted Planning Commission Resolution No. 19-16 approving CUP No. 17-012.

T. On April 24, 2019, Mani MBI (DE), LLC, filed a timely Appeal No. 19-003 of Planning Commission Resolution No. 19-17.

U. On October 28, 2019, a Notice of City Council 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 and all interested parties.

V. On November 25, 2019, the City Council continued the item at the request of the Appellant in order for them to provide additional materials in support of the appeal.

W. On February 25, 2021, a Notice of City Council 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 and all interested parties.

X. On March 22, 2021, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed, and considered written reports, public testimony, and other information in the record. The City Council deliberated and voted 4-0 directing staff to return with an updated resolution on the Consent Agenda denying the appeal.

Y. On May 13, 2021, the City Council continued the item.

Z. On June 14, 2021, the City Council reviewed the materials in the record and based thereon takes the following action.

SECTION 2. Appeal of Action.

The appeal filed by the Appellant, Mani MBI (DE), LLC, on April 24, 2019, contends that the Planning Commission's denial of the project is not appropriately supported by findings or evidence, and is contrary to law; that the project does comply with the LCP and MMC; that the project is the least environmentally damaging alternative; and that the Appellant's civil rights, specifically its right to equal protection of the laws, was violated.

SECTION 3. Findings for Denial of Appeal.

Based on evidence in the record, including the City Council agenda report for the subject project

presented at the City Council meeting of March 22, 2021 and the hearing conducted on that date, the City Council hereby determines that Appellant has failed to establish that the proposed project satisfies all requirements of applicable law. The reasons for the City Council's decision include, but are not limited to, the following:

A. Appellant has failed to establish that the proposed project is consistent with LIP sections 3.14.5(A)(1) and 3.14.5(A)(2). Among other things, Appellant has failed to establish the proposed off-site parking is no farther than 300 feet from the use it is required to serve, measured along a legal and safe pedestrian path from the parking space to the nearest entrance of the building or use for which the parking is required. More specifically, Appellant failed to establish, among other things, that the "legal and safe pedestrian path" proposed by Appellant is legal and safe and/or was measured from, and to, appropriate locations. Instead, Appellant proposed an unrealistic pedestrian path that did not account for the manner by which ordinary human beings walk from one location to another, measured the proposed pedestrian path only from the proposed valet stand, not from the hotel entrance or even the hotel building, and concluded the measurement at the tip of the single parking space in the proposed parking lot that was closest to the hotel without regard to the balance of the parking spaces. The proposed pedestrian path also does not provide for a safe pedestrian path that allows pedestrian movement in both directions without exceeding 300 feet. As proposed, pedestrians travelling in opposite directions would have to walk into each other if they stayed on the identified pedestrian path. Additionally, the proposed pedestrian path would require a pedestrian to walk on the very edge of the crosswalk which is not safe and also would not be a feasible path for a patron using a wheelchair, as not only would such travel be infeasible and unsafe, it also does not terminate at the lowest point of the ADA accessible curb cuts at either end of the crosswalk. Pursuant to LIP section 13.9(A)(1) the City Council cannot approve a proposed project without finding, among other things, that the project conforms to the City LIP. Appellant failed to persuade the City Council to make that finding in this case based upon, among other things, Appellant's failure to establish that the proposed project is consistent with LIP sections 3.14.5(A)(1) and 3.14.5(A)(2) for the reasons discussed above. Without approval of the offsite parking the hotel would become under-parked, and the scope of work included in CDP No. 17-092 would not conform to the LCP or MMC.

The City Council also has determined that the proposed off-site parking operation poses traffic, safety, and circulation problems. Pacific Coast Highway is the central artery of the City and traffic and circulation issues on PCH, particularly in this area, are of critical importance to the City. Per Chapter 4.2.1 of the City of Malibu General Plan, PCH, "(State Route 1) is a four-lane state highway traversing the city from east to west along the Pacific Coast. . . . Within the City, PCH is about 25 miles long with a posted speed limit between 45 and 55 miles per hour. PCH is the only major arterial within the City." As PCH is the only artery through Malibu that connects the entire City, maintaining vehicle flow is critical to safety, quality of life and emergency access.

