



# Council Agenda Report

To: Mayor Grisanti and Honorable Members of the City Council

Prepared by: Philip Coronel, Assistant Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: September 30, 2021 Meeting date: October 11, 2021

Subject: Appeal No. 21-007 – Appeal of Planning Commission Resolution No. 21-46 (24266 Malibu Road; Owner/Appellant, Malibu Road #3, LLC/Lester Tobias) (Continued from September 27, 2021)

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**RECOMMENDED ACTION:** Adopt Resolution No. 21-44, determining the project is categorically exempt from the California Environmental Quality Act; and denying Appeal No. 21-007 and approving Coastal Development Permit No. 16-066 to allow for the construction of a new 4,722 square foot, two-story, beachfront single-family residence with an attached two-car garage, swimming pool, spa, decks, seawall, 18-foot wide view corridor and fencing, and onsite wastewater treatment system, including Variance No. 16-066 for construction on steep slopes, Demolition Permit No. 21-009 for the removal of wood retaining walls, and Offer-to-Dedicate No. 21-003 for public lateral access on the beach located in the Single-Family Medium zoning district at 24266 Malibu Road (Malibu Road #3, LLC).

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

**WORK PLAN:** This item is not included in the Adopted Work Plan for Fiscal Year 2020-2021. Processing this application is part of normal staff operations.

**DISCUSSION:** On August 19, 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 an updated resolution to deny the appeal and approve the project per Council directives. On September 27, 2021, the City

Council continued the item to the October 11, 2021 City Council meeting. The resolution has been updated to reflect the continuance.

ATTACHMENT: Resolution No. 21-44

## RESOLUTION NO. 21-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, DENYING APPEAL NO. 21-007 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 16-066 TO ALLOW FOR THE CONSTRUCTION OF A NEW 4,722 SQUARE FOOT, TWO-STORY, BEACHFRONT SINGLE-FAMILY RESIDENCE WITH AN ATTACHED TWO-CAR GARAGE, SWIMMING POOL, SPA, DECKS, SEAWALL, 18-FOOT WIDE VIEW CORRIDOR AND FENCING, AND ONSITE WASTEWATER TREATMENT SYSTEM, INCLUDING VARIANCE NO. 16-066 FOR CONSTRUCTION ON STEEP SLOPES, DEMOLITION PERMIT NO. 21-009 FOR THE REMOVAL OF WOOD RETAINING WALLS, AND OFFER-TO-DEDICATE NO. 21-003 FOR PUBLIC LATERAL ACCESS ON THE BEACH LOCATED IN THE SINGLE-FAMILY MEDIUM (SFM) ZONING DISTRICT AT 24266 MALIBU ROAD (MALIBU ROAD #3, LLC)

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

### SECTION 1. Recitals.

- A. On November 3, 2016, an application for Coastal Development Permit (CDP) No. 16-066 was submitted to the Planning Department on behalf of the property owner, Malibu Road #3, LLC. The application was routed to the City Biologist, City Coastal Engineer, City Environmental Health Administrator, City Public Works Department, City geotechnical staff, and the Los Angeles County Fire Department (LACFD) for review.
- B. On November 13, 2019, the notice of application was posted onsite.
- C. On May 7, 2021, story poles were installed on the subject property and photo documented by staff.
- D. On May 10, 2021, the CDP application was deemed complete for processing.
- E. On May 13, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- F. On May 26, 2021, story poles were taken down due to safety issues.
- G. On June 7, 2021, 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.
- H. On June 14, 2021, the appellant, Lester Tobias, filed an appeal of the Planning Commission's decision.
- I. On July 14, 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 radius of 500-feet from the subject property and all interested parties.

J. On August 9, 2021, prior to the opening of the public hearing, the City Council continued the hearing to the August 19, 2021 Adjourned Regular City Council meeting.

K. On August 19, 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. Council directed staff to revise Resolution No. 21-44 consistent with its direction to be brought back on the consent calendar for formal approval and adoption by the City Council.

L. On September 27, 2021, the City Council received the revised Resolution and continued the item to the October 11, 2021 Regular City Council meeting.

M. On October 11, 2021, the City Council received the revised Resolution, reviewed and considered the agenda report, written reports, and other information in the record.

## SECTION 2. Appeal of Action.

The appellant contends that the proposed roof does not meet the Malibu Municipal Code (MMC) and Local Coastal Program (LCP)'s interpretation of a pitched roof. The appellant also argues that a re-evaluation of the building stringlines should take place since the property located at 24300 Malibu Road has completed construction.

## SECTION 3. Findings for Denying the Appeal.

Based on evidence in the record including the content of the City Council Agenda Report for the project, the Planning Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and the City Council, including the evidence presented at the hearing on August 19, 2021, the City Council hereby makes the following findings of fact, denies the appeal and based on the evidence in the record approves the project.

1. At the time the applicant submitted the plans for the revised house layout, the appellant's project on 24300 Malibu Road was in a rough framing stage, and had yet to be eligible for the issuance of a Certificate of Occupancy – raising the question of whether the appellant's project was an "existing residential structure" as that term is used in LIP Section 10.4(G). The stringline requirements, however, are also defined in more detail in LIP Section 3.6(G)(4) which states "For a dwelling, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast dwelling. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast dwelling." The stringlines were drawn from the corners of the residences of the next adjacent downcoast parcel (24254 Malibu Road) and the next adjacent upcoast neighbor beyond the parcel on which appellant's project was situated (24314 Malibu Road). Although the appellant argues that the upcoast stringline should have been drawn to the residential structure being constructed on the appellant's property, the under construction structure did not constitute a dwelling at the time the revised plans were submitted, and the 10-foot setback from the most landward mean high tide line was generally used instead when designing the applicant's project since the setback was more restrictive than the building and deck stringlines measured from the next upcoast property.

