



Council Agenda Report

To: Mayor Grisanti and Honorable Members of the City Council

Prepared by: Adrian Fernandez, Assistant Planning Director

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: October 14, 2022 Meeting date: October 24, 2022

Subject: Appeal Nos. 22-002 and 22-003 - Appeal of Planning Commission Resolution No. 22-01 (22969 and 22959 Pacific Coast Highway; Appellants: Mani Brothers Real Estate Group and Patt Healy; Applicant: Steven Hakim; Property Owner: SKA Group, LLC and Surfrider Plaza, LLC) (Continued from October 10, 2022)

RECOMMENDED ACTION: Adopt Resolution No. 22-43 (Exhibit 1), determining the project is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal Nos. 22-002 and 22-003 and approving Conditional Use Permit Amendment (CUPA) No. 13-006 and Joint Use Parking Agreement (JUPA) No. 14-001 amending Conditional Use Permit (CUP) No. 09-009 and JUPA No. 10-001 to reduce the restaurant service area, increase retail tenant space, and decrease the number of required off-site parking spaces (22959 Pacific Coast Highway) located in the Commercial Visitor Serving-One (CV-1) zoning district at 22969 and 22959 Pacific Coast Highway (PCH) (SKA Group, LLC and Surfrider Plaza, 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 2022-2023. Processing this application is part of normal staff operations.

DISCUSSION: The matter concerns two separate appeals (Exhibits B and C) of CUPA No. 13-006 and JUPA No. 14-001, approved by the Planning Commission on April 4, 2022, for the permanent conversion of restaurant service area to retail space in order to reduce the subject property's required offsite parking spaces on the adjacent surface parking lot (currently under review for a new motel). Planning Commission Resolution No. 22-01 and the related Planning Commission Agenda Report are included herein as Exhibits D and E, respectively.

Two appellants submitted two separate appeals. The appellants shared some of the appeal bases. A summary of the two appellants' contentions are as follows:

- The Aviator Nation Dreamland approval was improperly split from the Malibu Inn Motel project;
- Proceeding with the subject application separate from the Malibu Inn Motel application would constitute improper piecemealing under CEQA;
- CUP and code violations, including noise complaints;
- Traffic-related issues at PCH, lack of parking, loss of public parking, and parking agreement with Surfrider Malibu Motel; and
- The findings made in the Planning Commission's decision are not supported by the evidence.

The full text of the appeals is included as Exhibits B and C.

Project Description

The applicant is seeking to amend the existing CUP No. 09-009 and JUPA No. 10-001 to allow the reduction of the restaurant service area, to increase the space of an existing retail tenant space (Aviator Nation) and decrease the number of required off-site parking spaces in the JUPA to reflect the new number of required offsite parking spaces for the existing restaurant (Aviator Nation Dreamland). The two tenant spaces are located in the same building also known as the Malibu Inn building.

The Malibu Inn building will remain the same size. However, the interior space was reconfigured to convert restaurant space into retail. The subject application seeks to amend the conditional use permit to memorialize this change. The pre-existing (approved under CUP No. 09-009) and existing/ proposed uses, and associated required parking are represented in Tables 1 and 2 below.

Table 1 – Existing and Proposed Uses		
Uses	Pre-Existing (CUP 09-009)	Existing/Proposed
Restaurant (Service Area Sq.Ft.)	2,474 sq.ft.	1,935 sq.ft.
Interior	1,184 sq.ft.	1,184 sq.ft.
Outdoor Patio	751 sq.ft.	751 sq.ft.
Banquet Room	539 sq.ft.	0 sq.ft.
Retail (Gross Floor Area Sq.Ft.)	565 sq.ft.	1,636 sq.ft.

Table 2 – Minimum Required Parking for Proposed Use			
Uses	Parking Requirement	Proposed	Required
Restaurant	one space for each 50 square feet of service area	1,935 sq. ft. service area / 50 sq. ft.	39 spaces
General Retail Store	one space for each 225 square feet of gross floor area	1,636 sq. ft. of gross floor area / 225 sq. ft.	7 spaces
Total	Onsite: 23 spaces Offsite: 23 spaces		46 spaces

Parking

The existing required onsite parking is comprised of 21 regular and compact parking spaces plus two ADA accessible parking spaces. There are four driveway curb cuts which provide access to the property from PCH. There is a traffic signal and crosswalk immediately south of the property, which provides safe access across PCH to the Malibu Pier and its adjacent public parking lot. The farthest curb cut to the east at the Malibu Inn site is shared with the adjacent property to the east. The next onsite curb cut to the east will be removed if the amendment is approved. Curb cuts that are in close proximity can be confusing to internal circulation as well as confusion when entering and existing the site. The elimination of the curb cut will have the benefit of providing ridesharing dropoff and pickup, or on-street parking spaces.

Per the existing JUPA, the adjacent 22959 PCH lot to the east provides 31 donor parking spaces at all times during the permitted operating hours. A deed restriction was recorded on the title of each property reflecting the permanent reciprocal parking agreement. The project proposes to amend the JUPA to reduce the number of required donor spaces from 31 to 23, as only 23 offsite spaces will be required by the Malibu Municipal Code (MMC) parking requirements if the CUPA is approved. These are the minimum parking requirements for the existing uses. The Council may decide that, based on the proposed use, additional parking spaces beyond the minimum are required.

The adjacent surface parking lot consists of approximately 39 parking spaces of which 31 spaces are currently dedicated to the subject property. This number would be reduced to 23 if the Council denies the appeals and affirms the decision of the Planning Commission.¹

APPEALS TO THE CITY COUNCIL

The appeals outline the specific findings and the grounds for the appeals, each of which are summarized below in *italics*. Following each point from the appeals are staff's responses in straight type. The full text of the appeal documents can be found in Exhibits B and C. The Planning Commission agenda report is included as Exhibit E. The Planning

¹ The Surfrider Malibu Motel, located two properties west of the subject property, executed a revocable agreement to rent five parking spaces at the adjacent surface parking lot. Prior to this agreement, the property owner was making the eight surplus parking spaces available to the public as paid parking. The agreement with the Surfrider Malibu Motel was not in violation with the approved conditional use permit for the subject property and the agreement has since been terminated.

Commission agenda report includes a complete overview of the surrounding area, project conformance with the Local Coastal Program (LCP) and MMC, and a discussion of all required findings.

Appeal Item 1. Violation of State Law and Malibu LCP Codes and Error in hearing procedure

Both CEQA and sound planning principles dictate that these two projects be evaluated and considered for approval together as one series of inter-related action constituting the whole project. CEQA requires that environmental considerations not be concealed by separately focusing on isolated parts, overlooking the effect of the whole action in its entirety. City of Sacramento v. State Water Resources Control Bd. (1992) 2 CA4th 960; McQueen v Board of Dirs. (1988) 202 CA3d 1136, 1144; City of Carmel-by-the-Sea v Board of Supervisors (1986) 183 CA3d 229, 241 (rejecting argument that re-zoning of motel and restaurant was a separate project from the application to redevelop the property). Accordingly, a public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the effects of the project as a whole. In this case, it was improper to approve the Aviator Nation parking reductions in isolation from the motel, because of the interrelationship of the two projects and especially because the Aviator Nation amendment will free up spaces on the motel site in order to facilitate the motel.

The Malibu Inn Motel and the amended requested 2022 CUP/JUPA should be heard together since they are intertwined and related. The Planning Commission voted twice to hear the motel application prior to the JUPA application and twice changed its agenda to that effect. This hearing order was ignored by staff at the third hearing by continuing the motel item to a date uncertain and allowing the JUPA hearing to proceed before the motel agenda item.

Staff Response

The two applications were scheduled on the same agenda for several Planning Commission hearings as separate items. However, while the adjacent lot where the Malibu Inn Motel is proposed to be located, and where the offsite parking for the subject property is located, is owned by the same entity--the projects themselves are separate. The project before the Council proposes a conversion of restaurant space to retail, reducing the parking demand of the subject property and the need to park vehicles offsite. If approved, the restaurant space will be permanently reduced as will be the number of offsite parking spaces that are required.

The appellants are correct that CEQA Guidelines forbid piecemealing or segmenting projects. However, the proposed project is an individual self-contained project and not dependent or contingent on any other development. It is not a phased development project, does not require offsite improvements, and does not reasonably anticipate physical development. It constitutes a rebalancing of the uses on site to reduce restaurant

use and increase retail space, which should reduce the potential impacts of the use. In order to increase restaurant space in the future, a CUP amendment would be required. The proposed project is not expected to have any potential for causing a significant effect on the environment whether evaluated independently or cumulatively.

The proposed project consists of a separate and independent application from the Malibu Inn Motel and should be considered based on its own merits. As discussed at the Planning Commission hearing, the subject project is not dependent upon the approval of the Malibu Inn Motel, and does not have a negative effect on the environment, it was determined that the project is beneficial by reducing the parking demand of the site.

Appeal Item 2. CUP and Code Violations (e.g., Noise), and 2010 CUP Revocation Required

The venue has not been complying with service area restrictions in the CUP. For example, an employee lounge has been used for food and beverage consumption by the public. And the layout of tables and seating permitted by the CUP has been violated as documented by inspection.

Excessive noise from amplified music at the Aviator Nation Dreamland venue was documented in a video recording presented at the Planning Commission hearing.

Staff Response

The item before the City Council is an appeal of a proposed CUP amendment, not a revocation hearing or a code enforcement proceeding. Revocation can only be accomplished through the process detailed in MMC Section 17.66.100, which has not been initiated, and requires specific procedures and noticing. Evidence of potential negative impacts may provide grounds for the Council to add conditions to the CUP to mitigate or prevent such impacts but, again, revocation may only occur pursuant to the process implemented by MMC section 17.66.100.

At the April 4, 2022 Planning Commission hearing, one of the neighbors submitted a video that was played at the meeting. The video appeared to show an event that did not keep the doors closed as required, may have generated noise in excess of that allowed (noise from the premise is not to be plainly audible at a five-foot distance from any residential unit from 10 pm to 7 am), and where the Sheriff's Department was not notified of a live entertainment event or large event in excess of 100 attendees. Staff followed up on the video that was submitted by the neighbor and, on April 6, 2022, a citation was issued for violation of the CUP conditions. To date, no new complaints have been filed.

The appellant claims there are CUP violations related to the employee lounge and the service area layout. However, the current CUP does not restrict the serving and consumption of food and beverages within the employee lounge (formerly the billiard room). A condition of the proposed CUP amendment would change this and restrict

seating, dining and drinking within the employee lounge area to employees only. The layout of the restaurant is consistent with the service area approved in the current CUP. If the Council has concerns about service area or events spilling into the employee lounge or retail space, additional conditions can be added to physically separate these spaces.

Further, the Planning Department approved the tenant change and layout under a Planning Clearance application, and the current setup conforms to these approvals. At the Planning Commission hearing, some people also referred to the furniture as more conducive to a bar than a restaurant because the seats were couches, and the tables were coffee tables. The choice of furniture, however, is not a violation of the CUP or the code.

In sum, while the Council may consider the impacts of the proposed project (and conditions required to mitigate any impacts) when evaluating the application, the CUP cannot be revoked during this hearing nor may code enforcement action be taken.

Appeal Item 3. Traffic and Parking

Numerous code and CUP violations were cited in the public hearing, including undersized parking spaces, undercounting employees, lack of parking, employees parking in the street, offsite parking more than 300 feet away, an unauthorized joint parking arrangement with Surfrider Malibu Motel, and traffic backing up on the highway. Reduce parking violates CEQA. Loss of public parking.

Staff Response

The subject property contains 23 parking spaces and the proposed CUP amendment will reduce the amount of offsite parking required from 31 to 23 parking spaces. Most of the existing onsite parking spaces are non-conforming due to size and aisle width. However, the City has generally not required previously approved non-conforming parking to be changed to comply with current development standards unless the property is proposed to be redeveloped. The inside of the building has been cosmetically remodeled, and the exterior walls repainted. The footprint and exterior walls remained unaltered. The restaurant and retail spaces will continue to provide the code-required number of parking spaces for those uses in the form they currently exist.

The existing CUP allows for the restaurant to hold 10 live entertainment events per month. At the time CUP No. 09-009 was approved, the former Planning Commission determined that the 10 live events per month (eight small events and two large events) could take place. The two large events per month that would be allowed to bring up to 300 patrons are expected to need more parking spaces than are provided onsite and through the JUPA. However, the proposed amendment will reduce the event space and, as conditioned, will reduce the total number of people per large event from 340 to 300. The current Planning Commission addressed this issue by adding Condition No. 13 that

requires the applicant to provide other off-street alternative parking for large events similar to the way temporary use permits are processed.

As mentioned before, the proposed amendment will convert restaurant space into retail space which will reduce traffic and parking demand. The project will reduce the number of required parking spaces, but the reduction in parking spaces is proportionate to the reduction in the demand of parking spaces as provided in the MMC. A smaller restaurant and event space is consistent with CEQA as it qualifies for a categorical exemption and would result in less parking and traffic; and as determined in Finding 3 of Section A of Planning Commission Resolution No. 22-01, the proposed project is a less environmentally damaging alternative compared to previously approved conditions. The reduction in size of the restaurant, maximum size of events, and the requirement to provide approved offsite parking for large events should also reduce any current impacts on traffic and parking in the area.

The appellants claim an unauthorized parking arrangement was executed with the Surfrider Malibu Motel. Both parties corroborated such an agreement was previously reached and has since been terminated. Staff also found that, in the surface parking lot, only 10 parking spaces were labeled for Aviator Nation and the rest for AirGarage. AirGarage is an online parking operator. This would be a violation of CUP No. 09-009 and current JUPA. Since notifying the owners, staff has confirmed that all the AirGarage signage for individual parking spaces have been removed. The adjacent parking lot has historically been used as a surface parking lot. This is a legal, non-conforming use. The parking spaces not assigned for Aviator Nation can be rented out to the public. Condition No. 14 has been added to the resolution requiring appropriate signage is installed and maintained to ensure parking spaces required for the Malibu Inn at the adjacent parking lot are not used by non-Malibu Inn customers.