As acknowledged by the Parking Demand Study provided by the Appellant in February 2021, the City previously expressed concerns that transfers of vehicles between the hotel property and proposed off-site parking lot would cause, among other things, long "turnaround" times, interruption of the traffic flows along PCH, and/or potential safety issues due to high traffic volumes and congestion conditions throughout the day on PCH in the vicinity of the hotel and proposed off-site parking lot, particularly during the summer months. The City Council also noted that (i) having valet operators crossing PCH

as proposed, both in vehicles and as pedestrians, poses a public safety danger as this is an area heavily congested with traffic and where these additional trips could result in an increase in vehicle and pedestrian collisions, and (ii) approval of the proposed offsite parking would require the valet operators to quickly cross multiple lanes in a short distance and also trigger the operation of the crosswalk—stopping or impacting the flow of traffic as well as posing safety issues. Appellant’s proposed project, and its proposed intensification of turning movements required by the valet operation would thus increase safety risks to vehicles and pedestrians along the PCH corridor.

Per General Plan Land Use Policy 2.2.4, “The City shall manage development in accordance with the efficient operation of the traffic system and service infrastructure.” The Malibu Beach Inn Parking Demand Study details the operational plan for the valet-only parking program, which proposes to limit the transfer of vehicles between lots to non-peak traffic times by 1) prioritizing onsite spaces for short term parking and using the offsite spaces for long-term storage and 2) limiting the transferring of vehicles offsite to off-peak hours, outside the typical high traffic and congestion periods on PCH. However, enforcing a condition that requires vehicles to be moved only at off peak hours will be very difficult, if not impossible. The Appellant’s history of not complying with its CUP requirement to allow only guests to dine at the restaurant illustrates the enforcement difficulties and the fact that conditions that require constant after-hours monitoring are often unenforceable. The proposed plan has the potential of creating a material impact upon traffic on PCH. Additionally, use of the crosswalk button to create a gap in traffic for valet operators has the potential to both increase traffic on PCH and interfere with the ability to establish and achieve the goals of the City’s Capital Improvement Signal Synchronization Project or “Smart Corridor,” which is anticipated to begin construction within the year 2021. The hotel is also already significantly underparked as it only provides 59 valet-only parking spaces onsite instead of the 112 parking spaces (94 parking spaces for the rooms, 6 parking spaces for the restaurant, and 12 parking spaces for employees) that would be required by the current LIP if the hotel were being constructed today. The onsite spaces are also valet spaces and not standard stripped self-parking spaces, of which only 50 currently exist. Moving some of these spaces offsite to accommodate a deck and pool would exacerbate the nonconformity and increase the impacts of the hotel use, actions which conflict with the City’s General Plan pursuant to Land Use Policy 2.2.5, which states “The City shall evaluate effect on road capacity of traffic impacts from all sources when determining the type and intensity of land use.”. As a result, the City Council has determined that the evidence demonstrates that the offsite parking should not be approved even if the required pedestrian path described in LIP section 13.4.5(A)(1) existed.

B. Appellant states that the Planning Commission’s denial of the project lacks evidentiary support. As the City Council’s review of this project is *de novo*, this issue is moot. The City Council’s decision to deny this appeal and project is also supported by substantial evidence as described above and below, and in the record.

C. Appellant disputes the Planning Commission’s determination that the project is not the least environmentally damaging alternative, which was based on the conclusion that the project would result in the intensification of an existing use and add to traffic congestion in the surrounding area. Given the potential impacts to PCH outside the project area as discussed above, the no project alternative or an alternative that eliminates the need for offsite parking (such as locating the pool on the roof, converting other areas of the property to pool use, or proposing a smaller pool/deck area,

among other things) would be a superior project alternative and would eliminate significant potential impacts to the surrounding community. As a result, Appellant has failed to establish that the project is the least environmentally damaging alternative.

D. Appellant contends that its civil rights, and in particular its rights to equal protection under the laws, have been violated by the Planning Commission's decision. In addition to lacking both factual and legal merit, Appellant's constitutional claim is moot as a result of the *de novo* review of the project by the City Council. Nor does the City Council's denial of the Appeal violate Appellant's constitutional rights. Appellant has been afforded procedural due process and the grounds for any business to claim an Equal Protection violation are exceedingly narrow and have not been met here. Further, no offsite parking has been approved by the City to operate across Pacific Coast Highway (a state highway and the City's only major arterial) from the use it supports, and all of the examples provided by Appellant are distinguishable or unauthorized as described at the hearings on this matter and the evidence in the record.