2. The appellant contends that the stringline was required to be recalculated when the applicant altered the project at 24266 Malibu Road (submitted to the Planning Department on November 14, 2019) after the residential structure being constructed on the appellant's property was in a rough framing stage. The appellant claims that the alteration of the project at 24266 Malibu Road was sufficiently substantial to require that the stringline be recalculated at the time the alteration was submitted for approval and that it should have been recalculated to extend to the residential structure being constructed on the appellant's property. The Council finds that no recalculation was required at this time because flipping the orientation of the house so that the 19-foot view corridor was on the east side of the property did not constitute a change so significant that the original application would no longer be considered complete and a recalculation of the stringline would be required. Alternatively, the Council finds because the appellant's property did not constitute a dwelling at the time of Planning review, and/or the revision submitted by the applicant still adhered to the mean high tide line and the required ten-foot setback which is generally more restrictive than the building and deck stringline, recalculation of the stringline was not required.

3. The appellant contends that Planning staff's interpretation of building height was incorrectly applied to this project in that only a conventional pitched roof constitutes as a pitched roof. The applicant proposes a butterfly roof that extends up to 28 feet in height with a 3:12 slope. The MMC and LCP Local Implementation Plan (LIP) do not specifically mention where the top of the ridge must be in regard to overall building height. Furthermore, other homes on Malibu Road and throughout Malibu also feature the same roof and is still classified as a pitched roof because of the 3:12 slope. The project was then redesigned to comply with the MMC/LIP requirement of a pitch roof requiring a 3:12 slope with a maximum height of 28 feet. The project height was measured correctly and does not exceed 28 feet in height for a pitched roof.

4. The City Public Works Department reviewed the project and issued a Department Review Sheet detailing the project was reviewed and was found to be in conformance with the City's Public Works Department and LCP policies. It was conditioned that prior to the issuance of building and grading permits, that the applicant shall comply with conditions set forth by the Public Works department which does not deter the approval by the Planning Commission. The City Public Works department determined that the project can proceed to building Plan Check without further issues.

#### SECTION 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed project. The City Council finds that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to Section 15303(e) - New Construction or Conversion of Small Structures. The City Council further determines that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

## SECTION 5. Coastal Development Permit Findings.

Based on evidence contained within the record, including the content of the Council Agenda Report and Planning Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and the City Council, and pursuant to the LIP including Sections 13.7(B) and 13.9, the City Council, hereby makes the findings of fact below, and approves CDP No. 16-066 that allows for the construction of a new 4,722 square foot, two-story, beachfront single-family residence with an attached two-car garage, swimming pool, spa, decks, seawall, 18-foot wide view corridor and fencing, and onsite wastewater treatment system, including Variance No. 16-066 for construction on steep slopes, Demolition Permit No. 21-009 for the removal of wood retaining walls, and Offer-to-Dedicate No. 21-003 for public lateral access on the beach located in the Single-Family Medium (SFM) zoning district at 24266 Malibu Road ).

The project is consistent with the LCP's zoning, grading, cultural resources, water quality, and wastewater treatment system standards requirements. The project, as conditioned, is consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

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

1. The project has been reviewed for conformance with the LCP by the Planning Department, the City biologist, City Coastal Engineer, City geotechnical staff, City Environmental Health Administrator, City Public Works Department, CSLC, and the LACFD. The proposed project, as conditioned, conforms to the LCP in that it meets all of the required beachfront residential development standards of the SFM residential zoning district.

2. The project is located between the first public road and the sea. Vertical public access exists approximately 184 feet to the west and a lateral public access easement was previously recorded on the properties adjacent to the west and east of the subject property. In addition, the property owner has voluntarily offered to provide an OTD for a lateral public access easement to accommodate a wider public access along the shoreline landward of the MHTL. Therefore, no potential project-related or cumulative impact on public access and/or recreation is anticipated to result from the proposed project. The proposed project conforms to the public access and recreational policies in Chapter 3 of the Coastal Act.

3. The proposed single-family residence is located on the same site as a previously demolished single-family residence. The proposed project will provide the required view corridor and includes the installation of a code compliant OWTS. The proposed project meets the development policies of the LCP and has been determined to be the least environmentally damaging feasible alternative.

### **B. Variance for Construction on Slopes Steeper than 2.5 to 1 (LIP Section 13.26)**

1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings, such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification. The subject property consists of steep slopes along Malibu, with the majority of the parcel being flatter than 4 to 1. Due to these site characteristics, the proposed development will be situated more landward towards Malibu Road in

order for the proposed residence to meet the required setback from the 1928 Mean High tide Line. Other proposed development located in areas of steep slopes include the proposed driveway with the required unenclosed parking stalls, site fencing, and a proposed deck. Residential development on the subject property would not be feasible without granting a variance for construction on slopes steeper than 2.5 to 1.