Appeal Item 4. The appellants contend that certain project findings cannot be met. Below is a list of the applicable findings in bold, followed by the appellant statements in italicize

Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

The original CUP is to operate a primarily restaurant use with incidental events. The current use is primarily a nightclub/event venue with the restaurant use no longer in existence. More parking spaces are needed for these events, not less. By reducing the required parking spaces, the applicant no longer has the minimum parking spaces required for events. Staff miscalculated the service area based on a primarily restaurant use instead of the current nightclub use. The service area becomes dramatically larger and the parking requirements should be calculated on the highest use. The Malibu Inn is massively under-parked for 300 patrons, 20 plus employees, vendors and/or musicians for large events. It is not possible to accommodate parking for 300 patrons, which is

required by code and the LIP. Employees and patrons will take street parking and displace visitor parking and access.

In addition, the wastewater system is for 94 individuals which is City-approved and the CUP allows up to 300 patrons which is well over capacity. The backup leachfield is not on the Malibu Inn site as required.

Finding 3. The subject site is physically suitable for the type of land use being proposed.

There is no restaurant operating onsite and the conditions of approval are not being enforced. Without strict enforcement the subject site is not physically suitable for the type of land use being proposed. The reduction of available parking also makes it unsuitable for its current use as an events/nightclub venue.

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The proposed use was a restaurant that could have events. The restaurant ceased to exist when Casa Escobar closed almost two years ago. The CUP was granted for a restaurant and thus the CUP is no longer valid. Under the 2010 CUP, the conditions of approval must be revoked.

In addition, the area consists of mix uses (residential, commercial, pre-school and religious). Allowing a nightclub to operate ignores the rights and needs of nearby uses. The area is not a “nightclub” zone; therefore, the current use would create a nightclub environment.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located. The proposed amendment will not affect the compatibility of the existing use.

The use is now a nightclub/event venue and is not compatible with the surrounding area uses comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space, and residential houses to the south. The event use conflicts with these uses especially if an event is during the day. At night the event use creates a nuisance disturbing the peace and quiet of the neighbors and therefore is not compatible with the residential use.

Future land use by a proposed motel known by the City has not been taken into consideration as required by this finding.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to

public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

Sanitation is not adequate for 300 patrons and an expanded site for this system does not exist. Due to the extensive nightclub use, a sewer connection under Phase 2 is required by the RQWCB MOU.

Staff Response

The original CUP continues to govern the uses allowed onsite. Since the CUP was originally granted in 2010, the restaurant has changed operators three times. The current operator is Aviator Nation Dreamland. On April 26, 2021, the Planning Department approved a Planning Clearance for Aviator Nation Dreamland after the applicant demonstrated that the service area was consistent with CUP No. 09-009. The existing restaurant use (Aviator Nation Dreamland) operates in compliance with CUP No. 09-009. In response to the appellant's statements, staff conducted a site visit on September 16, 2022. During the site visit, staff confirmed that the existing restaurant is operating in compliance with the original CUP. There is a full menu displayed by the entrance and food was served to patrons. The proposed amendment will not change the nature of the existing conditionally permitted use and, in fact, would be reducing the conditionally permitted restaurant use.

The original CUP authorizes eight small events and two large events per month. Under the original CUP, events were interchangeably referred to as live entertainment (including DJs). Small events would allow a maximum of 100 patrons. It is expected that the proposed parking spaces are all that would be necessary for small events. The restaurant is restricted to 94 patrons due to septic system capacity, which is comparable to the 100 patrons allowed for small events. Large events were limited to a maximum of 340 patrons based on indoor maximum capacity. During these events, the restaurant must operate with a full menu per the requirements of the liquor license. Therefore, regardless of whether an event is happening the building must always operate as a restaurant.

The existing septic system capacity has been determined to be sufficient both for the restaurant capacity, and for the allowed events. Wastewater flow capacity is different for restaurants than it is for large events. Based on the conversion of restaurant into retail space, Environmental Health modified its allowance to 92 seats for the restaurant and the Planning Commission accepted a condition requiring the large events to accommodate no more than 300 patrons due to the reduced maximum capacity.

The estimated flow rate pursuant to Malibu Plumbing Code, Table K-3, restaurant requires 50 gallons per day (gpd) per seat and events require 5 gpd per person. As a result, the existing restaurant generates a total of 4,700 gpd and the use for events generates a total of 1,700 gpd. The Environmental Health Administrator reviewed the previous approval of the design report and determined the existing Onsite Wastewater Treatment System (OWTS) is consistent with the City requirements. The approved design report included

the calculations of the flow rate, the grease interceptor capacity, and the septic tank capacity. According to the given calculations, the OWTS could accommodate the proposed 92 restaurant seating, live entertainment with up to 300 patrons, and the proposed retail all operating simultaneously. The flow rate calculation is used to also calculate the grease interceptor capacity assuming the restaurant and large events are open for 16 hours per day. The flow rate is also used to calculate the septic tank capacity which totals to 6,000 gallons.

As previously authorized pursuant to MMC 17.040.080(A)(7), a CUP allows for the site's 100 percent dispersal area expansion area to be located on the adjacent surface parking lot. The subject property is located within Phase 3 of the Civic Center Wastewater Treatment Plant. If Phase 3 is constructed, the existing septic system would be abandoned.

As approved, the required parking spaces for day-to-day operation of the restaurant and small events can be accommodated with both onsite parking and the 23 offsite parking spaces subject to the proposed amended JUPA. Valet parking is required for the two large events per month. Large events were originally approved to use street parking along PCH and any other adjacent office parking spaces that the owners also owned or would be able to secure at the time of the event. A variance was not required because the required parking spaces for a restaurant is based on service area. The Planning Commission added the following conditions to ensure sufficient parking spaces is available for large events:

- The retail space must be separated with a physical barrier from the restaurant with a fence or wall at least 42 inches in height.
- All events authorized by Condition No. 19 of Resolution 10-59 must be approved by the Planning Director in advance as described in the following sentence and any condition approved by the Planning Director which may be added to mitigate impacts of the event must be complied with: A six-month event schedule shall be submitted for approval every six months and any changes to such approval must be approved at least a month in advance before the event.

The Planning Commission found that with this condition, sufficient parking spaces will be provided for the two large events per month.

Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The previous restaurants were compatible with the surrounding neighborhood but the existing nightclub/event venue allowing 300 attendees is not. Constant complaints of the harassed neighbors have demonstrated that over the years the venue is not compatible due to the total lack of condition enforcement. Reduced parking spaces will only make the situation worse as far as traffic and circulation is concerned. In addition, the traffic and

circulation problems have increased and available public parking on PCH has decreased due to four very successful, well-attended restaurants which also do not have enough onsite parking and take up a considerable amount of public parking on PCH.

Due to the miscalculation of the service area for a nightclub, the additional parking spaces required cannot be met on site and are not adequate for the zone and the congested area between the Malibu Pier and Nobu. Since there is no longer a restaurant at the site, the applicant is in violation of its ABC liquor license. The applicant has a Type 47 license which permits the sale of beer, wine and distilled spirits for consumption on the licensee's premises. To keep this license, the site must operate and maintain the premises as a bona fide eating place, maintain suitable kitchen facilities, and make actual and substantial sales of meals for consumption on the premises. Aviator Nation Dreamland is not serving food, does not have a kitchen staff, and does not have dining tables at the property but continues to serve alcohol at their events.

Staff Response

As stated previously in *Appeal Items 2 and 4*, a Planning Clearance was previously granted after the applicant demonstrated that the Aviator Nation Dreamland will operate consistent with the CUP. The subject application is to amend the current CUP by converting the banquet hall into retail space. This would reduce the restaurant and event space.

Aviator Nation Dreamland will continue to operate in compliance with the CUP and ABC license. The restaurant will continue to have a full menu while the space is used for live entertainment events.

Finding 7. There would be adequate provisions for public access to serve the subject proposal.

Parking is not adequate due to the change in use and undercounting of increased service area. It will obstruct traffic circulation due to the lack of traffic control to prevent highway backup as required for the Sea View Hotel. State beach parking, Nobu, Soho House and Malibu Pier parking continuously creates a backup on PCH effectively closing one eastbound lane. A similar backup situation occurs at Aviator Nation with large events.

Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

An updated traffic study has not been done and obvious ingress and egress and congestion problems exist with no adequate solution. The aviator Nation intersection is rated high on the list of dangerous intersections for traffic accidents by the recent city highway safety study. Furthermore, a nightclub with live entertainment events in combination with late night drinking will increase the probability of intoxication, drunk driving, accidents, vandalism, loitering, graffiti, and noise.

Because of the lack of the ability to enforce compliance, the CUP is allowing the Malibu Inn/Aviator Nation to create a public and private nuisance and shifts the burden of enforcement from the City and law enforcement to residents.

Aviator Nation Dreamland security can only monitor onsite disturbances and patrons. Once away from the applicant's premises, intoxicated patrons will drive, disturb the peace and quiet of residents, create a nuisance, possible fights, and increase the risk of harm to both residents and visitors nearby and along the highway.

Staff Response

As discussed by the Planning Commission and as referenced in Planning Commission Resolution No. 22-01, the proposed amendment is not expected to change the nature of the existing conditionally permitted use. As the amendment will reduce the restaurant and event space, traffic is expected to proportionally be reduced. No evidence of traffic backup at the subject property has been provided. Condition No. 13, which requires the restaurant operator to secure offsite parking in advance of large events, is expected to also reduce potential traffic and provide the necessary off-street parking for large events.

Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

The proposed use does not meet the goals of the following land use policies of the General Plan because it is not compatible with the rural and natural environment of Malibu, it will also obstruct public access and it does not provide enough convenient parking for residents and visitors.

LU Policy 3.1.1: The City shall ensure visitor serving and recreational uses are compatible with the natural resources and aesthetic values of the area.

Allowing large events does not respect the rural character and natural environmental setting. It does not protect the surrounding properties or ensure safe traffic circulation. Under the General Plan "Rural" is defined to include respect for 'Residential Privacy' which has not been respected for over 10 years due to the excessive noise invading neighbors' homes.

LU Policy 3.2.1: The City shall permit the development of commercial recreational and visitor servicing facilities at suitable locations which provide convenient public access, adequate infrastructure, convenient parking and, when feasible, are located where existing low cost recreational uses will be enhanced.

Large events are not suitable at this location, there is not adequate infrastructure, convenient public access, adequate or convenient parking.

LU Policy 4.4.1: The City shall encourage establishment and continued operation of small neighborhood and community serving businesses.

The City shall encourage establishment and continued operation of small neighborhood and community serving businesses. Large events aren't small neighborhood businesses or community serving. Aviator Nation is not a small business operator.

Thus, General Plan Policies 3.1.1 and 3.2.1 and 4.4.1 are not met.

Finding 9. The proposed project complies with all applicable requirements of State and local law.

The proposed project violates applicable requirements of State and local law. The ABC license has been violated since Aviator Nation has not been complying with its conditions. Therefore, requirements of the State law are not being met. See finding 2 above.

LU policies 3.1.1, 3.2.1 and 4.4.1 are not being met. Therefore, State and Local law requirements are not being met.

Furthermore, allowing a nightclub to exist so close to residential structures with large numbers of people and loud music would constitute a public or private nuisance under California Civil Code Sections 3479, 3480, and 3481

Staff Response

The proposed amendment reduces the existing conditionally permitted use and will not change the nature of that existing conditionally permitted use. The restaurant and bar use are conditionally permitted in the CV-1 zoning district and provides live entertainment as an ancillary use. The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City.

Staff and the owners have met with the new tenants to review all conditions of approval. As part of the review of the appeal materials, on September 16, 2022, Planning staff visited the site and confirmed that all required signage and other conditions were satisfied. The applicant was also requested to conduct sound testing before any event to make sure the sound is not audible with five feet from any surrounding residence in conformance with the conditions of approval. As conditioned, the existing use will be consistent with rural character and natural environmental setting. Additionally, the proposed amendment is consistent with following General Plan policies and implementation measures:

- **LU Policy 4.1.2:** The City shall encourage redesign and adaptive reuse of existing structures.

- **LU Implementation Measure 71:** Permit minor modifications to development standards to accommodate renovation and adaptive reuse of existing commercial/retail buildings.
- **LU Implementation Measure 77:** Allow waivers of parking requirements where reciprocal parking agreements can provide adequate parking for multiple uses.
- **LU Policy 4.4.1:** The City shall encourage establishment and continued operation of small neighborhood and community serving businesses.

The amendment would permit the continual operation of the existing restaurant and retail space in the old Malibu Inn building. This would encourage the adaptive use of the existing building. Condition No. 13, as added by the Planning Commission, is expected to improve the parking situation for large events. As conditioned, the restaurant will have the required parking spaces for typical restaurant operations and small events and would allow overflow parking offsite and off-street for large events.

It should be noted that the proposed project is not expanding or creating restaurant space or space to be used for live events. This is a reduction in restaurant space and would reduce the number of large event attendees from 340 to 300.

The proposed project, as conditioned, is consistent with goals, objectives and policies of the General Plan because the proposed amendment will continue to provide a visitor and resident serving use in a manner compatible with the surrounding area. The reduction in restaurant and event space will reduce potential traffic and parking demand.

Joint Use Parking Agreement Amendment

A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use.

Condition not met:

This condition cannot be met due to the current use of the adjacent parking lot for public parking. Finding A would require removal of parking for the general public. The Surfrider Malibu Motel agreement also reduces the parking by five spaces.

C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.

Condition not met:

There currently is a parking agreement between the Applicant and the Surfrider Malibu Motel for 5 spaces which has not been approved by the city. There is a current conflict between the operation of a parking lot during the hours of operation of Aviator Nation.

Staff Response

MMC Section 17.48.040 authorizes the Planning Commission to permit a joint use and common parking facilities to meet the standards of certain mixed uses under three conditions. Two of the conditions are enumerated above as (A) and (C). The third condition may permit joint use and common parking facilities to reduce parking requirements for common parking facilities by up to 25 percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.

The use of parking on a separate lot does not require adherence to the three conditions in MMC Section 14.48.040. The proposed project is not requesting a 50 percent reduction in parking requirements due to a primarily daytime or nighttime use, or a 25 percent reduction in parking for common parking. Therefore, these three conditions do not apply.