SECTION 4. Environmental Review.

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

SECTION 5. Coastal Development Permit Findings.

Based on the evidence contained within the record and pursuant to LIP sections 13.7(B) and 13.9, the City Council adopts the analysis and the findings of fact above and below, and denies CDP No. 17-092 consisting of an application for the Malibu Beach Inn to construct a new swimming pool and pool deck in the location where required parking currently exists, remodel and convert approximately 268 square feet of office and storage room into bathroom facilities and equipment room, relocate the existing OWTS, and allow a portion of the property's required onsite parking to be located offsite at 22853 PCH, pursuant to JUPA No. 17-001 and Lot Tie No. 17-001 to hold 22878 PCH and 22853 PCH as one lot.

Appellant has failed to establish that the project, as proposed, satisfies and is consistent with the applicable law, including, but not limited to, the LCP and MMC codes, standards, goals, and policies. In addition, the Appellant has failed to establish that the proposed project represents the least environmentally damaging alternative. The reasons for denial of each entitlement are provided in more detail above and as follows:

A. General Coastal Development Permit (LIP Chapter 13)

1. Appellant has failed to establish that the proposed project complies with the parking requirements of LIP Section 3.14.3 (Specific Parking Requirements). The Appellant proposes to accommodate the displaced required parking by parking cars on 22853 PCH through the use of a JUPA, however, Appellant has failed to establish that the proposed project is consistent with LIP sections 3.14.5(A)(1) and 3.14.5(A)(2) for the reasons summarized in Section 3A above. Additionally, the proposed vehicular path of travel and proposed operation of the offsite parking has the potential to result in cumulative traffic impacts and safety risks along PCH. Noncompliance with the LCP is

discussed in greater detail in Section 3 above. As such, Appellant has failed to establish that the project conforms to the LCP and/or MMC.

2. The project is located between the first public road and the sea; however, the subject property does not contain any mapped trails as depicted on the LCP Park Lands Map. The California Coastal Commission has confirmed that the property owner has previously provided a dedicated lateral and a vertical public access easement to accommodate public access along the shoreline and to the shoreline through the hotel. These easements would be unaffected by the project. However, the hotel site is currently nonconforming with respect to parking; under the City's current ordinances increased onsite parking would be required. The Appellant has proposed to move vehicles only between the two sites during off peak traffic hours; however, such a condition would be difficult to enforce. Furthermore, the City Council determined that the maneuvers needed to transfer cars between lots would create a substantial risk of traffic and safety hazards. This portion of PCH in the vicinity of Malibu Pier and Surfrider Beach is currently characterized as congested during peak traffic hours, and the project as proposed presents a significant risk that cars will be moved between lots during times of congestion or that cars will circle in search of additional parking which would worsen the congestion. LIP section 3.14.1(A) also states that the parking regulations of Chapter 3.14 are the minimum required to preserve the public health, safety, and welfare; it also envisions that "more extensive provisions may be warranted in particular circumstances." Even if the project complied with the other requirements of the LIP, the City Council is concerned that the proposed project poses significant risks to the public health, safety and welfare that have been identified by staff and the public as described in further detail in Section 3 above.

3. Appellant has failed to establish that the project is the least environmentally damaging alternative. Among other things, the project will lead to an increase in pedestrian and vehicular traffic and congestion, adding dangerous valet traffic maneuvers in one of the City's most congested visitor areas. This is because of the offsite parking plan which proposes to locate required parking displaced by the pool and deck at 22853 PCH which requires vehicles to cross PCH and pedestrian traffic to utilize the crosswalk. Compared to what would be required if the hotel were approved today and subject to current parking requirements for the existing hotel, the property is currently under-parked by 42 spaces, and the spaces do not include proper circulation lanes, instead they are organized through a tandem valet layout. Removing some of these spaces offsite worsens a nonconformity that is already significant, and greatly reduces a parking lot that is already undersized compared to what would be required today by the MMC and LIP. The Appellant never presented evidence of having considered an alternative design for a pool other than the proposed design located in the existing parking lot. A design alternative that does not displace onsite parking, such as a rooftop pool or conversion of other areas of the hotel to pool use, or a smaller pool/deck would not impose the additional traffic maneuvers and associated safety impacts on the surrounding community. The project is not the least environmentally damaging alternative as described here and in Section 3 above.