2. The proposed variance will allow construction of a single-family residence. The proposed development will not be detrimental to the public's interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone as the subject property. Furthermore, the project has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City geotechnical staff and City Public Works Department for conformance with the LCP and determined not to be detrimental to the public interest safety, health or welfare, nor detrimental or injurious to the property.

3. As previously stated, the site's topography contains steep slopes in the portion of the lot where development can occur that is farthest away from the beach and mean high tide line. There is no alternative development pad on the property that would avoid construction on steep slopes. Therefore, approval of the variance will grant relief from a technical development standard, which if strictly applied, could limit single-family development completely on the subject properties. The proposed development is consistent with surrounding properties and in the SFM zoning district. Therefore, the granting of the variance will not constitute a special privilege to the applicant or the property owner.

4. The granting of the proposed variance will not be contrary to or in conflict with the LCP as the improvements, consisting of a single-family residence and associated development are allowed in the SFM zoning district. As previously stated in Section A, with the inclusion of the variance, the project is consistent with the LCP, the Coastal Act, and other applicable regulations. The granting of the variance will not be contrary to or in conflict with the general purposes and intent of LIP Chapters 8 and 13, nor the goals, objectives, and policies of the LCP.

5. The requested variance is not associated with ESHA or ESHA buffer standards. Therefore, this finding does not apply.

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

7. The variance request is for development on slopes steeper than 2.5 to 1 for the construction of a single-family residence in the SFM zoning district. Therefore, the variance request does not authorize a use or activity that is not expressly authorized by the zoning regulations for the subject property.

8. The subject site is physically suitable for the proposed variance. The proposed development is sited on the disturbed portion of the subject site, however, construction on slopes steeper than 2.5 to 1 cannot be avoided. In addition, the proposed project has been reviewed and approved by City geotechnical staff and City Public Works Department for structural integrity and stability, and determined that the project site is physically suitable for the proposed variance. Construction on steep slopes is also common for beachfront lots, especially neighboring properties along Malibu Road.

9. The proposed project complies with all applicable requirements of State and local law, and is conditioned to comply with any relevant approvals and permits. Construction of the single-family residence and associated development is conditioned to comply with all building code requirements and will incorporate all recommendations from applicable City agencies and project consultants.

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

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

1. Due to the lot dimensions, view corridors and setbacks, there is no feasible alternative building site location where the development would not have the potential to be visible from Malibu Road or the beach, which are public viewing areas. With the inclusion of the conditions set forth in Section 5 of this resolution, pertaining to permissible exterior colors, materials and lighting restrictions, the required view corridor pursuant to LIP Section 6.5, and conformance with LIP beachfront development standards, the project will blend in with the surrounding environment.

2. With the implementation of the conditions set forth in Section 5 of this resolution, the project, as proposed and conditioned, will not have significant adverse scenic or visual impacts.

3. The project, as proposed and conditioned, is the least environmentally damaging alternative.

4. The project has been designed to minimize any adverse or scenic impacts from the beach and adjacent structures by providing the required view corridor pursuant to LIP Section 6.5. The project incorporates a 18-foot wide view corridor on the east side of the property.

5. The location proposed for development would result in a less than significant visual impact to public views from the beach and will not impact sensitive resources. All proposed development conforms to the view corridor requirement and will be constructed landward of the required building stringline and deck stringline, and set back 10 feet from the most landward MHTL. The project, as proposed and conditioned, will result in less than significant impacts on scenic and visual resources.

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

1. Based on review of project plans, geotechnical reports and wave uprush studies, the project engineers concluded the project, as proposed, is feasible from an engineering geologic standpoint, will be free from geologic hazards, and will not have an adverse effect upon the stability of the site or adjacent properties provided their recommendations and those of the project Geotechnical Engineer are incorporated into the plans, and implemented during construction, and the subject property and proposed structures are properly maintained. The project geotechnical engineer determined that the project is located within an existing Federal Emergency Management Agency (FEMA) identified Zone X. The property owner is required to sign a waiver indemnifying the City of Malibu from liability or claims resulting from wave action. The project site is subject to wave action and the entire city limits of Malibu are located within a high fire hazard area.



The project, including the foundations, AOWTS and drainage, as conditioned, will incorporate all recommendations contained in the geotechnical report and wave uprush report and conditions required by the City Coastal Engineer, City geotechnical staff, City Public Works Department and LACFD. As such, the proposed project will not increase instability of the site or structural integrity from geologic, flood or any other hazards. Additionally, there are conditions included in Section 5 of this resolution that require the property owner to acknowledge the potential for damage or destruction from wildfire and that the property is subject to wave action, erosion, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

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

3. There are no feasible alternatives that would avoid or substantially lessen impacts on site stability or structural integrity.

4. There are no feasible alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

5. The proposed project, as designed and conditioned, is the least environmentally damaging alternative and no adverse impacts to sensitive resources are anticipated.

#### **E. Shoreline and Bluff Development (LIP Chapter 10)**

1. The proposed project includes the removal of wood retaining walls and a concrete footing and the construction of a new two-story, single-family residence, and AOWTS. The proposed seawall is only for the protection of the AOWTS. The residence and all accessory development is designed with a pile foundation that does not require a shoreline protection device for the life of the project. The proposed development is sited 10 feet from the MHTL, a location as landward as feasible. Due to the project design, the project is not anticipated to result in significant adverse impacts to public access, shoreline sand supply or other resources. The project site currently provides no lateral public access. However, the property owner has offered to record an OTD for a public lateral access easement allowing public access across the width of the lot. Therefore, the proposed project will improve public access.