ALTERNATIVE ACTION: Should the Council determine that the impacts of the proposed use require additional parking, the Council may require more than the minimum number of offsite parking spaces (23) be provided—especially because these spaces are used for both the retail/restaurant use and for event use. The Council may also impose conditions reducing the number of small or large events allowed, the size of such events, or even prohibit such events if the Council determines such conditions are necessary to make the findings required for the proposed CUP amendment.

CORRESPONDENCE: All public correspondence received during the Planning Commission public hearing process is included as an attachment to the Planning Commission Agenda Report herein included as Exhibit E. Staff has not received any additional public correspondence since the last Planning Commission hearing.

PUBLIC NOTICE: On September 15, 2022, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City and a public notice was mailed to the owners and occupants of all properties within a radius of 500 feet of the subject property (Exhibit H).

SUMMARY: Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, staff recommends that the City Council adopt Resolution No. 22-43 denying Appeal Nos. 22-002 and 22-003 and approving CUPA No. 13-006 and JUPA No. 14-001, subject to the conditions of approval in the resolution.

EXHIBITS:

- A. City Council Resolution No. 22-43
- B. Appeal No. 22-002
- C. Appeal No. 22-003
- D. Planning Commission Resolution No. 22-01
- E. April 4, 2021 Planning Commission Agenda Report Item 4.A.
- F. Project Plans
- G. Public Hearing Notice

RESOLUTION NO. 22-43

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 NOS. 22-002 AND 22-03 AND APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. 13-006 AND JOINT USE PARKING AGREEMENT NO. 14-001 AMENDING CONDITIONAL USE PERMIT NO. 09-009 AND JOINT USE PARKING AGREEMENT NO. 10-001 TO REDUCE THE RESTAURANT SERVICE AREA, INCREASE RETAIL TENANT SPACE, AND DECREASE THE NUMBER OF REQUIRED OFF-SITE PARKING SPACES (22959 PACIFIC COAST HIGHWAY) LOCATED IN THE COMMERCIAL VISITOR SERVING-ONE ZONING DISTRICT AT 22969 AND 22959 PACIFIC COAST HIGHWAY (SKA GROUP, LLC AND SURFRIDER PLAZA, LLC)

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

SECTION 1. Recitals.

A. On November 22, 2010, the City Council approved Conditional Use Permit (CUP) No. 09-009 and Joint Use Parking Agreement (JUPA) No. 10-001. The CUP approved the use of the property as restaurant, including eight small live entertainment events, two large events, set hours for operation and alcohol sales, and prohibited live entertainment on the outdoor patio. Low level amplified music on the patio was allowed from 7:00 a.m. to 10:00 p.m. daily.

B. On August 2, 2011, the Planning Commission adopted Planning Commission Resolution No. 11-72, amending CUP No. 09-009 to extend the hours of operation to 7 a.m. to 2 a.m. daily.

C. On December 11, 2013, an application for Conditional Use Permit Amendment (CUPA) No. 13-006 and Joint Use Parking Agreement (JUPA) No. 14-001 was submitted to the Planning Department, on behalf of the property owner, SKA Group, LLC to reduce the restaurant service area, to allow for the creation of a new retail tenant space, and decrease the number of required off-site parking spaces consistent with the new required parking at an existing restaurant. The application was routed to the City Environmental Health Administrator for review.

D. On July 8, 2021, the application was deemed complete.

E. On August 26, 2021, a Notice of Adjournment was issued adjourning the August 26, 2021 Special Planning Commission meeting to the September 8, 2021 Adjourned Regular Planning Commission meeting to allow staff additional time to gather additional information.

F. On September 8, 2021, the Planning Commission continued the item to the November 1, 2021 Regular Planning Commission meeting.

G. On November 1, 2021, the Planning Commission continued the item to the December 6, 2021 Regular Planning Commission meeting.

EXHIBIT 1

H. On December 6, 2021, the Planning Commission continued the item to the January 11, 2022 Special Planning Commission meeting.

I. On January 11, 2022, the Planning Commission continued the item to the April 4, 2022 Regular Planning Commission meeting.

J. On April 4, 2022, 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, and approved CUPA No. 13-006 and JUPA No. 14-001.

K. On April 14, 2022, Mani Brothers Real Estate Group and Patt Healy submitted Appeal (AP) Nos. 22-002 and 22-003, appealing the Planning Commission's approval of CUPA No. 13-006 and JUPA No. 14-001.

L. On September 15, 2022, 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.

M. On October 10, 2022, the City Council continued the item to the October 24, 2022 Regular City Council meeting.

N. On October 24, 2022, 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.

SECTION 2. Appeal of Action.

The two appeals filed by the appellants contend that:

- The Aviator Nation Dreamland approval was improperly split from the Malibu Inn Motel project;
- Proceeding with the subject application separate from the Malibu Inn Motel application would result in a piecemeal under CEQA;
- CUP and code violations, including noise complaints;
- Traffic-related issues at PCH, lack of parking, loss of public parking, and parking agreement with Malibu Surfrider Motel; and
- The Planning Commission's decision is not supported by findings.

In the associated Council Agenda Report, Planning Department staff analyzed and addressed appellant's contentions.

SECTION 3. Findings for Denying the Appeal.

Based on evidence contained within the record, including the content of the Council Agenda Report and Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and the City Council, the City Council hereby makes the following findings of fact, denies the appeals, and approves the project.

The appellants have not provided evidence that: 1) the Aviator Nation Dreamland approval was improperly split from the Malibu Inn Motel project; 2) the Aviator Nation Dreamland approval was improperly split from the Malibu Inn Motel project; 3) proceeding with the subject application separate from the Malibu Inn Motel application would constitute improper piecemealing under CEQA; 4) CUP and code violations, including noise complaints; and 5) traffic-related issues at PCH, lack of parking, loss of public parking, and parking agreement with Malibu Surfrider Motel. The proposed project consists of a separate and independent application from the Malibu Inn Motel and should be considered based on its own merits. The subject project is not dependent upon the approval of the Malibu Inn Motel, and does not have a negative effect on the environment, it was determined that the project is beneficial by reducing the parking demand of the site.

A. The appellants failed to demonstrate that the findings made in the Planning Commission's decision are not supported by the evidence. In summary, the appellant's object to the existing use, history of violations, inadequate septic system, traffic, incompatibility with surrounding uses, traffic and parking. In general, the proposed amendment will not change the nature of the existing conditionally permitted use and in fact would reduce the restaurant and live entertainment space, which would proportionally reduce traffic and parking demand. The project is also conditioned to adequately provide parking spaces for the two large events per month that would generate more parking spaces than can be provided with the required parking spaces. A noise complaint has been made for the Aviator Nation Dreamland. Staff followed up on the video that was submitted by the neighbor and on April 6, 2022 a citation was issued for violation of the CUP conditions. Staff and the owners have met with the operator to address all CUP conditions. Since this noise complaint, no other complaints have been filed and the operator has shown compliance with all conditions of approval. The two other potential parking violations have been resolved. A private agreement to rent five parking spaces to Surfrider Malibu Motel employees has been terminated. Additionally, signs indicated less than the 31 JUPA-required parking spaces at the adjacent parking lot (22959 PCH) were removed, and a condition has been added for new signage to be installed and maintained to clearly depict the required parking spaces for Malibu Inn customers. The City Environmental Health Administrator verified that the existing septic system is adequate for all existing uses to operate simultaneously. As a result, the findings for the proposed amendment can be made.

C. The Council finds that the proposed project is categorically exempt from the provisions of the CEQA pursuant to Section 15301 - Existing Facilities. Based on the scope of the project and the associated technical reports, the City Council found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. The proposed amendment will convert restaurant space into retail space which will reduce traffic and parking demand. The project will reduce the number of required parking spaces, but the reduction in parking spaces is proportionate to the reduction in the demand of parking spaces as provided in the MMC. A smaller restaurant and event space is consistent with CEQA as it qualifies for a categorical exemption and would result in less parking and traffic; and as determined in Finding 3 of Section A of Planning Commission Resolution No. 22-01, the proposed project is a less environmentally damaging alternative compared to previously approved conditions. The reduction in size of the restaurant, maximum size of events, and the requirement to provide approved offsite parking for large events should also reduce any current impacts on traffic and parking in the area.

D. The Council finds that the Planning Commission conducted the meeting in a manner consistent with the applicable rules of order and provided appellants both notice and an

opportunity to be heard in conformance with those standards. The appellant's have not presented evidence of inappropriate bias, conflict of interest or an unfair or impartial hearing. In addition, any such violation would be cured by the *de novo* hearing held before the City Council. In conclusion, as detailed above and in the record, the evidence supports the required findings for approval of the proposed project and that it is consistent with the Malibu Municipal Code (MMC) standards. The evidence also demonstrates a fair and impartial hearing was provided. Additional evidence in the record supports the findings required for the project, as discussed below.

SECTION 4. Environmental Review.

Pursuant to the authority and criteria contained in CEQA, the City Council has analyzed the proposed project. The City Council has found 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 exempt from the provisions of CEQA according to CEQA Guidelines Section 15301 - Existing Facilities. The City Council has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2). The project will also reduce the environmental impacts of the current operation of the site by reducing the restaurant space and required offsite parking that was needed for the larger restaurant.

SECTION 5. Amendment of Conditional Use Permit Findings.

Based on evidence contained within the record, including the content of the Council Agenda Report and Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and the City Council, and pursuant to MMC Chapter 17.66, the City Council hereby makes the findings of fact below, and approves CUPA No. 13-006 and JUPA No. 14-001 to reduce the restaurant service area, increase retail tenant space, and decrease the number of required off-site parking spaces (22959 Pacific Coast Highway) located in the Commercial Visitor Serving-One (CV-1) zoning district at 22969 and 22959 Pacific Coast Highway (PCH).

The project, as conditioned, has been determined to be consistent with all applicable MMC codes, standards, goals, and policies. The required findings are made herein.

MMC Findings

A. Conditional Use Permit Findings (MMC Section 17.66.080)

1. The proposed amendment will not affect the finding previously made and the use is still a conditionally permitted use. A restaurant with an interior capacity in excess of 125 people is a conditionally permitted use in the CV-1 zoning district. The project has been conditioned to comply with all applicable provisions of the MMC and conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments.

2. The proposed amendment will not change the existing land uses. The existing land uses consists of a restaurant and retail. The restaurant is conditionally permitted and retail is a permitted use in the CV-1 zoning district. The restaurant use will be reduced as part of this application. The proposed conversion of restaurant space into retail would not impair the integrity and character of the CV-1 zoning district. A restaurant has occupied the subject property since the

1950s and a restaurant has been operating for eleven years under the approved CUP No. 09-009. The existing restaurant has a California Department of Alcoholic Beverage Control (ABC) liquor license and a Los Angeles County Sheriff's Department entertainment license consistent with the existing CUP conditions of approval for the restaurant with live entertainment.

3. The proposed amendment will not physically alter the size or footprint of the existing building, or the existing paved parking. The proposed tenant improvements involve converting restaurant service area into retail and expanding the existing retail space from 565 square feet to 1,636 square feet. The restaurant service area is being reduced, and will continue to use and occupy the existing space—only less of it. The business has operated on the subject property since the 1950s and a restaurant has been operating for eleven years under the approved CUP No. 09-009. A total of 46 parking spaces are required for the proposed uses, which reflects a reduction of seven required parking spaces. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein. The reduction in restaurant/event venue space will result in a reduction in parking and potentially traffic demand. Therefore, the site is physically suitable for the use being proposed.

4. The proposed project, similar to the existing restaurant and retail uses, is compatible with the land uses present on the subject property and in the surrounding neighborhood. The property is surrounded by both commercial and residential uses. There is a mix of commercial, office and retail uses in the immediate vicinity of the site similar to the proposed project. The proposed retail use expansion is a similarly permitted by right use in all commercial zoned properties. All other conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, remain in effect, unless modified herein. These conditions restrict the restaurant and events in order to mitigate potential impacts to neighbors such as restricting noise, loitering, number of events, and number of patrons.

5. The proposed project, similar to the existing restaurant and retail uses, is compatible with the land uses within the zone and general area surrounding the location. The use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses are comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space and residential uses to the south.

6. The proposed amendment will not alter the existing utilities or structures. Existing utilities will continue to serve the existing site, but the required wastewater flow impact will be reduced due to the reduction in restaurant space. The Los Angeles County Fire Department and Los Angeles County Sheriff's Department (LACSD) reviewed the original CUP No. 09-009 and indicated that the amendment did not require additional review. In addition, the City Environmental Health Administrator reviewed the CUPA and determined that the existing septic system is adequate for the proposed use. No changes to the exterior of the existing structure are proposed, so no impacts to solar access or public or private views will occur.

The proposed project will not create any shade or shadow impacts that would impede solar access. The existing commercial structure at 22969 PCH will not change under this amendment, and therefore, will not adversely impact existing public and private views.

7. The existing use will meet the required parking for the existing restaurant and retail

use. A conditional of approval is included that required off-site parking to be secured in advance of large events. As condition, the project is not expected to have an adverse effect on public access and is not expected to obstruct public traffic circulation. The number of required parking spaces is reduced from 53 to 46 because the restaurant space will be converted into retail space which reduces the demand for parking spaces.

8. The proposed amendment will not change the nature of the existing conditionally permitted use. The use is a conditionally permitted commercial use in the CV-1 zoning district. The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall be consistent with compatible accessory uses, shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City.

9. The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the LACSD.

10. The proposed amendment will not affect the existing restaurant, which is a conditionally permitted use in a commercial zone. Conditions of City Council Resolution No. 10-59 which required that the property owner notify the LACSD and the City no less than three days prior to any event will remain in effect. Finally, as demonstrated through an ABC license query the property owner maintains a valid ABC license and has not been subject to any disciplinary infractions in the past with regard to a liquor license. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein, including those that prohibit noise impacts and facilitate traffic and parking safety.

11. The project will not be at risk from earth movement and flood hazards since the application does not change the existing commercial structure. The building will not change; therefore, there is no new impact related to earth movement, flooding or liquefaction.

SECTION 6. City Council Approval.

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves CUPA No. 13-006 and JUPA No. 14-001, subject to the following conditions. No other changes to the conditions contained in City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, are made by this amendment and all other applicable findings, terms, and/or conditions remain in full force and effect.