B. Hazards (LIP Chapter 9)

1. As described in Section 5(A)(3), Appellant has failed to establish that project is the least environmentally damaging alternative as required by LIP Section 9.3(A)(3).

C. Shoreline and Bluff Development

1. As described in Section 5(A)(3), Appellant has failed to establish that the project is the least environmentally damaging alternative as required by LIP Section 10.3(A)(3).

D. Joint Use and Common Parking Facilities (LIP Section 3.14.4)

1. Appellant has requested a Joint Use and Common Parking Facilities Agreement (“JUPA”) to allow the hotel/restaurant use (Malibu Beach Inn) at 22878 PCH to locate displaced required parking offsite on the lot addressed as 22853 PCH. Appellant failed to establish that the proposed parking plan resulted in parking that was consistent with LIP Section 3.14.5(A)(1) because, among other things, Appellant failed to establish that the legal and safe pedestrian path of travel between the proposed off-site parking and the use it is required to serve does not exceed 300 feet, as described in greater detail above in Section 3 and Section 5(A)(1).

2. The City Council also declines to grant the JUPA because of the impacts on traffic and safety that are anticipated to occur. With the parking onsite there is no increased risk of injury or accident nor is there traffic delay caused by valet traffic or use of the pedestrian crosswalk. This disruption of traffic and increased safety risk contradicts significant goals of the City and is not justified by the benefits provided by adding a pool and deck to the hotel. The City Council’s findings are described in greater detail above in Section 3 and Section 5(A)(2).

SECTION 6. Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby denies Appeal No. 19-003 and denies CDP No. 17-092, JUPA No. 17-001 and LT No. 17-001.

SECTION 7. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 14th day of June 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk
(seal)

APPROVED AS TO FORM:

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

JOHN COTTI, Interim City Attorney

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 or in person at the Coastal

Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the MMC and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.

RESOLUTION NO. 21-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 19-004 AND DENYING COASTAL DEVELOPMENT PERMIT NO. 17-091 WHICH INCLUDES JOINT USE PARKING AGREEMENT NO. 17-001 TO ALLOW THE MALIBU BEACH INN TO LOCATE REQUIRED PARKING ON 22853 PACIFIC COAST HIGHWAY, AND LOT TIE NO. 17-001 TO HOLD 22878 AND 22853 PACIFIC COAST HIGHWAY AS ONE LOT, LOCATED IN THE COMMUNITY COMMERCIAL ZONING DISTRICT AT 22853 PACIFIC COAST HIGHWAY (MB NORTH LOT (DE), LLC)

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

SECTION 1. Recitals.

A. The existing structure is being used for general office use as of July 1, 2020. The subject property's current zone of Community Commercial (CC) allows such use by-right. The use has a surplus supply of parking according to the parking standards of the Malibu Local Coastal Program (LCP) and Malibu Municipal Code (MMC) parking standards.

B. On September 21, 2017, the applicant, Burdge and Associates Architects, Inc., on behalf of property owner, MB North Lot (DE), LLC, submitted Coastal Development Permit (CDP) No. 17-091, Variance (VAR) No. 17-038 and Joint Use Parking Agreement (JUPA) No. 17-001. The applicant subsequently submitted Lot Tie (LT) No. 17-001, VAR No. 17-043, Minor Modification (MM) No. 17-018 and Extension of Amortization (EAS) No. 17-001. The subject property is proposed to accommodate displaced required parking from the Malibu Beach Inn at 22878 Pacific Coast Highway that will result from the proposed development under CDP No. 17-092, which is being processed concurrently. The application was routed to the City Biologist, Environmental Health Administrator, City geotechnical staff, City Public Works Department and Los Angeles County Fire Department (LACFD) for review.

C. On October 12, 2017, 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.

D. On November 6, 2017, the Planning Commission continued the items to a date uncertain.

E. On November 9, 2017, 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.

F. On December 4, 2017, the Planning Commission continued the items to the December 18, 2017 Regular Planning Commission hearing.