2. The proposed location of the AOWTS and seawall have been reviewed and conditionally approved by the City Coastal Engineer, City geotechnical staff and City Environmental Health Administrator for compliance with LIP Chapter 10. The proposed project, as designed and conditioned, will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

3. The proposed project, as designed and conditioned, will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

4. The proposed project, as designed and conditioned, will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

5. The seawall will protect the new AOWTS only. The proposed shoreline protection device is located in the most landward location feasible on the project site and is in compliance with LIP Section 10.4. A condition is included in Section 5 of this resolution that requires the property owner to acknowledge, by recordation of a deed restriction that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. The deed restriction shall also acknowledge that the intended purpose of the shoreline protection structure is solely to protect the proposed septic disposal system and that any future development on the subject site landward of the shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor.

#### SECTION 6. City Council Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves CDP No. 16-066, VAR No. 18-036, and OTD No. 21-003 subject to the following conditions.

#### SECTION 7. Conditions of Approval.

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 following:

##### Demolition

- a. Wood retaining walls and concrete footings.

##### Construction

- b. A new 4,722 - square foot, two-story, single-family residence with an attached two-car garage;
- c. Swimming pool and decks;
- d. An uninhabitable understructure mechanical platform with a 5.29 foot height clearance between the lowest structural member and the top of the platform;
- e. New seawall with top of wall elevation of 18 feet, five inches and return walls;
- f. New pile foundations;
- g. Fencing and gates;
- h. OWTS;
- i. 18-foot wide view corridor on the east side of the property; and

- j. OTD No. 21-003 offering to dedicate a lateral public access easement along the shore.

Additional Discretionary Requests

- k. VAR No. 18-036 for construction on slopes steeper than 2.5:1 but less than 1:1.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **January 13, 2021**. In the event the 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 and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision and/or prior to issuance of any development permits.
  5. The applicant shall submit a digital copy of the 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. This resolution, signed Acceptance of Conditions Affidavit and all Department Review Sheets attached to the Planning Commission agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check.
  7. This CDP shall expire if the project has not commenced within three (3) years after issuance of the permit. 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.
  8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
  9. All structures shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Biologist, City Coastal Engineer, City geotechnical staff, City Environmental Health Administrator, City Public Works Department, WD29, and LACFD, as applicable. Notwithstanding this review, all required permits shall be secured.
  10. 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 MMC and the LCP. Revised plans reflecting the minor changes and additional fees shall be required.
  11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission (CCC), have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the CDP approved by the City is void.

12. The applicant must submit payment for any outstanding fees payable to the City prior to issuance of any building or grading permit.

### ***Cultural Resources***

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

### ***Demolition/Solid Waste***

15. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals and drywall.
16. An Affidavit and Certification to implement a Waste Reduction and Recycling Plan (WRRP) signed by the Owner or Contractor shall be submitted to the Environmental and Sustainability Department for review and approval. The WRRP shall indicate the agreement of the applicant to divert at least 50 percent of all construction waste generated by the project.
17. Prior to Final Building inspection, the applicant shall provide the Public Works Department with a Final Waste Reduction and Recycling Summary Report (Summary Report). The Final Summary Report shall designate all material that were land filled or recycled, broken down by material types. The Public Works Department shall approve the final Summary Report.

### ***Construction / Framing***

18. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.
19. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the highest roof member elevation, lowest finish floor elevation and elevation of centerline of Malibu Road. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning Department for review and sign off on framing.

20. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.
21. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.
22. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in LIP Chapter 17, including:
  - a. Construction shall be phased to the extent feasible and practical to limit the amount of disturbed areas present at a given time;
  - b. Grading activities shall be planned during the Southern California dry season (April through October);
  - c. During construction, contractors shall be required to utilize sandbags and berms to control runoff during on-site watering and periods of rain in order to minimize surface water contamination; and
  - d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within the project site.

### ***Biology***

23. This is a beachfront property and no new landscaping is proposed with this project. Therefore, none is approved. Should the applicant intend to plant any new vegetation with a potential to exceed six feet in height, or change 2,500 square feet or more the existing landscaping area, a detailed landscape plan shall be submitted for review and approval prior to any planting.
24. Grading shall be scheduled only during the dry season from April 1 – October 31. If it becomes necessary to conduct grading activities from November 1 – March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
25. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting.
26. Lighting of the shore is prohibited.
27. No storage or staging of construction materials or equipment shall occur on the beach at any time.
28. Except as permitted pursuant to the provisions in LUP policies 3.18 and 3.20, throughout the City of Malibu, development that involves the use of pesticides, including insecticides,

herbicides, rodenticides or any other similar toxic chemical substances, shall be prohibited in cases where the application of such substances would have the potential to significantly degrade Environmentally Sensitive Habitat Areas or coastal water quality or harm wildlife. Herbicides may be used for the eradication of invasive plant species or habitat restoration, but only if the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls are infeasible. Herbicides shall be restricted to the least toxic product and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and used for a limited time.