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. This approval is to allow the reduction of the restaurant service area in order to accommodate the creation of a new retail tenant space, and decrease the number of required off-site parking spaces in JUPA No. 14-001, to reflect the new number of required offsite parking spaces for the uses onsite.
3. This conditional use permit amendment shall not be effective until all appeals are exhausted and the property owner, applicant and the business operator execute the Affidavit of the Acceptance of Conditions. Said documents shall be recorded with the Los Angeles County Recorder and a certified copy of said recordation shall be filed with the Planning Department within 10 days of the effective date of the approval.
4. A review of the proposed amendment and compliance with the conditions of approval shall be conducted by Planning Department staff and reported to the Planning Commission within one year, and again within five years, of commencement of operations. Staff will report whether the amendment is operating in compliance with the Planning Commission's findings and all approved conditions, and whether it recommends initiating proceedings to modify or revoke the permit.
5. The third driveway curb cut from west to east must be removed.

Joint Use Parking Agreement

6. The number of offsite parking spaces required is reduced to 23 parking spaces to reflect a restaurant service area of 1,935 square feet. A revised parking agreement is required among the subject property, the adjacent property at 22959 PCH and the City required the 23 off-site parking spaces to always be available during hours of operation of the subject property.

Operations

7. The approved hours of operation are from 7:00 a.m. to 12:00 a.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 2:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that the use may be open until 2:00 a.m. only on those Sundays when the following Monday is a federal holiday. Closure must be complete, and all employees must vacate the premises no more than one hour after closing, daily. No afterhours operation shall be permitted.
8. The restaurant service area is 1,935 square feet, and allocated as follows:
 - a. Interior service area: 1,184 square feet; and
 - b. Outdoor patio: 751 square feet.
9. The retail space area is 1,636 square feet.
10. The total number of seats shall not exceed 92 and the total number of patrons for large events is limited to 300.
11. Seating, dining or drinking by non-employees is not permitted within the employee lounge area.

Site-Specific Conditions

12. The retail space must be separated with a physical barrier from the restaurant with a fence or wall at least 42 inches in height.
13. All events authorized by Condition No. 19 of Resolution 10-59 must be approved by the Planning Director in advance as described in the following sentence and any condition approved by the Planning Director which may be added to mitigate impacts of the event must be complied with: A six-month event schedule shall be submitted for approval every six months and any changes to such approval must be approved at least a month in advance before the event.
14. The property owners / operator shall install and maintain signs for each of the parking spaces required for the Malibu Inn at the adjacent parking lot located at 22959 Pacific Coast Highway indicating those spaces may only be used by Malibu Inn customers and non-Malibu Inn customers will be towed.

Fixed Conditions

15. If it has cause to believe that grounds for revocation or modification may exist, the Planning Commission shall hold a public hearing upon the question of modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C). The conditional use permit may be revoked if the Planning Commission finds that one or more of the following conditions exists:
 - a. The conditional use permit was obtained in a fraudulent manner.
 - b. The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.
 - c. One or more of the conditions found within this resolution have not been substantially met.
16. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement (JUPA).
17. All other conditions of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments are hereby incorporated by reference and remain in full force and effect.

SECTION 8. The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 10th day of October, 2022

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

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

TREVOR RUSIN, 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.



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

NON-COASTAL DEVELOPMENT PERMIT APPEAL SUBMITTAL

Actions Subject to Appeal: Pursuant to Malibu Municipal Code (MMC) Section 17.04.220, any person aggrieved by a decision or any portion of a decision made by the Planning Director under the provisions of this title in connection with a site plan review, variance, stringline modification, conditional use permit, cultural resources review, highway dedication or improvement, or temporary use permit may appeal such action to the Planning Commission. Any person aggrieved in a similar manner by such decision made by the Planning Commission may appeal such action to the City Council.

Planning Director or Planning Commission Date of Action: APRIL 4, 2022

Case No.: PC RESOLUTION 22-01 APPROVING CUPA 13-006 AND JUPA 14-001 (AVIATOR NATION)

Site Address/Location: 22969 AND 22959 PACIFIC COAST HWY, MALIBU (APNs 4452-019-004 & -005)

Note: Appeals shall be addressed to the appellant body on a form prescribed by the City. The appeal shall state the basis of the appeal and identify the decision or portion of the decision being appealed and stated the grounds for the appeal. Only matters raised in the appeal shall be subject to review. Any matters not raised in the appeal shall not be subject to consideration by the appellate body. The purpose of this limitation is to provide adequate notice to all parties with respect to the issues on appeal and eliminate the necessity of rehearing matters not subject to challenge. Although the issues on appeal will be limited by the appeal, the appellate body will accept new evidence (de novo appeal) and will not be bound by the previous record. [MMC Section 17.04.220(B)]

An appeal shall be filed with the City Clerk within 10 days following the date of action for which appeal is made. Appeals shall be accompanied by the filing fee as specified by the City Council. An appellant shall have an additional 10 days following the date of filing the appeal to submit to the City Clerk in writing, the specific grounds for the appeal. If the appellant does not submit grounds for the appeal within the time allowed by this section, the City Clerk shall return the filing fee and the appeal shall be deemed to have been withdrawn. [MMC Section 17.04.220(C)]

To Submit an Appeal:

The appeal must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23825 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Senior Administrative Analyst, at (310) 456-2489, ext. 245.

RECEIVED

APR 14 2022

PLANNING DEPT.

EXHIBIT B

ALL of the following must be timely filed to perfect an appeal.

- | | |
|--|---|
| 1. Appeal Letter | X |
| An appeal letter setting for the grounds for the appeal | |
| 2. Appeal Fees(s) | X |
| In the form of a check or money order made payable to the City of Malibu. Cash will not be accepted. | |
| 3. Appeal Checklist (This form with appellant's signature) | X |

An appellant shall have 10 days following the date of filing to submit the following:

4. Grounds of Appeal Letter _____
An appellant shall have an additional 10 days following the date of filing the appeal to submit to the City Clerk in writing, the specific grounds for the appeal. If the appellant does not submit grounds for the appeal within the time allowed by this section, the City Clerk shall return the filing fee and the appeal shall be deemed to have been withdrawn. See MMC Section 17.04.220(C) for details.
5. Certified Public Notice Property Owner and Occupant Mailing Addresses and Radius Map _____
- The addresses of the property owners and occupants within the mailing radius shall be provided on a compact disc in a Microsoft Excel spreadsheet. The spreadsheet shall have the following column headers in row one: 1) name, 2) address, 3) city, state & zip code, and 4) parcel (for APN). The owners should be listed first followed by the occupants. The project applicant's mailing address should be added at the end of the list.
 - An additional column for "arbitrary number" may be included if the supplied radius map utilizes such numbers for the purpose of correlating the addressee to their map location.
 - Printouts of the excel spreadsheet and radius map, certified by the preparer as being accurate, must be provided.
 - The radius map (8½" x 11") shall show a 500-foot radius* from the subject property and must show a minimum of 10 developed properties. A digital copy of the map shall be submitted on the same cd as the mailing addresses.

*Properties zoned RR-10, RR-20, or RR-40 require a 1,000-foot radius notification.

**Note that updated mailing labels may be requested by the project planner prior to deeming the application complete.

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or subsequently deficient, the appeal shall be deemed to have been withdrawn and the filing fee shall be returned.

**MANI BROTHERS REAL ESTATE /
MANI MBI (DE), LLC**

310-777-5000

PRINT APPELLANT'S NAME

TELEPHONE NUMBER

By:  (Its Manager)

4/12/22

APPELLANT'S SIGNATURE

DATE

Appellant's mailing address: **9200 Sunset Blvd., Suite 555, West Hollywood CA 90069**

Appellant's telephone: **310-777-5000**

OFFICE USE ONLY

Action Appealed: _____

Appeal Period: _____

Date Appeal Form submitted: _____ Received by: _____

Date Grounds of Appeal Letter submitted: _____ Received by: _____

Date of Mailing Labels/Radius Map submitted: _____ Received by: _____

Appeal Completion Date: _____ By: _____
Name, Title

HUESTON HENNIGAN LLP

April 14, 2022

VIA HAND DELIVERY

Malibu City Council
City of Malibu
Attn: City Clerk
23825 Stuart Ranch Road
Malibu, California 90265-4861

Re: Appeal of Planning Commission's Resolution No. 22-01 (Aviator Nation)

Dear Malibu City Council:

This firm represents Mani Brothers Real Estate, Mani MBI (DE), LLC, and affiliated companies that own properties near the Aviator Nation project, including the Malibu Beach Inn, located at 22878 PCH; the former Hertz lot at 22853 PCH; and the multifamily properties at 22640 and 22648 PCH (collectively, the "Mani Brothers").

Pursuant to Malibu Municipal Code (MMC) Section 17.04.220, the Mani Brothers hereby appeal the Planning Commission's April 4, 2022 approval of Resolution No. 22-01 (Aviator Nation). Prior to its approval, the Mani Brothers submitted several letters in opposition to the resolution. See Exhibit 1. The Mani Brothers respectfully request that City Council grant its appeal for the foregoing reasons:

1. **The Aviator Nation Approvals Were Improperly Split Off and Should Have Been Considered Concurrent with the Malibu Motel.** The Aviator Nation action appealed from reduces (by seven spaces, from 53 to 46 spaces) the parking that will be used on the Malibu Motel site by the neighboring Aviator Nation retail and restaurant use. Aviator Nation and Malibu Motel should be considered one project for zoning and environmental analysis. The two adjoining projects (Malibu Motel and Aviator Nation) occupy adjoining lots, are under common ownership and have interdependent driveway access and parking. Further underscoring the joint nature of these two projects, what is now called the "Aviator Nation" restaurant was historically operated under the same brand name ("Malibu Inn") that the owner of both properties is using for the new motel ("Malibu Inn Motel"). The effect and purpose of the Aviator Nation amendments is to free up more parking for use by the adjoining "motel" which is actually a "hotel" requiring two parking spaces per room and not a "motel" requiring one parking space per room (by code definition, a "motel" does not have a restaurant and has guest rooms accessible directly off the parking lot, whereas the proposed Malibu Inn Motel rooms are accessible only through common stairwells, hallways and corridors as in a hotel).

Both the Malibu Motel and Aviator Nation items were scheduled to be heard by the Planning Commission on April 4, 2022. On March 24, 2022, however, Planning staff recommended that the Malibu Motel item be continued to resolve an issue with the Regional Water Quality Control Board. Staff did not, however, recommend continuance of the Aviator Nation. In a last-minute effort to "paper

HUESTON HENNIGAN LLP

1136, 1144; *City of Carmel-by-the-Sea v Board of Supervisors* (1986) 183 CA3d 229, 241 (rejecting argument that re-zoning of motel and restaurant was a separate project from the application to redevelop the property). Accordingly, a public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the effects of the project as a whole. In this case, it was improper to approve the Aviator Nation parking reductions in isolation from the motel, because of the interrelationship of the two projects and especially because the Aviator Nation amendment will free up spaces on the motel site in order to facilitate the motel.

2. **Other Grounds for Appeal.** In addition to the “project splitting” issue, this appeal is based on numerous other concerns and objections raised by members of the Planning Commission and concerned residents, including among other concerns:
 - a. **Noise.** Excessive noise from amplified music at the Aviator Nation venue was documented in a video recording presented at the Planning Commission hearing.
 - b. **CUP and Code Violations.** The venue has not been complying with service area restrictions in the CUP. For example, an employee lounge has been used for food and beverage consumption by the public. And the layout of tables and seating permitted by the CUP has been violated as documented by inspection.
 - c. **Traffic and Parking.** Numerous code and CUP violations were cited in the public hearing, including undersized parking spaces, undercounting employees, employees parking in the street, offsite parking more than 300’ away, an unauthorized joint parking arrangement with Surfrider Motel, and traffic backing up on the highway.

For all of the foregoing reasons, this appeal should be granted and the City Council should deny the Aviator Nation applications and send the Aviator Nation and Malibu Inn Motel project back to staff for further analysis, including a full EIR, so that they may be brought back to Planning Commission together for proper consideration.

Although the foregoing provides more than adequate grounds for the appeal, appellant reserves the right to provide an additional oral and written submissions pursuant to MMC Section 17.04.220(C) and other applicable laws which permit public testimony up to and including at the City Council hearing on this appeal.

Sincerely,



Marshall A. Camp

cc: John Cotti, City Attorney (via e-mail)

EXHIBIT 1

HUESTON HENNIGAN LLP

April 4, 2022

VIA EMAIL

Kraig Hill, Chair
Members of the Planning Commission
City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265-4861
planningcommision@malibucity.org

Re: April 4, 2022 Planning Commission Meeting - Agenda Items 4.A. and 4.B. – Aviator Nation/Malibu Motel

Dear Chair Hill and Members of the Planning Commission:

This firm represents Mani Brothers Real Estate and affiliated companies that own properties near the proposed Malibu Motel, including the Malibu Beach Inn, located at 22878 PCH; the former Hertz lot at 22853 PCH; and the multifamily properties at 22640 and 22648 PCH (collectively, the “Mani Brothers”).

The Mani Brothers oppose the Malibu Motel, including the entitlements and approvals sought in connection with Agenda Items 4.A. and 4.B. for the April 4, 2022 Planning Commission meeting. Grounds for the opposition were extensively detailed in my letters dated August 26, 2021, December 3, 2021, and January 10, 2022, attached as **Exhibits A-C**. The agenda for the April 4, 2022 meeting recommends that item 4.B (Malibu Inn Motel) be continued, but does not similarly recommend a continuance for related item 4.A (Aviator Nation). These items should be considered together, as detailed in my previous letters. The materials for Item 4.A also does not provide the letters I previously submitted on this item. In brief, the opposition to these items include the following without limitation:

1. Aviator Nation. The agenda item proposes to reduce (by seven spaces, from 53 to 46 spaces) the parking that will be used on the Malibu Motel site by the neighboring Aviator Nation retail and restaurant use. This should be denied. Contrary to the supplemental material provided on April 1, 2022, Aviator Nation and Malibu Hotel should be considered one project for zoning and environmental analysis.¹ Both properties are owned by entities controlled by the Hakim family, they will have joint parking and a joint driveway² (see Attachment 2 in the Malibu Motel agenda report).