G. On December 18, 2017, the Planning Commission held a duly noticed public hearing on both applications, reviewed and considered the staff reports, reviewed, and considered written reports, public testimony, and other information in the record. At that meeting the items were continued to March 5, 2018 Regular Planning Commission meeting to allow the applicant time to address the issues raised at that hearing.

H. On March 5, 2018, the Planning Commission continued the items to a date uncertain.

I. On July 12, 2018, 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 August 6, 2018, the Planning Commission continued the items to the August 20, 2018 Regular Planning Commission hearing.

K. On August 20, 2018, the Planning Commission continued the items to the November 5, 2018 Regular Planning Commission hearing.

L. On November 5, 2018, the Planning Commission continued the items to the November 19, 2018, Regular Planning Commission hearing.

M. On November 15, 2018, the November 19, 2018 Regular Planning Commission meeting was cancelled due to the Woolsey Fire.

N. On December 27, 2018, 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 and all interested parties.

O. On January 22, 2019, the Planning Commission continued the item to the March 4, 2019, Regular Planning Commission hearing.

P. On March 4, 2019, the Planning Commission held a duly noticed public hearing on both applications, reviewed and considered the staff reports, reviewed, and considered written reports, public testimony, and other information in the record. At that meeting the Planning Commission directed staff to return with a resolution approving the extension of amortization for the nonconforming car rental use and a separate resolution denying the proposed CDP and JUPA for the subject property.

Q. On April 15, 2019, Planning Commission Resolution No. 19-19 denying the proposed project was presented to the Planning Commission as a consent item. The Planning Commission adopted Planning Commission Resolution No. 19-19 to deny CDP No. 17-092, JUPA No. 17-001 and LT No. 17-001 and adopted Planning Commission Resolution No. 19-18 to approve EAS No. 17-001.

R. On April 24, 2019, MB North Lot (DE), LLC, filed a timely Appeal No. 19-004 of Planning Commission Resolution No. 19-19.

S. On October 28, 2019, a Notice of City Council 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 and all interested parties.

T. On November 25, 2019, the City Council continued the item at the request of the appellant in order for them to provide additional materials in support of the appeal.

U. On July 1, 2020, the Hertz Rental Car company vacated the property, ceasing the rental car use, and Malibu Beach Inn staff commenced the general office use.

V. On February 25, 2021, a Notice of City Council 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 and all interested parties.

W. On March 22, 2021, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed, and considered written reports, public testimony, and other information in the record. The City Council deliberated and voted 4-0 directing staff to return with an updated resolution on the Consent Agenda denying the appeal.

X. On May 13, 2021, the City Council continued the item.

Y. On June 14, 2021, the City Council reviewed the materials in the record and based thereon takes the following action.

SECTION 2. Appeal of Action.

The appeal filed by the Appellant, MB North Lot (DE), LLC, on April 24, 2019, contends that the Planning Commission's denial of the project is not appropriately supported by findings or evidence, and is contrary to law; that the project does comply with the LCP and MMC; that the project is the least environmentally damaging alternative; and that Appellant's civil rights, specifically its right to equal protection of the laws, was violated.

SECTION 3. Findings for Denial of Appeal.

Based on evidence in the record, including the City Council agenda report for the subject project presented at the City Council meeting of March 22, 2021 and the hearing conducted on that date, the City Council hereby determines that Appellant has failed to establish that the proposed project satisfies all requirements of applicable law. The reasons for the City Council's decision include, but are not limited to, the following:

A. Appellant has failed to establish that the proposed project is consistent with LIP sections 3.14.5(A)(1) and 3.14.5(A)(2). Among other things, Appellant has failed to establish the proposed off-site parking is no farther than 300 feet from the use it is required to serve, measured along a legal and safe pedestrian path from the parking space to the nearest entrance of the building or use for which the parking is required. More specifically, Appellant failed to establish, among other things, that the "legal and safe pedestrian path" proposed by Appellant is legal and safe and/or was measured from, and to, appropriate locations. Instead, Appellant proposed an unrealistic pedestrian path that did not account