### ***Coastal Engineering***

29. The property owner shall comply with the requirements for recorded documents and deed restrictions outlined in LIP Sections 10.6(A).
30. The consultant's report (GeoSoils, INC., 9-26-16) contains a Shore Protection Monitoring Program that is consistent with the City's requirements. The property owner shall record a "Covenant and Agreement Regarding Maintenance of the Shoreline Protection Device and the Use and Transfer of Ownership of Property", informing any successors-in-interest to the property of these SPD monitoring requirements. The Shore Protection Monitoring Program shall be attached to the covenant as Exhibit B. A template for this covenant is available at the City. This item shall be made a condition of approval and shall be completed prior to building plan check stage approval.

### ***Environmental Health***

31. Final Onsite Wastewater Treatment System (OWTS) Plot Plan: A final plot plan by a City Registered OWTS Designer shall be submitted showing an OWTS design meeting the minimum requirements of the Malibu Municipal Code (MMC) and the Local Coastal Program (LCP)/Local Implementation Plan (LIP). The plans must include all necessary construction details, the proposed drainage plan for the developed property, and the proposed landscape plan for the developed property. The OWTS Plot Plan shall show essential features of the OWTS, existing improvements, and proposed/new improvements. The plot must fit on an 11"x 17" sheet leaving a 5" left margin clear to provide space for a City-applied legend. If the plan scale is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18" x 22" for review by Environmental Health).
32. Final OWTS Design Report, Plan, and System Specifications: A final OWTS design report and large set of construction drawings with system specifications (four sets) shall be submitted to describe the OWTS design basis and all components proposed of use in the construction of the OWTS. All plans and reports must be signed by a City Registered OWTS Designer and the plans stamped by the project Geologist, Coastal Engineer, and Structural Engineer as applicable. The final OWTS design report and construction drawings shall be submitted with the designer's signature, professional registration number, and stamp (if applicable).
33. The final OWTS design report shall contain the following information (in addition to the items listed above).
  - a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and

shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;

- b. Sewage and effluent pump design calculations (as applicable);
  - c. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;
  - d. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Provide seepage pit cap depth relative to original and finished grades. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak OWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics; and
  - e. All OWTS design drawings shall be submitted with the wet signature and typed name of the OWTS designer. If the plan scale is such that more space than is available on the 11" x 17" plot plan is needed to clearly show construction details, larger sheet may also be provided (up to a maximum size of 18" x 22" for review by Environmental Health). Note: For OWTS final designs, full-size plans are required for review by the Building Safety Division and/or the Planning Department.
34. Final plans shall clearly show the locations of all existing OWTS components (serving pre-existing development) to be abandoned and provide procedures for the OWTS' proper abandonment in conformance with the Malibu Plumbing Code.
35. The following note shall be added to the plan drawings included with the OWTS final design. "Prior to commencing work to abandon, remove, or replace existing OWTS components an OWTS Abandonment Permit shall be obtained from the City of Malibu. All work performed in the OWTS abandonment, removal, or replacement area shall be performed in strict accordance with all applicable federal, state, and local environmental and occupational safety and health regulatory requirements. The obtainment of any such required permits or approvals for this scope of work shall be the responsibility of the applicant and their agents."

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36. All project architectural plans and grading/drainage plans shall be submitted for Environmental Health review and approval. These plans must be approved by the Building Safety Division prior to receiving Environmental Health final approval.
37. All proposed reductions in setbacks from the onsite wastewater treatment system to structure or other features less than those shown in Malibu Municipal Code (MMC) Section 15.42 must be supported by letters from the project consultants. The wastewater plans and the construction plans must be specifically referenced in all certification letters. The construction plans for all structures and/or buildings with reduced setback must be approved by City of Malibu Building Safety prior to Environmental Health final approval. The architectural and/or structural plans submitted for Building Safety plan check must detail methods of construction that will compensate of the reduction in setback (e.g. waterproofing, concrete additives). For complex waterproofing installations, submittal of a separate waterproofing plan may be required. All plans must show the location of onsite wastewater treatment system components in relation to those structures from which the setback is reduced, and the plans must be signed and stamped by the architect, structural engineer, and geotechnical consultants (as applicable).
- a. Structures – All proposed reductions in setback from the onsite wastewater treatment system to structures (i.e. setbacks less than those in MMC Section 15.42) must be supported by a letter from the project Structural Engineer and a letter from the project Soils Engineer (i.e., a Geotechnical Engineer or Civil Engineer practicing in the area of soils engineering). Both engineers must certify unequivocally that the proposed reduction in setbacks from the treatment tank and effluent dispersal area will not adversely affect the structural integrity of the onsite wastewater treatment system, and will not adversely affect the structural integrity of the structures for which the setback is reduced.
  - b. Buildings – All proposed reduction in setback from the onsite wastewater treatment system to building (i.e., setbacks less than those shown in MMC Section 15.42) also must be supported by a letter from the project Architect, who must certify unequivocally that the proposed reduction in setbacks will not produce a moisture intrusion problem for the proposed building(s). If the building designer is not a California licensed architect, then the required Architect's certification may be supplied by an Engineer who is responsible for the building design with respect to mitigation of potential moisture intrusion from reduced setback to the wastewater system; in this potential moisture intrusion. If any specific construction features are proposed as part of a moisture intrusion mitigation system in connection with the reduced setback(s), then the Architect (or Engineer) must provide associated construction documents for review and approval during Building Plan Check.
38. Waterproofing Plan: A waterproofing plan in conformance with the project consultants' recommendations must be submitted.
39. Proof of ownership of subject property shall be submitted.
40. An operations and maintenance manual specified by the OWTS designer shall be submitted to the property owner and maintenance provider of the proposed advanced OWTS.
41. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed advanced onsite



wastewater treatment system shall be submitted prior to Environmental Health approval. Please note only original “wet signature” documents are acceptable.