¹ As further explained in point 2, the fact that the Malibu Motel and Aviator Nation are one project further demonstrates our point that the project is a “hotel” and not a “motel”. As defined by code, a “hotel” includes amenities such as a restaurant and a “motel” does not.

² The proposed new joint driveway (see Attachment 2 in the agenda report) appears to eliminate at least one of the existing parking spaces in the Aviator Nation parking lot. This needs to be acknowledged and mitigated in the agenda report and CEQA documentation.

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2. The Proposed Use is a Hotel Prohibited in the CV-1 Zone. The proposed use is not a “motel” or “bed and breakfast inn” and is properly classified as a “hotel” under the Malibu Local Coastal Program (LCP) and Zoning Code. Hotels are prohibited under the site’s current CV-1 zoning.
3. Loss of Beach Parking. The site currently provides 16 spaces for beach parking. The proposed motel will provide zero. This loss of beach parking violates important policies of the Coastal Act and the Malibu LCP and creates a significant impact that must be analyzed in an environmental impact report (EIR). See LIP 1.2(C), (H).
4. Insufficient Parking. The project provides just 23 parking spaces for the proposed motel. Under either the parking standards for a “hotel” or a “motel,” 23 spaces is insufficient for this 20-room property with bar and dining services that hosts public events including weddings. See LIP 3.14.3; MMC 17.48.030. Further, the project plans do not conform to the stall sizes or turnarounds required by code. See LIP 1.2(C), (H) & 3.14.5(D); Zoning Code § 17.48.050(D).
5. Project Exceeds the Maximum Allowable Height and Stories. The maximum height allowed for a new commercial building is 24 feet (or 28 feet for a pitched roof) and two stories. See LIP 3.8(A)(1)(b). The proposed motel is slated to be four stories and over 40 feet tall.
6. General Plan Inconsistencies. The project violates several General Plan policies enacted to preserve the character of Malibu. Approving the tallest hotel to date in Malibu in the vicinity of the congested Malibu pier neither respects the “rural character and natural environmental setting” nor conforms to the requirement that commercial areas be limited to “small neighborhoods ... interspersed throughout the City.” See LU Element §§ 1.1, 1.5.4. The applicant also has not complied with the requirement to secure a planned development permit. See LU Implementation Measure 67. The project also violates LU Implementation Measure 26 and LU Policy 1.4.3, which require preservation of existing land forms and limit use of grading and retaining walls.
7. LCP and Zoning Code Inconsistencies. The project violates so many provisions of the LCP and Zoning Code that it requires multiple variances and discretionary approvals. The required variances are not supported by the required findings.
8. CEQA Defects. The City has improperly used a mitigated negative declaration (MND) for this project. An EIR should have been prepared given the project’s stark inconsistencies with the General Plan, LCP and Zoning Code, and the additional traffic impacts and safety risks associated with this highly congested section of the PCH. This includes, among other things, the traffic and safety impacts associated with the 875 round trips that will be made by heavy dump trucks exporting all the soil that needs to be removed in order to illegally set the building back into the hillside.

The Planning Commission is thus respectfully urged to postpone item 4.A to consider in tandem with item 4.B, and both should be denied for the reasons set forth above, as well as the many other grounds for denial raised by the public in opposition to this project. If the project is to be brought forward again for further consideration, it should first be revised for consistency with existing City plans and policies and then evaluated in an EIR.

HUESTON HENNIGAN LLP

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Camp", with a stylized flourish at the end.

Marshall A. Camp

cc: John Cotti, City Attorney (via e-mail)
Kathleen Stecko (via e-mail)

EXHIBIT A

HUESTON HENNIGAN LLP

January 10, 2022

VIA EMAIL

Kraig Hill, Chair
Members of the Planning Commission
City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265-4861
planningcommision@malibucity.org

Re: January 11, 2022 Planning Commission Meeting - Agenda Items 1.A. and 1.B. - Malibu Motel

Dear Chair Hill and Members of the Planning Commission:

This firm represents Mani Brothers Real Estate and affiliated companies that own properties near the proposed Malibu Motel, including the Malibu Beach Inn, located at 22878 PCH; the former Hertz lot at 22853 PCH; and the multifamily properties at 22640 and 22648 PCH (collectively, the "Mani Brothers").

The Mani Brothers oppose the Malibu Motel, including the entitlements and approvals sought in connection with Agenda Items 1.A. and 1.B. for the January 11, 2022 Planning Commission meeting. Grounds for the opposition were extensively detailed in my letters of August 26, 2021 and December 3, 2021, attached as **Exhibit A** and **Exhibit B**. In brief, they include the following without limitation:

1. The Proposed Use is a Hotel Prohibited in the CV-1 Zone. The proposed use is not a "motel" or "bed and breakfast inn" and is properly classified as a "hotel" under the Malibu Local Coastal Program (LCP) and Zoning Code. Hotels are prohibited under the site's current CV-1 zoning.
2. Loss of Beach Parking. The site currently provides 16 spaces for beach parking. The proposed motel will provide zero. This loss of beach parking violates important policies of the Coastal Act and the Malibu LCP and creates a significant impact that must be analyzed in an environmental impact report (EIR). See LIP 1.2(C), (H).
3. Insufficient Parking. The project provides just 23 parking spaces for the proposed motel. Under either the parking standards for a "hotel" or a "motel," 23 spaces is insufficient for this 20-room property with bar and dining services that hosts public events including weddings. See LIP 3.14.3; MMC 17.48.030. Further, the project plans do not conform to the stall sizes or turnarounds required by code. See LIP 1.2(C), (H) & 3.14.5(D); Zoning Code § 17.48.050(D).
4. Project Exceeds the Maximum Allowable Height and Stories. The maximum height allowed for a new commercial building is 24 feet (or 28 feet for a pitched roof) and two stories. See LIP 3.8(A)(1)(b). The proposed motel is slated to be four stories and over 40 feet tall.
5. General Plan Inconsistencies. The project violates several General Plan policies enacted to preserve the character of Malibu. Approving the tallest hotel to date in Malibu in the vicinity of the congested

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Malibu pier neither respects the “rural character and natural environmental setting” nor conforms to the requirement that commercial areas be limited to “small neighborhoods ... interspersed throughout the City.” See LU Element §§ 1.1, 1.5.4. The applicant also has not complied with the requirement to secure a planned development permit. See LU Implementation Measure 67. The project also violates LU Implementation Measure 26 and LU Policy 1.4.3. which require preservation of existing land forms and limit use of grading and retaining walls.

6. LCP and Zoning Code Inconsistencies. The project violates so many provisions of the LCP and Zoning Code that it requires multiple variances and discretionary approvals. The required variances are not supported by the required findings.
7. CEQA Defects. The City has improperly used a mitigated negative declaration (MND) for this project. An EIR should have been prepared given the project’s stark inconsistencies with the General Plan, LCP and Zoning Code, and the additional traffic impacts and safety risks associated with this highly congested section of the PCH. This includes, among other things, the traffic and safety impacts associated with the 875 round trips that will be made by heavy dump trucks exporting all the soil that needs to be removed in order to illegally set the building back into the hillside.
8. Aviator Nation. The companion agenda item proposes to reduce (by seven spaces, from 53 to 46 spaces) the parking that will be used on the Malibu Motel site by the neighboring Aviator Nation retail and restaurant use. This should also be denied. Both the Malibu Motel and Aviator Nation properties are owned by entities controlled by the Hakim family, they will have joint parking and a joint driveway¹ (see Figure 2 in the Malibu Motel agenda report), and should be considered one project for zoning and environmental analysis.²

None of these concerns have been addressed, as the staff report submitted for the January 11, 2022 hearing date reveals. The Planning Commission is thus respectfully urged to deny the proposed approvals for the reasons set forth above, as well as the many other grounds for denial raised by the public in opposition to this project. If the project is to be brought forward again for further consideration, it should first be revised for consistency with existing City plans and policies and then evaluated in an EIR.

Sincerely,



Marshall A. Camp

cc: John Cotti, City Attorney (via e-mail)
Kathleen Stecko (via e-mail)

¹ The proposed new joint driveway (see Figure 2 in the agenda report) appears to eliminate at least one of the existing parking spaces in the Aviator Nation parking lot. This needs to be acknowledged and mitigated in the agenda report and CEQA documentation.

² The fact that the Malibu Motel and Aviator Nation are one project further demonstrates our point that the project is a “hotel” and not a “motel”. As defined by code, a “hotel” includes amenities such as a restaurant and a “motel” does not.

EXHIBIT B

HUESTON HENNIGAN LLP

December 3, 2021

Kraig Hill, Chair
Members of the Planning Commission
City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265-4861
planningcommision@malibucity.org

Re: December 6, 2021 Planning Commission Meeting - Agenda Item 4.E - Malibu Motel

Dear Chair Hill and Members of the Planning Commission:

This firm represents Mani Brothers Real Estate and affiliated companies that own properties near the proposed Malibu Motel, including the Malibu Beach Inn, located at 22878 PCH; the former Hertz lot at 22853 PCH; and the multifamily properties at 22640 and 22648 PCH (collectively, the "Mani Brothers").

The Mani Brothers oppose the Malibu Motel, including the entitlements and approvals sought in connection with Agenda Item 4.E at the December 6, 2021 Planning Commission meeting. Grounds for the opposition were extensively detailed in my letter of August 26, 2021, attached as **Exhibit A**. In brief, they include the following without limitation:

1. The Proposed Use is a Hotel Prohibited in the CV-1 Zone. The proposed use is not a "motel" or "bed and breakfast inn" and is properly classified as a "hotel" under the Malibu Local Coastal Program (LCP) and Zoning Code. Hotels are prohibited under the site's current CV-1 zoning.
2. Loss of Beach Parking. The site currently provides 16 spaces for beach parking. The proposed motel will provide zero. This loss of beach parking violates important policies of the Coastal Act and the Malibu LCP and creates a significant impact that must be analyzed in an environmental impact report (EIR). See LIP 1.2(C), (H).
3. Insufficient Parking. The project provides just 23 parking spaces for the proposed motel. Under either the parking standards for a "hotel" or a "motel," 23 spaces is insufficient for this 20-room property with bar and dining services that hosts public events including weddings. See LIP 3.14.3; MMC 17.48.030. Further, the project plans do not conform to the stall sizes or turnarounds required by code. See LIP 1.2(C), (H) & 3.14.5(D); Zoning Code § 17.48.050(D).
4. Project Exceeds the Maximum Allowable Height and Stories. The maximum height allowed for a new commercial building is 24 feet (or 28 feet for a pitched roof) and two stories. See LIP 3.8(A)(1)(b). The proposed motel is slated to be four stories and over 40 feet tall.
5. General Plan Inconsistencies. The project violates several General Plan policies enacted to preserve the character of Malibu. Approving the tallest hotel to date in Malibu in the vicinity of the congested

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Malibu pier neither respects the “rural character and natural environmental setting” nor conforms to the requirement that commercial areas be limited to “small neighborhoods ... interspersed throughout the City.” See LU Element §§ 1.1, 1.5.4. The applicant also has not complied with the requirement to secure a planned development permit. See LU Implementation Measure 67.

6. LCP and Zoning Code Inconsistencies. The project violates so many provisions of the LCP and Zoning Code that it requires multiple variances and discretionary approvals. The required variances are not supported by the required findings.
7. CEQA Defects. The City has improperly used a mitigated negative declaration (MND) for this project. An EIR should have been prepared given the project’s stark inconsistencies with the General Plan, LCP and Zoning Code, and the additional traffic impacts and safety risks associated with this highly congested section of the PCH.

None of these concerns have been addressed, as the staff report submitted before the December 6, 2021 Planning Commission meeting reveals.

The Mani Brothers also oppose the entitlements and approvals sought in connection with companion Agenda Item 4.D, which proposes reducing the restaurant serving area of the adjacent property to free up parking spaces for the proposed motel. This proposal was not accounted for in the City’s MND for the proposed motel, and the “requirements of CEQA cannot be avoided by chopping up proposed projects into bite-size pieces which, when taken individually, may have no significant adverse effect on the environment.” *Tuolumne Cty. Citizens for Responsible Growth, Inc. v. City of Sonora*, 155 Cal. App. 4th 1214, 1223 (2007).

The Planning Commission is thus respectfully urged to deny the proposed approvals for the reasons set forth above, as well as the many other grounds for denial raised by the public in opposition to this project. If the project is to be brought forward again for further consideration, it should first be revised for consistency with existing City plans and policies and then evaluated in an EIR.

Sincerely,



Marshall A. Camp

cc: John Cotti, City Attorney (via e-mail)
Trevor Rusin, Assistant City Attorney (via e-mail)

EXHIBIT C

HUESTON HENNIGAN LLP

August 26, 2021

VIA E-MAIL

Jeffrey Jennings, Chair
Members of the Planning Commission
City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265-4861
planningcommission@malibucity.org

Re: August 26, 2021 Planning Commission Meeting - Agenda Item 1.C. – Malibu Motel

Dear Chair Jennings and Members of the Planning Commission:

This firm represents Mani Brothers Real Estate and affiliated companies that own properties in the vicinity of the proposed Malibu Motel, including the Malibu Beach Inn, located at 22878 PCH; the former Hertz lot at 22853 PCH; and the multifamily properties at 22640 and 22648 PCH (collectively, the “Mani Brothers”).

The Mani Brothers oppose the Malibu Motel, including the entitlements and approvals sought in connection with Agenda Item 1.C. at tonight’s Planning Commission meeting. Grounds for the opposition include, without limitation, the following:

1. The Proposed Use is a Hotel Prohibited in the CV-1 Zone. The proposed use is not a “motel” or “bed and breakfast inn” and is properly classified as a “hotel” under the Malibu Local Coastal Program (LCP) and Zoning Code. Hotels are prohibited under the site’s current CV-1 zoning.

As defined in the LCP Local Implementation Plan (LIP) and Zoning Code, a “motel” is “a *group of attached or detached buildings containing guest rooms, some or all of which have a separate entrance leading directly from the outside of the building to automobile parking space conveniently located on the lot or parcel of land, [and] does not provide accessory uses such as restaurants or meeting rooms*”. (LIP 2.1; see also MMC 12.02.060.) The proposed project fails to meet this definition in two significant respects.