for the manner by which ordinary human beings walk from one location to another, measured the proposed pedestrian path only from the proposed valet stand, not from the hotel entrance or even the hotel building, and concluded the measurement at the tip of the single parking space in the proposed parking lot that was closest to the hotel without regard to the balance of the parking spaces. The proposed pedestrian path also does not provide for a safe pedestrian path that allows pedestrian movement in both directions without exceeding 300 feet. As proposed, pedestrians travelling in opposite directions would have to walk into each other if they stayed on the identified pedestrian path. Additionally, the proposed pedestrian path would require a pedestrian to walk on the very edge of the crosswalk which is not safe and also would not be a feasible path for a patron using a wheelchair, as not only would such travel be infeasible and unsafe, it also does not terminate at the lowest point of the ADA accessible curb cuts at either end of the crosswalk. Pursuant to LIP section 13.9(A)(1) the City Council cannot approve a proposed project without finding, among other things, that the project conforms to the City LIP. Appellant failed to persuade the City Council to make that finding in this case based upon, among other things, Appellant's failure to establish that the proposed project is consistent with LIP sections 3.14.5(A)(1) and 3.14.5(A)(2) for the reasons discussed above. Without approval of the offsite parking the hotel would become under-parked, and the scope of work included in CDP No. 17-092 would not conform to the LCP or MMC.

The City Council also has determined that the proposed off-site parking operation poses traffic, safety, and circulation problems. Pacific Coast Highway is the central artery of the City and traffic and circulation issues on PCH, particularly in this area, are of critical importance to the City. Per Chapter 4.2.1 of the City of Malibu General Plan, PCH, "(State Route 1) is a four-lane state highway traversing the city from east to west along the Pacific Coast. . . . Within the City, PCH is about 25 miles long with a posted speed limit between 45 and 55 miles per hour. PCH is the only major arterial within the City." As PCH is the only artery through Malibu that connects the entire City, maintaining vehicle flow is critical to safety, quality of life and emergency access.

As acknowledged by the Parking Demand Study provided by the Appellant in February 2021, the City previously expressed concerns that transfers of vehicles between the hotel property and proposed off-site parking lot would cause, among other things, long "turnaround" times, interruption of the traffic flows along PCH, and/or potential safety issues due to high traffic volumes and congestion conditions throughout the day on PCH in the vicinity of the hotel and proposed off-site parking lot, particularly during the summer months. The City Council also noted that (i) having valet operators crossing PCH as proposed, both in vehicles and as pedestrians, poses a public safety danger as this is an area heavily congested with traffic and where these additional trips could result in an increase in vehicle and pedestrian collisions, and (ii) approval of the proposed offsite parking would require the valet operators to quickly cross multiple lanes in a short distance and also trigger the operation of the crosswalk—stopping or impacting the flow of traffic as well as posing safety issues. Appellant's proposed project, and its proposed intensification of turning movements required by the valet operation would thus increase safety risks to vehicles and pedestrians along the PCH corridor.

Per General Plan Land Use Policy 2.2.4, "The City shall manage development in accordance with the efficient operation of the traffic system and service infrastructure." The Malibu Beach Inn Parking Demand Study details the operational plan for the valet-only parking program, which proposes to limit the transfer of vehicles between lots to non-peak traffic times by 1) prioritizing onsite spaces for short term parking and using the offsite spaces for long-term storage and 2) limiting the transferring of vehicles offsite to off-peak hours, outside the typical high traffic and congestion periods on PCH.

However, enforcing a condition that requires vehicles to be moved only at off peak hours will be very difficult, if not impossible. The Appellant's history of not complying with its CUP requirement to allow only guests to dine at the restaurant illustrates the enforcement difficulties and the fact that conditions that require constant after-hours monitoring are often unenforceable. The proposed plan has the potential of creating a material impact upon traffic on PCH. Additionally, use of the crosswalk button to create a gap in traffic for valet operators has the potential to both increase traffic on PCH and interfere with the ability to establish and achieve the goals of the City's Capital Improvement Signal Synchronization Project or "Smart Corridor," which is anticipated to begin construction within the year 2021. The hotel is also already significantly underparked as it only provides 59 valet-only parking spaces onsite instead of the 112 parking spaces (94 parking spaces for the rooms, 6 parking spaces for the restaurant, and 12 parking spaces for employees) that would be required by the current LIP if the hotel were being constructed today. The onsite spaces are also valet spaces and not standard stripped self-parking spaces, of which only 50 currently exist. Moving some of these spaces offsite to accommodate a deck and pool would exacerbate the nonconformity and increase the impacts of the hotel use, actions which conflict with the City's General Plan pursuant to Land Use Policy 2.2.5, which states "The City shall evaluate effect on road capacity of traffic impacts from all sources when determining the type and intensity of land use.". As a result, the City Council has determined that the evidence demonstrates that the offsite parking should not be approved even if the required pedestrian path described in LIP section 13.4.5(A)(1) existed.