42. Prior to final Environmental Health approval, a covenant which runs with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the City of Malibu Recorder’s Office. Said covenant shall serve as constructive, notice to any future purchaser for value that the OWTS serving subject property is an advanced method of onsite wastewater disposal pursuant to the City of Malibu Municipal Code. Said covenant shall be provided by the City of Malibu Environmental Health Administrator. Please submit a certified copy issued by the City of Malibu Recorder.
43. Covenant to Forfeit 100% Expansion Effluent Disposal Area: A covenant running with the land shall be executed by the property owner and recorded with the City of Malibu Recorder’s Office. Said covenant shall serve as constructive notice to any successors in interest that (1) the private sewage disposal system serving the development on the property does not have a 100 percent expansion effluent dispersal area (i.e., replacement disposal fields(s) or seepage pit(s)) and (2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures including, but not limited to, limitations on water use enforced through an operating permit and/or repairs, upgrades or modifications to the private sewage dispersal system. The recorded covenant shall state and acknowledge that future maintenance and/or repair of the private sewage disposal system may necessitate interruption in use of the private sewage dispersal system and therefore, any buildings(s) served by the private sewage disposal system may become non-habitable during any required future maintenance and/or repair. Said covenant shall be in a form acceptable to the City Attorney and approved by the Environmental Sustainability Department. Please submit a certified copy issued by the City of Malibu Recorder.
44. Project Geologist/Geotechnical Consultant Approval: Project Geologist/Geotechnical Consultant final approval of the Onsite Wastewater Treatment System plan shall be submitted to the Environmental Health Administrator.
45. City of Malibu Geotechnical Approval: City of Malibu geotechnical staff final approval of the Onsite Wastewater Treatment System plan shall be submitted to the Environmental Health Administrator.
46. Project Coastal Engineer Approval: Project Coastal Engineer Consultant final approval of the Onsite wastewater Treatment System plan shall be submitted to the Environmental Health Administrator.
47. City of Malibu Coastal Engineering Approval: City of Malibu Coastal Engineering final approval of the Onsite Wastewater Treatment System plan shall be submitted to the Environmental Health Administrator.
48. City of Malibu Planning Approval: City of Malibu Planning Department final approval of the OWTS plan shall be obtained.
49. Environmental Health Final Review Fee: A final fee in accordance with the adopted fee schedule at the time of final approval shall be paid to the City of Malibu for Environmental Health review of the OWTS design and system specifications.

50. Operating Permit Application and Fee: IN accordance with Malibu Municipal Code, an application shall be made to the Environmental Health office for an Onsite Wastewater Treatment System operating permit. An operating permit fee in accordance with the adopted fee schedule at the time of final approval shall be submitted with the application.

### ***Geology***

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

### ***Public Works***

#### ***Street Improvements***

53. The project proposes to construct new driveway within the City's right-of-way. Prior to the Public Works Department's approval of the grading or building permit, the applicant shall obtain encroachment permits from the Public Works Department for the proposed work within the City's right-of-way.
54. This project proposes to construct a new driveway within the City's right-of-way. Prior to the Public Works Department's approval of the grading or building permit, the applicant shall obtain encroachment permits from the Public Works Department for the proposed driveway. The driveway shall be constructed of either 6-inches of concrete over 4-inches of aggregate base, or 4-inches of asphalt concrete over 6-inches of aggregate base. The driveway shall be flush with the existing grades with no curbs.
55. Several existing private improvements are located within the City's right-of-way, such as (but not limited to) landscaping, railroad ties, fencing. These improvements are required to be removed as part of this project and must be shown on the plans. The applicant shall place notes on the plans for the removal of existing encroachments within the City's right-of-way. Prior to the Public Works Department's approval of the grading or building permit, the applicant shall obtain encroachment permits from the Public Works Department for the removal of the private improvements within the City's right-of-way.

### ***FEMA***

56. Proposed improvements are located within the Special Flood Hazard Area (SFHA). An Elevation Certificate based on construction drawings is required for any building located within the SFHA. A survey map shall be attached to this certificate showing the location of the proposed building in relation to the property lines and to the street center line. The survey map shall delineate the boundary of the SFHA zone(s) based on the FIRM flood maps in effect and provide the information for the benchmark utilized, the vertical datum,

and any datum conversion. A post construction Elevation Certificate will be required to certify building elevations, when the construction is complete, and shall be provided to the Public Works Department prior to final approval of the construction.

57. The proposed pool is located within a SFHA, Zone VE. The proposed pool must be elevated above one foot above the base flood elevation (BFE), the structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. All pool equipment shall be placed above the BFE. A professional engineer must certify by that these standards have been satisfied.
58. The proposed septic system is located within a SFHA, Zone VE. The proposed septic system shall be designed to eliminate infiltration of flood waters into the system and discharges from the system into flood waters. The septic system shall be located to avoid impairment or contamination during flooding. The septic system shall be buried below the expected depth of erosion and scour. The tank shall be anchored to prevent a buoyancy failure. Septic system tanks must not be structurally attached to building foundations. All septic lines shall be protected from water and debris damage. Riser lines shall be located on the landward side of a pile or other vertical structural member or inside an enclosure designed to withstand the forces from the event.