First, there is no direct access from the guest rooms to the parking. None of the guest rooms are on the same level as the parking. To get from their rooms to the parking garage below, guests will need to travel through common walkways and corridors and use the common elevator or common stairs.

Second, the project includes a dedicated bar serving the large rooftop deck area, as well as a full commercial kitchen for food service. The rooftop deck and amenities would be used by motel guests on a daily basis, but events that would bring in visitors can be held onsite in the motel subject to City approval of a Temporary Use Permit (TUP), including “weddings, B’nai Mitzvahs, parties, corporate events, and other festivities.” (Agenda Report, p. 13.) These amenities, such as the rooftop bar and

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lounge, commercial kitchen and special event space, clearly distinguish this project from a “motel” and bring it within the definition of “hotel,” i.e., “a facility offering transient lodging accommodations to the general public and providing additional services, such as restaurants and meeting rooms.” (LIP 2.1; see also MMC 12.02.060.)¹ Accordingly, this project cannot be approved without a zone change and LCP amendment to redesignate the site from CV-1 to CV-2 to allow a hotel.

2. Loss of Beach Parking. As stated in the Commission’s agenda report, the site is currently improved with a parking lot containing 40 spaces, of which at least 24 are required for the adjacent Aviator Nation restaurant/retail property. The remainder of the parking spaces have been used as beach parking (see February 2021 photo attached hereto as Exhibit A showing parking attendant shack and banner advertising “Beach Parking”).

The proposed motel includes 47 parking spaces, of which 24 will continue to be used for the adjacent Aviator Nation property. This leaves only 23 spaces for the Malibu Motel (far short of what code requires, as discussed below) and leaves zero spaces for beach parking. This represents an unmitigated loss of at least 16 spaces (from 40 to 24) currently available for beach parking. This loss of beach parking violates important policies of the Coastal Act and Malibu Local Coastal Program (LCP)² and creates a significant impact that must be analyzed in an EIR.

3. Insufficient Parking for the Motel. As explained above, the project should be classified as a “hotel” and not as a “motel.” Under the LIP and Zoning Code, a hotel requires two parking spaces per room, plus additional spaces for food and beverage serving area and employees. (LIP 3.14.3; MMC 17.48.030.) This would result in a parking requirement more than twice the 23 spaces provided for the Malibu Motel (47 total onsite, less 24 dedicated for the use of Aviator Nation).

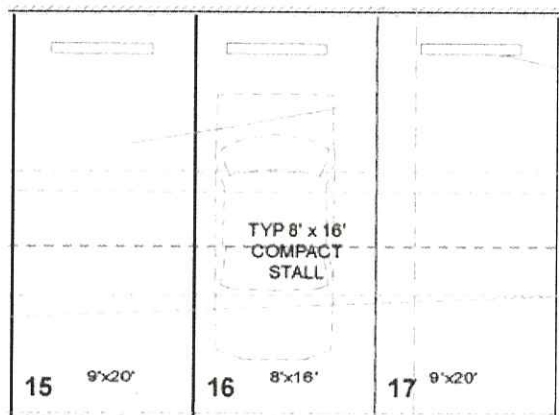
Even if the property were required to provide only the number of spaces required for a “motel,” there would still be more than 23 spaces required. Staff calculated that 23 spaces were required based on the “motel” standard of one space per room, plus one space for each employee assuming three employees per shift. (LIP 3.14.3.) But the assumption of only three employees per shift is clearly too low. For example, at 5:00 pm on a typical day, the property would require *at minimum* seven (7) employees: a parking valet, a front desk clerk, a manager, a food prep chef, a dishwasher/bar back, a bartender, and a pool attendant/server. If any housekeeping personnel were still on site, the number would be even higher.

¹ The proposed use also does not constitute a “bed and breakfast inn,” which is defined as “a facility offering transient lodging accommodations to the public and providing kitchen facilities adequate to provide meals to the guests of the facility only and not otherwise open to the public.” (LIP 2.1; see also MMC 12.02.060.) While the project contemplates transient lodging and a commercial kitchen, so does any hotel. Read in context with the definitions of motel and hotel, the term “bed and breakfast inn” was intended to reflect the traditional notion of a quaint, rural lodging house that offers breakfast to a handful of guests. A bustling, 20-room property at the pier with rooftop bar and dining service late into the night for its 30-40 guests along with public weddings and events is a hotel, not a B&B. Notably, the agenda report and proposed resolution uniformly refer to the project as a “motel” and never as a “bed & breakfast inn.”

² Policies of the Malibu LCP include coastal access and the provision of adequate off-street parking. (See, e.g., LIP 1.2, paragraphs C and H.)

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The project plans also reveal that the parking spaces provided do not conform to the stall sizes required by code. Except for the 20% allowed to be compact spaces, all standard stalls must be at least 9' by 20'. The dimensions called out on the applicant's Proposed Subterranean Garage Plan appear inaccurate, inconsistent and potentially misleading. (See Agenda Report at p. 87.) Simply by way of example, the plan appears to depict dimensions for spot #16, which is labeled as an "8' x 16' Compact Stall," that are roughly identical to adjacent stalls labeled "9'x20'":



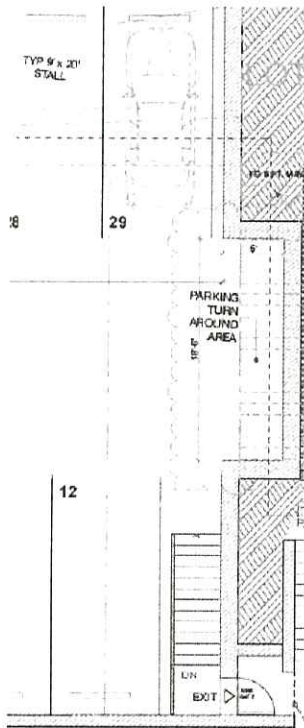
(Agenda Report at p. 87.) And bizarrely, spot #25 appears to be labeled both "9'x20'" and "8'x16'":



(Id.)

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The same plan also shows a dead-end parking aisle with no adequate turnaround as prohibited by Zoning Code § 17.48.050(D) & LIP 3.14.5(D):



(Id.)

4. Project Exceeds the Maximum Allowable Height and Stories. The maximum height allowed for a new commercial building under the LCP is 24 feet (or 28 feet for a pitched roof) and two stories. (LIP 3.8(A)(1)(b).) As shown by the project's south elevation (see Exhibit "B" to this letter), however, the project is actually four stories and over 40 feet tall. At the base is the entry lobby and reception area, together with an enclosed parking garage. The second and third levels contain the guest rooms and commercial kitchen. The top floor contains the pool deck, elevator box, and a roofed bar area.

Each of these four levels is a "story" under the LCP, which defines a "story" as: "*that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the roof above.*" (LIP 2.1; see also MMC 12.02.060.) Contrary to the Agenda Report's erroneous references to the project as a "two-story motel" (see e.g., p.11, referring only to the second and third levels which contain guest rooms) the first floor lobby/parking levels and the top floor pool and bar are also stories.

Indeed, the top floor is not only used as habitable floor area, but portions are roofed (to wit, the elevator box and bar), and these roofed portions squarely meet all aspects of the code definition for a fourth "story." (See Ex. B.) Similarly, although the code states that a "basement" is not a story, the lobby/parking level does not meet the definition of a "basement," i.e. "*that portion of a building or an area*

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enclosed by walls located below finished grade and beneath or partially beneath the first floor footprint above, where the vertical distance from finished grade to the bottom of the finished floor above is no more than 3 vertical feet at all points around the perimeter of all exterior walls.” (Emphasis added.) Although the proposed motel will be built into the hillside and the lower level is partially below ground, the front (southerly) edge of the ground floor will be fully exposed and “daylighted” to at least a 10 foot height, as shown on Ex. B to this letter, and on pages 92 and 135 of the agenda report. The architect’s failed attempt to simulate a basement condition by flanking the exposed lobby frontage with dirt planters does not change the fact that the lower level includes at least a 10 foot height of exposed frontage and cannot be considered a “basement” as defined by code.

5. General Plan Inconsistencies. The proposed project clearly violates the following policies of the City of Malibu General Plan Land Use Element:
 - a. Section 1.1 in the Introduction to the Land Use Element states: “Commercial areas are limited to small neighborhood serving and visitor serving uses interspersed throughout the City” By contrast, the proposed project at four stories would be the tallest hotel approved to date in Malibu, and it would create the third hotel/motel in this immediate area (within approximately 500 feet of the Malibu Pier), which is already congested with restaurants and tourist facilities.
 - b. LU Implementation Measure 67 requires a commercial planned development permit for any commercial development or change of use of existing development to assure compliance with current codes. The applicant here has not sought a planned development permit and the project does not comply with current codes (stories, setbacks, parking, grading, etc.) as documented in this letter.
 - c. Section 1.5.4 of the Land Use Element states that the CV designation for this site provides for uses that serve visitors and residents, such as hotels and restaurants “which respect the rural character and natural environmental setting.” The imposing, four-story structure proposed here to be cut into the hillside would be entirely urban in character and—literally and figuratively—undercut the natural setting and terrain.
6. Inconsistencies with the LCP and Zoning Code. As noted above, the project violates so many provisions of the LCP and Zoning Code (excessive grading, height, setbacks, open space, landscaping, parking standards, retaining wall height, etc.) that it requires multiple variances and discretionary approvals to be approved. Many of these inconsistencies are openly identified and admitted by planning staff in the 47-page staff memorandum included in the agenda report. Others are identified above in this letter. The required variances are not supported by the required findings.

For example, the agenda report claims that the hillside must be carved out because of “special circumstances,” citing the steep slopes at the rear of the lot. (Agenda Report at 23.) Those steep slopes, however, are far from unique in Malibu—to the contrary, they are the typical condition for most of the inland lots along PCH. Another variance allows for a 46-foot high retaining wall—more than *three times* the 12 foot maximum. This wall again is needed not for any unique condition of the property, but only because of the applicant’s desire to build into the hillside for the purpose of claiming that this four-story structure only has a height of 24 feet by the trick of terracing back the building against the hillside and measuring vertically parallel to the slope. A third variance is required for parking in the front yard setback, which still does not provide sufficient parking for both the use and the 24 spaces already dedicated to the Aviator Nation property next door. The self-imposed voluntary arrangement made by

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the property owner to sell perpetual parking rights to a neighbor should not be later used as a hardship justification for a variance to allow extra parking spaces located in the front yard setback.

7. CEQA Defects. The City has improperly used a mitigated negative declaration for this project, when an EIR should have been prepared in light of the project's stark inconsistencies with the General Plan, LCP and Zoning Code as noted above. The MND failed to address additional traffic impacts and safety risks associated with this highly congested section of PCH. These include increased nighttime trips, increased nighttime pedestrian crossings of PCH by hotel guests, and increased nighttime left turns into and out of the unsignalized/uncontrolled driveways. Although my clients deal with these issues at the Malibu Beach Inn and believe they can be adequately mitigated, the City disagreed and cited these kinds of alleged PCH safety concerns in denying the Malibu Beach Inn's pool and offsite parking application. The proposed Malibu Motel project should be held to the same standard, particularly because of the congestion and greater PCH crossings at this location directly across from the beach, and the shops and restaurants at the Malibu Pier.

The Planning Commission is respectfully urged to deny the proposed approvals for the reasons set forth above, as well as the many other grounds for denial raised in the voluminous public correspondence submitted in opposition to this project. If the project is to be brought forward again for further consideration, it should first be revised to be consistent with existing City plans and policies, and then evaluated in an EIR before returning to the Planning Commission for additional hearings.

Sincerely,

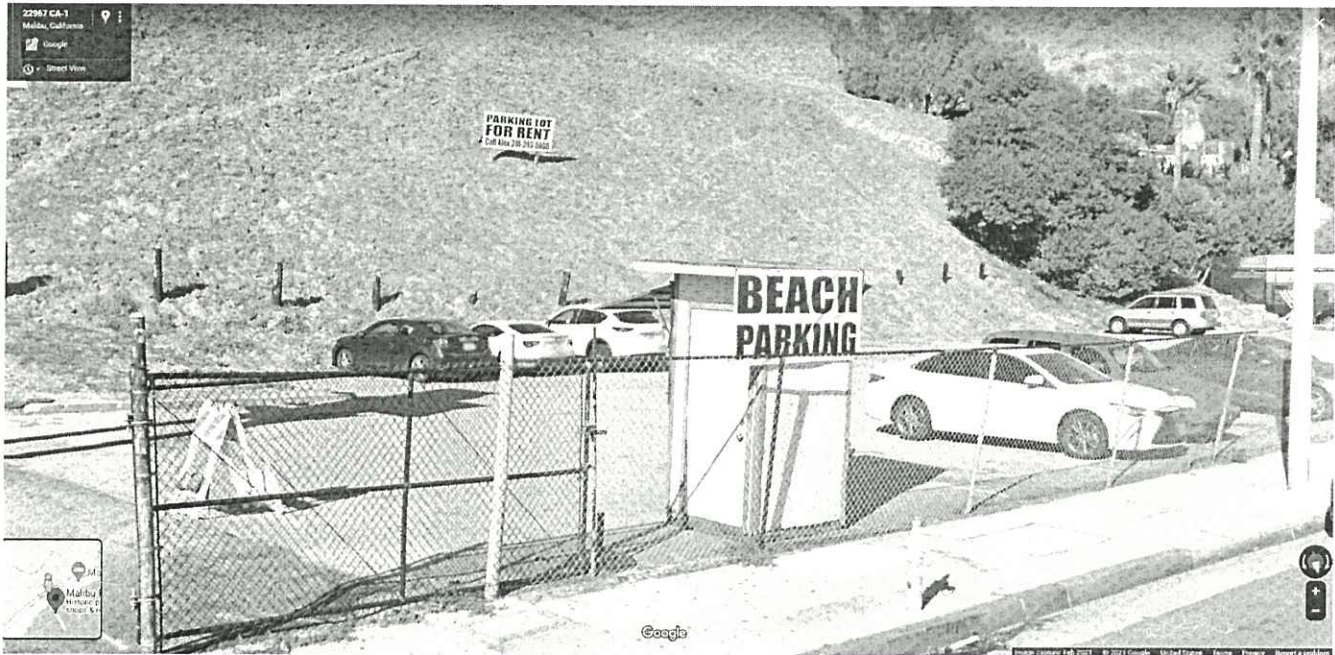


Marshall A. Camp

cc: John Cotti, City Attorney (via e-mail)
Kathleen Stecko (via e-mail)