B. Appellant states that the Planning Commission's denial of the project lacks evidentiary support. As the City Council's review of this project is *de novo*, this issue is moot. The City Council's decision to deny this appeal and project is also supported by substantial evidence as described above and below, and in the record.

C. Appellant disputes the Planning Commission's determination that the project is not the least environmentally damaging alternative, which was based on the conclusion that the project would result in the intensification of an existing use and add to traffic congestion in the surrounding area. Given the potential impacts to PCH outside the project area as discussed above, the no project alternative or an alternative that eliminates the need for offsite parking (such as locating the pool on the roof, converting other areas of the property to pool use, or proposing a smaller pool/deck area, among other things) would be a superior project alternative and would eliminate significant potential impacts to the surrounding community. As a result, Appellant has failed to establish that the project is the least environmentally damaging alternative.

D. Appellant contends that its civil rights, and in particular its rights to equal protection under the laws, have been violated by the Planning Commission's decision. In addition to lacking both factual and legal merit, Appellant's constitutional claim is moot as a result of the *de novo* review of the project by the City Council. Nor does the City Council's denial of the Appeal violate Appellant's constitutional rights. Appellant has been afforded procedural due process and the grounds for any business to claim an Equal Protection violation are exceedingly narrow and have not been met here. Further, no offsite parking has been approved by the City to operate across Pacific Coast Highway (a state highway and the City's only major arterial) from the use it supports, and all of the examples provided by Appellant are distinguishable or unauthorized as described at the hearings on this matter and the evidence in the record.

SECTION 4. Environmental Review.

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

SECTION 5. Coastal Development Permit Findings.

Based on the evidence contained within the record and pursuant to LIP sections 13.7(B) and 13.9, the City Council adopts the analysis and the findings of fact above and below, and denies CDP No. 17-091 consisting of an application to allow for tandem on-grade parking to be operated by valet on a site currently occupied by a general office use (22853 PCH) in order to accommodate displaced required parking for an offsite hotel/restaurant use (Malibu Beach Inn at 22878 PCH), and construct new perimeter fences and gates with planter boxes to allow the Malibu Beach Inn to locate required parking on the Hertz site pursuant to JUPA No. 17-001, and LT No. 17-001 to hold 22878 PCH and 22853 PCH together.

Appellant has failed to establish that the project, as proposed, satisfies and is consistent with the applicable law, including, but not limited to, the LCP and MMC codes, standards, goals, and policies. In addition, the Appellant has failed to establish that the proposed project represents the least environmentally damaging alternative. The reasons for denial of each entitlement are provided in more detail above and as follows:

A. General Coastal Development Permit (LIP Chapter 13)

1. The proposed project is located in the CC commercial zoning district, an area designated for commercial uses. The project is proposed to provide spaces for the use at 22878 PCH, which cannot be approved without the approval of JUPA No. 17-001. As the purpose of this CDP is to provide offsite parking for the Malibu Beach Inn, as proposed in CDP No. 17-092, this CDP is dependent on the approval of CDP No. 17-092, which the Council has denied simultaneous with this resolution¹. Appellant has failed to establish that the proposed project complies with the parking requirements of LIP Section 3.14.3 (Specific Parking Requirements). The Appellant proposes to accommodate the displaced required parking by parking cars on 22853 PCH through the use of a JUPA, however, Appellant has failed to establish that the proposed project is consistent with LIP sections 3.14.5(A)(1) and 3.14.5(A)(2) for the reasons summarized in Section 3A above. Additionally, the proposed vehicular path of travel and proposed operation of the offsite parking has the potential to result in cumulative traffic impacts and safety risks along PCH. Noncompliance with the LCP is discussed in greater detail in Section 3 above. As such, Appellant has failed to establish that the project conforms to the LCP and/or MMC.