#### *Grading and Drainage*

59. Clearing and grading during the rainy season (extending from November 1 to March 31) shall be prohibited for development pursuant to LIP Section 17.3.1:
  - a. Is located within or adjacent to ESHA, or
  - b. Includes grading on slopes greater than 4:1,
  - c. Approved grading for development that is located within or adjacent to ESHA or on slopes greater than 4:1 shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the City determines that completion of grading would be more protective of resources.
60. Exported soils shall be taken to the County Landfill, or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3. A note shall be placed on the project plans that addresses this condition.
61. A Grading and Drainage Plan for the excavation containing the following information shall be reviewed and approved by the Public Works Department, prior to the issuance of grading permits for the project:
  - a. Public Works Department general notes;
  - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking tennis courts and pool decks);
  - c. The limits of land to be disturbed during project development shall be delineated on the grading plan and a total area shall be shown on the plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated.

- d. The grading limits shall include the temporary cuts made for buttresses, and over-excavation for fill slopes shall be shown;
  - e. If the property contains trees that are to be protected, they shall be highlighted on the grading plan;
  - f. If the property contains rare and endangered species as identified in the resources study, the grading plan shall contain a prominent note identifying the areas to be protected (to be left undisturbed). Fencing of these areas shall be delineated on the grading plan if required by the City Biologist.
  - g. Private storm drains, and systems greater than 12-inch diameter shall also include a plan and profile; and
  - h. Public storm drain modifications shown on the grading plan shall require approval by the Public Works Department prior to the issuance of the grading permit.
62. A digital drawing (AutoCAD) of the project's private storm drain system, public storm drain system within 250 feet of the property limits, and post-construction BMPs shall be submitted to the Public Works Department prior to the issuance of building permits. The digital drawing shall adequately show all storm drain lines, inlets, outlets, post-construction BMPs and other applicable facilities. The digital drawing shall also show the subject property, public or private streets, and any drainage easements.
63. All City/County storm drain inlets within 250 feet from each property line shall be labeled per the City of Malibu's standard label template. A note shall be placed on the project plans to address this condition.

### ***Stormwater***

64. A Local Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the Grading/Building permits for the project. This plan shall include an Erosion and Sediment Control Plan (ESCP) that includes, but not limited to:

Erosion Controls	Scheduling
	Preservation of Existing Vegetation
Sediment Controls	Silt Fence
	Sand Bag Barrier
	Stabilized Construction Entrance
Non-Storm Water Management	Water Conservation Practices
	Dewatering Operations
Waste Management	Material Delivery and Storage
	Stockpile Management
	Spill Prevention and Control
	Solid Waste Management
	Concrete Waste Management
	Sanitary/Septic Waste Management

65. All BMPs shall be in accordance to the latest version of the California Stormwater Quality Association (CASQA) BMP Handbook. Designated areas for the storage of construction materials, solid waste management, and portable toilets must not disrupt drainage patterns or subject the material to erosion by site runoff.

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66. A Storm Water Management Plan (SWMP) is required for this project. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within the City's LCP Section 17.3.2.B.2. The SWMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The SWMP shall identify the site design and source control BMPs that have been implemented in the design of the project. The SWMP shall be reviewed and approved by the Public Works Department prior to the issuance of the grading/building permits for this project.
67. A Water Quality Mitigation Plan (WQMP) is required for this project. The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The WAMP shall meet all the requirements of the City's current Municipal Separate Stormwater Sewer System (MS4) permit. The following elements shall be included within the WQMP:
- a. Site Design BMPs;
  - b. Source Control BMPs;
  - c. Treatment Control BMPs that retains on-site the Stormwater Quality Design Volume (SWQDv). Or where it is technically infeasible to retain on-site, the project must biofiltrate 1.5 times the SWQDv that is not retained on-site.
  - d. Drainage Improvements;
  - e. A plan for the maintenance and monitoring of the proposed treatment BMP for the expected life of the structure;
  - f. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits;
  - g. The WQMP shall be submitted to the Public Works Department and the fee applicable at time of submittal for the review of the WQMP shall be paid prior to the start of the technical review. The WQMP shall be approved prior to the Public Works Department's approval of the grading and drainage plan and or building plans. The Public Works Department will tentatively approve the plan and will keep a copy until the completion of the project. Once the project is completed, the applicant shall verify the installation of the BMPs, make any revisions to the WQMP, and resubmit to the Public Works Department for approval. The original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted to the Public Works Department prior to the certificate of occupancy.
68. The developer's consulting engineer shall sign the final plans prior to the issuance of permits.
69. The discharge of swimming pool, spa, and decorative fountain water and filter backwash, including water containing bacteria, detergents, wastes, algaecides or other chemicals is prohibited. Swimming pool, spa, and decorative fountain water may be used as landscape irrigation only if the following items are met:
- a. The discharge water is dechlorinated, debrominated or if the water is disinfected using ozonation;
  - b. There are sufficient BMPs in place to prevent soil erosion; and

- c. The discharge does not reach into the MS4 or to the ASBS (including tributaries)

Discharges not meeting the above0mentioned methods must be trucked to a Publicly Owned Wastewater Treatment Works.

The applicant shall also provide a construction note on the plans that directs the contractor to install a new sign stating “It is illegal to discharge pool, spa or water feature waters to a street, drainage course or storm drain per MMC 13.04.060(D)(5).” The new sign shall be posted in the filtration and/or pumping equipment area for the property. Prior to the issuance of any permits, the applicant shall indicate the method of disinfection and the method of discharging.