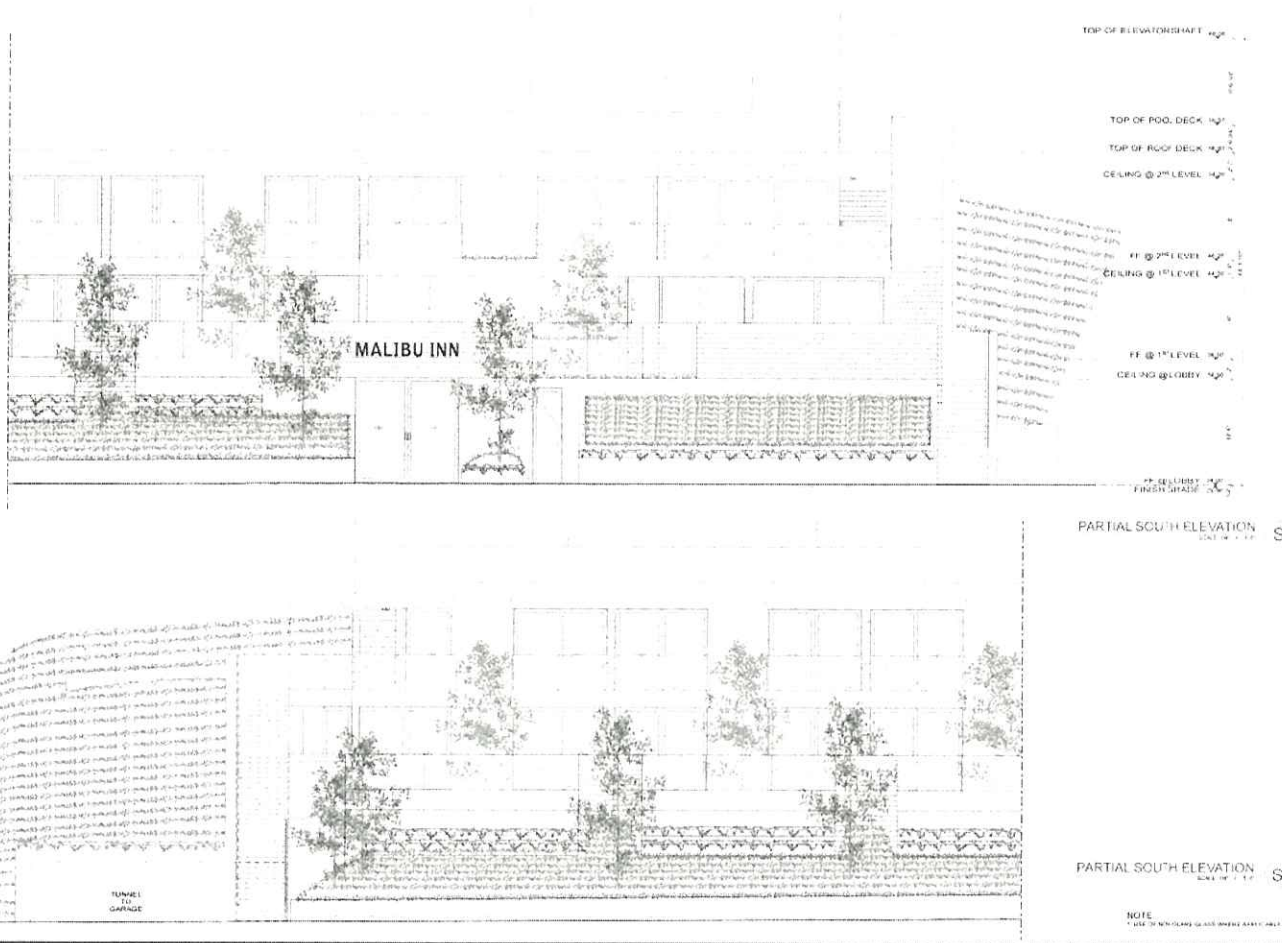
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Exhibit "A"
Existing Beach Parking at the Site



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Exhibit "B"
Proposed South Elevation





City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

NON-COASTAL DEVELOPMENT PERMIT APPEAL SUBMITTAL

Actions Subject to Appeal: Pursuant to Malibu Municipal Code (MMC) Section 17.04.220, any person aggrieved by a decision or any portion of a decision made by the Planning Director under the provisions of this title in connection with a site plan review, variance, stringline modification, conditional use permit, cultural resources review, highway dedication or improvement, or temporary use permit may appeal such action to the Planning Commission. Any person aggrieved in a similar manner by such decision made by the Planning Commission may appeal such action to the City Council.

Planning Director or Planning Commission Date of Action:

April 11, 2022

Case No.:

Conditional Use Permit Amendment No 13-006 and Joint Use Parking Agreement No. 14-001

Site Address/Location:

22969 Pacific Coast Highway (Aviation Nation)

Note: Appeals shall be addressed to the appellant body on a form prescribed by the City. The appeal shall state the basis of the appeal and identify the decision or portion of the decision being appealed and stated the grounds for the appeal. Only matters raised in the appeal shall be subject to review. Any matters not raised in the appeal shall not be subject to consideration by the appellate body. The purpose of this limitation is to provide adequate notice to all parties with respect to the issues on appeal and eliminate the necessity of rehearing matters not subject to challenge. Although the issues on appeal will be limited by the appeal, the appellate body will accept new evidence (de novo appeal) and will not be bound by the previous record. [MMC Section 17.04.220(B)]

An appeal shall be filed with the City Clerk within 10 days following the date of action for which appeal is made. Appeals shall be accompanied by the filing fee as specified by the City Council. An appellant shall have an additional 10 days following the date of filing the appeal to submit to the City Clerk in writing, the specific grounds for the appeal. If the appellant does not submit grounds for the appeal within the time allowed by this section, the City Clerk shall return the filing fee and the appeal shall be deemed to have been withdrawn. [MMC Section 17.04.220(C)]

To Submit an Appeal:

The appeal must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23825 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Senior Administrative Analyst, at (310) 456-2489, ext. 245.

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APR 14 2022

PLANNING DEPT.

ALL of the following must be timely filed to perfect an appeal.

1. Appeal Letter _____

An appeal letter setting for the grounds for the appeal

2. Appeal Fees(s) _____

In the form of a check or money order made payable to the City of Malibu. Cash will not be accepted, _____

3. Appeal Checklist (This form with appellant's signature) _____

An appellant shall have 10 days following the date of filing to submit the following:

4. Grounds of Appeal Letter _____

An appellant shall have an additional 10 days following the date of filing the appeal to submit to the City Clerk in writing, the specific grounds for the appeal. If the appellant does not submit grounds for the appeal within the time allowed by this section, the City Clerk shall return the filing fee and the appeal shall be deemed to have been withdrawn. See MMC Section 17.04.220(C) for details.

5. Certified Public Notice Property Owner and Occupant Mailing Addresses and Radius Map _____ The addresses of the property owners and occupants within the mailing radius shall be provided on a compact disc in a Microsoft Excel spreadsheet. The spreadsheet shall have the following column headers in row one: 1) name, 2) address, 3) city, state & zip code, and 4) parcel (for APN). The owners should be listed first followed by the occupants. The project applicant's mailing address should be added at the end of the list.

An additional column for "arbitrary number" may be included if the supplied radius map utilizes such numbers for the purpose of correlating the addressee to their map location.

Printouts of the excel spreadsheet and radius map, certified by the preparer as being accurate, must be provided.

The radius map (B 'A" x 11") shall show a 500-foot radius* from the subject property and must show a minimum of 10 developed properties. A digital copy of the map shall be submitted on the same cd as the mailing addresses.

*Properties zoned RR-IO, RR-20, or RR-40 require a 1,000-foot radius notification.

"Note that updated mailing labels may be requested by the project planner prior to deeming the application complete.

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or subsequently deficient, the appeal shall be deemed to have been withdrawn and the filing fee shall be returned.

MALIBU COALITION FOR SLOW GROWTH + PAT HEALY

PRINT APPELLANTS NAME

TELEPHONE NUMBER

Pat Healy as an individual + for Slow Growth

APPELLANTS SIGNATURE

DATE

Appellant's mailing address: 6085 Paseo Canyon Dr.

Appellant's telephone: 424-235-2464

OFFICE USE ONLY

Action Appealed: _____

Appeal Period: _____

Date Appeal Form submitted: _____

Received by: _____

Date Grounds of Appeal Letter submitted: _____

Received by: _____ Date of

Mailing Labels/Radius Map submitted: _____

Received by: _____

Appeal Completion Date: _____ By: _____

Name, Title

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PLANNING DEPT.

Appeal of Conditional Use Permit Amendment No 13-006 and Joint Use Parking Agreement No. 14-001

Reasons to Deny the Planning Commission's Approval of CUP and JUPA

SUMMARY

Lack of Parking The Malibu Inn/Aviator Nation property has 22 parking spaces. The adjacent parking lot property owned by the same entity has 40 spaces. In total, there are 62 parking spaces. Applicants have requested to reduce their required parking spaces. However, the amended requested 2022 CUP/JUPA should not be heard separately from the Malibu Inn Motel permit since they are intertwined and related and must be heard together

It is most important to note that the Applicant has prematurely applied to amend the 2010 CUP/JUPA to reduce the number of required parking spaces of Aviator Nation by 7 spaces (22 on site and 24 in parking lot next door) because it does not take into consideration the impact of a motel/hotel project. The Planning Commission has approved their application. This is an appeal of that decision.

If you uphold the Planning Commission decision and amend the CUP for Aviator Nation to reduce the number of parking spaces from 31 to 24 in the parking lot next door you will be in effect approving the parking required for the proposed 20 room motel the Applicant has applied to build on the parking lot next door to Aviator Nation.

The seating chart provided in the Planning Commission staff report used to calculate the service area was prepared twelve years ago when there was a restaurant at the premises. There is no restaurant at Aviator Nation now and the current layout of the event venue/ nightclub consists of small coffee tables, a few chairs and couches. There are no tables for restaurant use.

The premise for this amended 2022 CUP and JUPA is that there is a full service restaurant in operation at Aviator Nation. This application is based on a fiction. Everyone who has been to the premises knows this a fiction. It states that Aviator Nation operates a full service restaurant which is false. Since Aviator Nation has taken over the space from Casa Escobar there has never been a restaurant operating on this site. It has only been an event venue.

Also, the original 2010 CUP was granted in contemplation of a "retail/office" being built on the adjoining parking lot which would be closed at night and thus night parking would not conflict with the operation of a restaurant. With a proposed motel project this is no longer the case.

Since Aviator Nation is an event venue the parking requirements need to be *increased* not decreased. The CUP currently permit each year 24 large live events with 300 attendees and 120 annual smaller events with 100 attendees and there is simply not enough parking on site or the adjacent parking lot to accommodate this many patrons.

In the past 12 years there has been an exponential increase in PCH traffic and lack of parking availability because four (4) very successful restaurants NOBU, Soho House and the 2 Farm Restaurants on the Pier have been permitted.

All these restaurants do not have adequate parking for their patrons or their employees resulting in them parking all along PCH every day and patron cars waiting to get into their parking lot are backed up on PCH creating a nuisance to the residents and visitors in the vicinity.

The Applicant stated at the Planning Commission that patrons for events could park in one of their office buildings which is over 1750 feet away. But this is not feasible because of the distance from Aviator Nation and the parking facility.

The city practice of allowing projects to be under parked is a nuisance and a detriment to the residents in the area.

A twelve year old CEQA traffic study was used in support of the JUPA. A new traffic, parking and circulation study must be done before any onsite parking is reduced.

Reason for Reduced Parking Request - Violates CEQA

There can be no question that this 2022 CUP and JUPA for parking reduction is being made as an attempt to gain a premature entitlement for the adjacent motel project.

This property and the adjoining vacant parking lot (site of the proposed Motel Project) are owned by the same Owner/ Applicant, share parking and a common driveway.

The Malibu Inn Motel and the amended requested 2022 CUP/JUPA should not be heard separately since they are intertwined and related and must be heard together. The Mani Brothers appeal states the law on how this piecemealing is not allowed.

The 2010 CEQA traffic study is outdated. A new traffic, parking and circulation study is needed and required under CEQA.

2010 CUP Revocation Required.

If you grant this requested CUP/JUPA for reduced Aviator Nation parking and on the adjacent vacant lot this reduction will be locked in forever since it is almost impossible to revoke a CUP.

Since Applicant has asked for a CUP amendment, the Council has the opportunity to change or revoke this CUP. The CUP should be revoked if the use for which the conditional use permit was granted has ceased for at least six successive calendar months or one or more of the conditions haven't been substantially met. Both situations exist. Nearby residents and members of the public who have visited the premises stated there is no restaurant operating at the site since Casa Escobar closed over a year and a half ago and there have been and are numerous CUP violations by Aviator Nation. Based on these facts, the city should revoke the 2010 CUP. However, at the very minimum that the 2010 CUP should be modified to no longer allow the large events because of the nuisance value and the lack of parking both on and off site. The Smaller events need to be prohibited during the day. Evening smaller events could be allowed if the conditions of the 2010 CUP are strictly enforced and code enforcement officers are available at night and on weekends.

Some of the continuous 2010 CUP condition violations that can be substantiated by the neighbors are the following:

- The prohibition of live entertainment on the exterior patio;
- The prohibition of amplified music on the patio;
- A limit on noise from the patio and the interior of Aviator Nation so it cannot be heard five feet from an adjacent residence in compliance with the M.M.C. Noise Ordinance
- The provision of security personnel onsite seven days a week from 9:00 p.m. to closing to ensure that patrons leaving the establishment will not adversely affect the welfare of neighborhood residents.