2. The project is located between the first public road and the sea; however, the subject property does not contain any mapped trails as depicted on the LCP Park Lands Map. The California Coastal Commission has confirmed that the property owner has previously provided a dedicated lateral and a vertical public access easement to accommodate public access along the shoreline and to the

¹ The proposed work was dependent upon approval of CDP No. 19-072 as the work constitutes one project on two different lots. Thus, the denial of the JUPA No. 17-001, and CDP No. 19-072 necessarily results in the denial of CDP No. 19-071. However, if the applicant desires to pursue the new garden walls, gates, and similar improvements it may pursue those through and application for an alternative development permit pursuant to MMC Chapter 17.

shoreline through the hotel. These easements would be unaffected by the project. However, the hotel site is currently nonconforming with respect to parking; under the City's current ordinances increased onsite parking would be required. The Appellant has proposed to move vehicles only between the two sites during off peak traffic hours; however, such a condition would be difficult to enforce. Furthermore, the City Council determined that the maneuvers needed to transfer cars between lots would create a substantial risk of traffic and safety hazards. This portion of PCH in the vicinity of Malibu Pier and Surfrider Beach is currently characterized as congested during peak traffic hours, and the project as proposed presents a significant risk that cars will be moved between lots during times of congestion or that cars will circle in search of additional parking which would worsen the congestion. LIP section 3.14.1(A) also states that the parking regulations of Chapter 3.14 are the minimum required to preserve the public health, safety, and welfare; it also envisions that "more extensive provisions may be warranted in particular circumstances." Even if the project complied with the other requirements of the LIP, the City Council is concerned that the proposed project poses significant risks to the public health, safety and welfare that have been identified by staff and the public as described in further detail in Section 3 above.

3. Appellant has failed to establish that the project is the least environmentally damaging alternative. Among other things, the project will lead to an increase in pedestrian and vehicular traffic and congestion, adding dangerous valet traffic maneuvers in one of the City's most congested visitor areas. This is because of the offsite parking plan which proposes to locate required parking displaced by the pool and deck at 22853 PCH which requires vehicles to cross PCH and pedestrian traffic to utilize the crosswalk. Compared to what would be required if the hotel were approved today and subject to current parking requirements for the existing hotel, the property is currently under-parked by 42 spaces, and the spaces do not include proper circulation lanes, instead they are organized through a tandem valet layout. Removing some of these spaces offsite worsens a nonconformity that is already significant, and greatly reduces a parking lot that is already undersized compared to what would be required today by the MMC and LIP. The Appellant never presented evidence of having considered an alternative design for a pool other than the proposed design located in the existing parking lot. A design alternative that does not displace onsite parking, such as a rooftop pool or conversion of other areas of the hotel to pool use, or a smaller pool/deck would not impose the additional traffic maneuvers and associated safety impacts on the surrounding community. The project is not the least environmentally damaging alternative as described here and in Section 3 above.

B. Joint Use and Common Parking Facilities (LIP Section 3.14.4)

1. Appellant has requested a Joint Use and Common Parking Facilities Agreement ("JUPA") to allow the hotel/restaurant use (Malibu Beach Inn) at 22878 PCH to locate displaced required parking offsite on the lot addressed as 22853 PCH. Appellant failed to establish that the proposed parking plan resulted in parking that was consistent with LIP Section 3.14.5(A)(1) because, among other things, Appellant failed to establish that the legal and safe pedestrian path of travel between the proposed off-site parking and the use it is required to serve does not exceed 300 feet, as described in greater detail above in Section 3 and Section 5(A)(1).

2. The City Council also declines to grant the JUPA because of the impacts on traffic and safety that are anticipated to occur. With the parking onsite there is no increased risk of injury or accident nor is there traffic delay caused by valet traffic or use of the pedestrian crosswalk. This disruption of traffic and increased safety risk contradicts significant goals of the City and is not

justified by the benefits provided by adding a pool and deck to the hotel. The City Council's findings are described in greater detail above in Section 3 and Section 5(A)(2).

SECTION 6. Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby denies Appeal No. 19-004 and denies CDP No. 17-091, JUPA No. 17-001 and LT No. 17-001.

SECTION 7. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 14th day of June 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk
(seal)

APPROVED AS TO FORM:

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

JOHN COTTI, Interim City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the MMC and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.