### **Site Specific Conditions**

- 70. All air conditioning equipment shall be screened from view by a solid wall or fence on all four sides at a height not to exceed 24 feet. The fence or walls shall comply with LIP Section 3.5.3(A). All rooftop equipment shall comply with the LIP Section 3.6.3 height requirements.

### **Colors and Materials**

- 71. The residence shall have an exterior siding of brick, wood, stucco, metal, concrete or other similar material. Reflective glossy, polished and/or roll-formed type metal siding is prohibited.
- 72. New structures shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
  - a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones;
  - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible; and
  - c. All windows shall be comprised of non-glare glass.

### **Lighting**

- 73. Exterior lighting must comply with the Dark Sky Ordinance and shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view. Permitted lighting shall conform to the following standards:
  - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height and are directed downward, and limited to 850 lumens (equivalent to a 60 watt incandescent bulb);
  - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 850 lumens;
  - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 850 lumens;
  - d. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 850 lumens;

- e. Site perimeter lighting shall be prohibited; and
  - f. Outdoor decorative lighting for aesthetic purposes and lighting of the shore are prohibited.
74. Night lighting for sports courts or other private recreational facilities shall be prohibited.
75. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property(ies) shall not produce an illumination level greater than one foot candle.
76. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded directed downward and inward so there is no offsite glare or lighting of natural habitat areas. High intensity lighting of the shore is prohibited.
77. String lights are allowed in occupied dining and entertainment areas only and must not exceed 3,000 Kelvin.
78. Motion sensor lights shall be programmed to extinguish ten minutes after activation.
79. Three violations of the conditions by the same property owner will result in a requirement to permanently remove the outdoor lighting fixture(s) from the site.

#### ***Water Service***

80. Prior to the issuance of a building permit, the applicant shall submit an updated Will Serve Letter from WD29 indicating the ability of the property to receive adequate water service.

#### ***U.S. Army Corps of Engineers***

81. The applicant/property shall obtain all required permits, if any, including any necessary permits from the U.S. Army Corps of Engineers, prior to commencement of construction.

#### ***Shoreline Construction Protection***

82. No stockpiling of dirt or construction materials shall occur on the beach.
83. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking, and construction equipment shall not be cleaned on the beach.
84. No machinery shall be allowed in the intertidal zone at any time unless necessary for protection of life and/or property.
85. The applicant/property owner shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion.
86. The applicant/property owner shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion, and all construction debris shall be removed from the beach daily and at the completion of development.

***View Corridor***

87. Pursuant to LIP Section 6.5(E)(2) and in order insure the protection of scenic and visual resources, the applicant is required to maintain:
- A view corridor a minimum of 18 feet wide across the linear frontage of the lot on the east side property line.
  - No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.
  - Any fencing across the view corridor shall be permanently maintained as visually permeable including safety fencing proposed for the swimming pool. Tinted or frosted glass, and louvered or slatted screen fences are not permitted.
  - Any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
  - If at any time the property owner allows the view corridor to become impaired or blocked, it would constitute a violation of the coastal development permit and the Coastal Act and be subject to all civil and criminal remedies.

**Offer to Dedicate/Deed Restrictions**

88. In order to effectuate the property owner's offer to dedicate an easement for lateral public access and passive recreational use along the shoreline, prior to issuance of the permit, the property owner shall execute and record a document, in a form and content acceptable to the Planning Director and CCC, irrevocably offering to dedicate to a public agency or private association approved by the City and CCC, an easement for lateral public access and passive recreational use along the shoreline. The easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the most seaward projection of the project. The document shall be recorded free of prior liens and any other encumbrances which the CCC determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of California, binding all successors and assigns, and this offer shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include a formal legal description and graphic depiction, prepared by a licensed survey, of both the property owner's entire parcel and the easement area. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property
89. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning Department approval.
90. The property owner is 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 Department approval.

91. Prior to final Planning Department approval, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth previously under Lighting. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning Department approval.
92. The property owner is required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. Said deed restriction shall be submitted to the Planning Department for approval prior to recordation. The deed restriction shall also acknowledge that the intended purpose of the shoreline protection structure is solely to protect the proposed septic disposal system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new residence shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor.

### **Prior to Occupancy**

93. The applicant shall request a final Planning Department inspection prior to final inspection by the City of Malibu Environmental and Sustainability Department. A Certificate of Occupancy shall not be issued until the Planning Department has determined that the project complies with this CDP. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
94. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval and if applicable, the issuance of the certificate of occupancy.
95. Prior to final building inspection, the applicant shall provide the Environmental Sustainability Department with a Waste Reduction and Recycling Plan Final Summary Report. The Final Summary Report shall designate all materials that were landfilled or recycled, broken down by material types. The Environmental Sustainability Department shall approve the Final Summary Report.

### **Fixed Conditions**

96. This coastal development permit shall run with the land and bind all future owners of the property.
97. 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 8. The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 11<sup>th</sup> day of October 2021.

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PAUL GRISANTI, Mayor

ATTEST:

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KELSEY PETTIJOHN, Acting City Clerk  
(seal)

APPROVED AS TO FORM:

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

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JOHN COTTI, Interim City Attorney

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

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.