Malibu has a poor safety record on the Pacific Coast Highway during late hours which must be addressed. Aviator Nation is also located in a residential neighborhood with nearby residences. It is not proper to allow a nightclub to operate until two am in the morning given the fact that Malibu does not have adequate Sheriff patrols or compliance officers on duty late at night to enforce the conditions of the CUP.

See findings violated in Discussion below.

DISCUSSION

Lack of Parking

The Aviator Nation property has 22 parking spaces. The adjacent parking lot property owned by the same entity has 40 spaces. In total, there are 62 parking spaces.

However the staff report in other sections claims it contains 23 spaces and erroneously uses that as a base line. The adjacent parking lot is to actually contribute 24 (not 23) spaces in the JUPA and thus is one space short of what the JUPA claims is required.

Staff has also not considered Applicant's agreement with the Surfrider Inn to lease five parking spaces on the Aviator Nation property and thus they have been counted twice.

Applicant has prematurely applied to amend the 2010 CUP/JUPA to reduce the number of required parking spaces of Aviator Nation by 7 spaces from 53 to 46. (22 on site and 24 in parking lot next door.)

If the Planning Commission decision is upheld, the Aviator Nation Site will be able to reduce the number of required donor spaces from 31 to 24 by converting a portion of restaurant service area to retail, which has a lower parking requirement. The CUP will permanently lock in much needed parking spaces for the proposed 20 room motel

Service area is used to calculate required parking. Staff has miscalculated the area. The seating chart provided in the Planning Commission staff report used to calculate the service area was drawn up twelve years ago and does not in any way show the present configuration of the Aviator Nation which only has a few small coffee tables, a few chairs and couches. No dining tables exist in the current layout. This is shown in the pictures provided in the Planning Commission staff report.

As a nightclub the entire area including the former dining room, interior bar, lounge and outside seating area and bar must be included in "service area" which will hold up to 300 people. This was not considered by the Planning Commission staff report. A visit to the site will make this evident. As a result of this increase in the actual service area many more parking spaces are required.

However, this application is based on a fiction that Aviator Nation operates a restaurant which is false. The premise for allowing this amended 2022 CUP

and JUPA is that there is a full service restaurant in operation. Currently there is no restaurant operating at Aviator Nation.

According to the neighbors, since Aviator Nation has taken over the space from Casa Escobar there has never been a restaurant operating on this site. It has only been an event venue. It was during the Pandemic that the current remodel of the Malibu Inn Casa Escobar restaurant facility was formally turned into a nightclub/event venue and the restaurant tables were removed without the required permit violating the 2010 CUP.

Since Aviator Nation is an event venue and no longer a restaurant, the parking requirements need to be *increased* not decreased. The 2010 and the proposed 2022 amendment to the CUP allow each year 24 large live events with 300 attendees and 120 annual smaller events with 100 attendees. Taken together almost 5 months of the year Aviator Nation is an event venue/nightclub.

Assuming there are 2 persons per vehicle, 150 customer parking spaces are needed on site for the large events.

According to the staff report 28 employees are needed for these events and they have no place to park. In addition, the Owner/ Applicant failed to mention, it has leased 5 parking spaces to the Surfrider Motel for their overflow parking due to similar errors in employee count in their CUP.

In reality, The proposed Malibu Inn Motel use is not a “motel” or “bed and breakfast inn” and should be properly classified as a “hotel” under the Malibu Local Coastal Program (LUP) and Zoning Code. Hotels are prohibited under the site’s current CV-1 zoning and require 2 parking spaces per room. Because of this fact an additional 20 parking spaces plus spaces for ancillary services like a public pool and bar must be added.

The original 2010 CUP was granted contemplating a "retail/office" on the adjoining parking lot property and took into account the fact that that facility would be closed at night and thus night parking would not conflict. With a proposed motel project this is no longer the case as a motel/hotel will have wedding and other events at the same time as Aviator Nation and will increase traffic and parking issues in that area. The adjoining motel project must be considered at the same time with the amended 2022 CUP-JUPA request in the reduction of parking request.

Applicant disregards the changes in traffic and parking along PCH. In the past 12 years there has been an exponential increase in PCH traffic and lack of parking availability in the immediate vicinity because 4 very successful

restaurants NOBU, Soho House and the 2 Farm Restaurants on the Pier have been permitted.

Simply stated there is not enough parking in the vicinity for everyone. All these restaurants are under parked and patrons and employees' cars park on PCH creating a nuisance to the residents in the area, including those directly impacted across from Aviator Nation. Currently Aviator Nations employees park on the street taking up valuable street public parking. Good planning dictates they be required to park on site.

Another factor that must be considered is that events are allowed day and night causing increased traffic at peak hours. Employees parking on PCH would take public parking away from the public which would not stand up to appeal to the Coastal Commission.

The Applicant stated at the Planning Commission that overflow could park in one of their office buildings which is over 1750 feet away. But this is not feasible since it is not allowed under the city code when the building for parking is more than 300 feet from the site. It is also not practical to have valet drivers drive a vehicle to the offsite parking but unable to return to Aviator Nation in a timely fashion to park the next car. Also, because it is prohibited to turn South at the exit of the Aviator Nation parking lot and allowing a U turn at the light would not meet safe turn standards of CalTrans no U turn would be available until Webb way which would add considerably to the distance the Valet must travel. It simply would not be possible to operate a Valet from such a distance.

The city practice of allowing projects to be under parked is a nuisance and a detriment to the residents in the area. Projects have to be designed to have adequate parking or they shouldn't be approved.

A twelve year old review of the traffic situation was used as an excuse not to do a new traffic study. This CUP allows operation of this property with large events day or night in the most constricted zone on Pacific Coast Hwy directly across from the Pier. Since 2010 circumstances have dramatically changed and traffic has vastly increased in this vicinity. A new traffic, parking and circulation study must be done before any onsite parking is reduced.

Therefore, approving this 2022 CUP without considering an updated CEQA study would greatly affect traffic on PCH in this very congested zone, causing additional traffic accidents restricting the ability of visitors and residents to access our civic center shopping area and surrounding State and local parks and beaches.

Loss of Public Parking

Loss of Beach Parking. The site currently provides 16 spaces for beach parking. The proposed motel will provide zero. Up to twenty eight employees will park on PCH taking up valuable resident and visitor parking. This loss of beach parking violates important policies of the Coastal Act and the Malibu LCP and creates a significant impact that must be analyzed in an environmental impact report (EIR). See LIP 1.2(C), (H).

Reason for Reduced Parking Request - Violates CEQA

There can be no question that this 2022 CUP and JUPA for parking reduction is being made as an attempt to gain a premature entitlement for the adjacent so-called motel project.

Although the staff report purports not to consider the adjacent motel application, this property and the adjoining vacant parking lot (site of proposed Motel Project) are owned by the same Owner/ Applicant, the 2 lots share parking and a driveway.

The proposed motel needs 1 parking space for each room. It is obvious that by reducing the 2010 CUP parking requirement by 7 spaces. it will give the proposed motel 7 needed space for their motel.

Once again it must be noted that the proposed "motel" is not consistent with CV-1 zoning in that it is a "Hotel" with hotel amenities and services. Correction of this zoning violation will add a minimum requirement of 2 parking spaces per room for an additional 20 parking spaces on top of those discussed in the staff report.

Error in Hearing Procedure

The Malibu Inn Motel and the amended requested 2022 CUP/JUPA should be heard together since they are intertwined and related. The Planning Commission voted twice to hear the motel application prior to the JUPA application and twice changed its agenda to that effect. This hearing order was ignored by staff at the third hearing by continuing the motel item to a date uncertain and allowing the JUPA hearing to proceed before the motel agenda item.

CEQA Requirements

According to the Mani Brothers appeal *“Both CEQA and sound planning principles dictate that these two projects be evaluated and considered for approval together as one series of inter-related action constituting the whole project. CEQA requires that environmental considerations not be concealed by*

separately focusing on isolated parts, overlooking the effect of the whole action in its entirety. City of Sacramento v State Water Resources Control Bd. (1992) 2 CA4th 960; McQueen v Board of Dirs. (1988) 202 CA3d”

“CEQA also requires projected projects known to the city to be considered in CEQA evaluations. In this case the improper CEQA studies done twelve years ago must include a new full CEQA report due to the major changes in Malibu since the first insufficient at the time study was done. This is required and been ignored.”

This project and change in parking should not be considered until the reviewing bodies understand the joint parking agreement and this 2022 CUP in relationship of the two projects. Granting a reduction in parking is a clever way to gain an entitlement for the proposed motel parking prematurely in violation of CEQA.

2010 CUP Revocation Required

Most Importantly please understand If you grant this requested CUP/JUPA for reduced Aviator Nation parking on the adjacent vacant lot this reduction will be locked in forever since it is almost impossible to revoke a CUP.

However, since Applicant has asked for a CUP amendment, the 2010 CUP can be looked at as a whole and the Council has the rare opportunity to change or revoke this CUP and correct all the obvious undercounting of parking requirements.

In fact, it should be revoked because a condition of the 2010 approval unequivocally states : *The conditional use permit **shall** be revoked if the Planning Commission finds that one or more of the following conditions exists:*
*a. The conditional use permit was obtained in a fraudulent manner. b. **The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.** c. **One or more of the conditions found within this resolution haven't been substantially met.*** Both b. and c. are now applicable.

Aviator Nation for far more than 6 consecutive months has not operated as a restaurant which was the use for which this CUP was originally granted. The conditions of the existing Malibu CUP Have been consistently violated by the current Owner/Applicant to the detriment of the surrounding neighbors.

The conditions of the 2010 CUP include:

- The prohibition of live entertainment and amplified music on the exterior patio;

- A limit on noise from the patio in compliance with the M.M.C. Noise Ordinance;
- The requirement that the property owner notify the City Code Enforcement Officer and the LACSD no less than three days prior to a large entertainment event (defined as any event with 100 or more persons in attendance); and
- The provision of security personnel onsite seven days a week from 9:00 p.m. to closing to ensure that patrons leaving the establishment will not adversely affect the welfare of neighborhood residents.

The Security Plan which was submitted to the Planning Commission on September 7, 2010 details a listing of goals which include:

- Creation of a safe and secure environment within the Malibu Inn for all patrons;
- Provision of a level of control and safety for all arriving and departing guests;
- Mitigation of any noise or inappropriate conduct directed at the immediate neighbors and leaseholds by patrons upon entry or departure; and
- Diffusion of all situations as they occur.

The above conditions have not been met after 12 years of operation under the 2010 CUP.

Some of the continuous violations that can be substantiated by the neighbors are the following:

- The prohibition of live entertainment and amplified music on the exterior patio;

Neighbors have told us: For the entire time Casa Escobar operated at the Malibu Inn, they had on a weekly basis outdoor live entertainment events on the patio. Several of these violations were videotaped by different residents and sent to Code Enforcement. Prior to Casa Escobar, the Hakims managed the restaurant/venue and also allowed live entertainment.

- A limit on noise from the patio in compliance with the M.M.C. Noise Ordinance;

Aviator Nation and all prior operators of the Malibu Inn played loud amplified music through their speaker system, as well as through DJ or band speakers at excessively loud sound levels. Residents have provided videotape footage to the City and Code enforcement of these violations since the Applicants took over the Malibu Inn. These excessive sound levels occurred both before and after 10 pm at night.

- The requirement that the property owner notify the City Code Enforcement Officer and the LACSD no less than three days prior to a large entertainment event (defined as any event with 100 or more persons in attendance); and

- The provision of security personnel onsite seven days a week from 9:00 p.m. to closing to ensure that patrons leaving the establishment will not adversely affect the welfare of neighborhood residents.

The Security Plan which was submitted to the Planning Commission on September 7, 2010 details a listing of goals which include:

- Creation of a safe and secure environment within the Malibu Inn for all patrons;
- Provision of a level of control and safety for all arriving and departing guests;
- Mitigation of any noise or inappropriate conduct directed at the immediate neighbors and leaseholds by patrons upon entry or departure; and
- Diffusion of all situations as they occur.

Neighbors have stated that they have not seen any security working outside the Malibu Inn/Aviator Nation monitoring patrons or asking them to be quiet. They would often hear loud music from the patio or from inside the Malibu Inn because the doors were open and noise/shouting from patrons on the patio and in front of the Malibu Inn could be heard inside homes and within 5 feet of resident homes. Some of these incidents can be seen on the submitted videotape footage.

This project is also in a residential neighborhood with nearby residences. It is not proper to allow a nightclub to operate until two am in the morning given the fact that Malibu does not have adequate Sheriff patrols or compliance officers on duty late at night

Because there is no restaurant in operation and there are numerous CUP violations the city should revoke the 2010 CUP. However, at the very minimum that the 2010 CUP be modified to no longer allow the large events because of the nuisance value and the lack of parking both on and off site. The Smaller events need to be prohibited during the day. Evening smaller events could be allowed if the conditions of the 2010 CUP are strictly enforced and code enforcement officers are available at night and on weekends.

Required Findings not Met

Finding 1. *The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.* The proposed amendment will not affect the finding previously made by the Planning Commission in that the proposed use remains consistent with the provisions of MMC Title 17 and is still a conditionally permitted use within the zone. A restaurant with an interior capacity in excess of 125 people, nightclub, and bar are all conditionally permitted uses in the CV-1 zoning district.

The restaurant will now provide a reduced service area, with no other change to operations. The project has been conditioned to comply with all applicable provisions of the MMC and will continue to provide the necessary parking consistent with past operational practices on the adjacent property via the amendment to JUPA No. 14- 001. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein. For these reasons, the amendment is not anticipated to result in a change from the existing conditions within the zoning district.

Finding 2 cannot be made.

The defunct restaurant was compatible with the surrounding neighborhood but a nightclub/event venue allowing 300 attendees is not. This venue has been demonstrated over the years not to be compatible by the constant complaints of the harassed neighbors due to the total lack of enforcement of the conditions of approval. Reduced parking spaces will only make the situation worse as far as traffic and circulation is concerned. In addition, the traffic and circulation problems have increased and available public parking on PCH has decreased due to 4 very successful well attended restaurants who do not have enough onsite parking and take up a considerable amount of public parking on PCH.

Due to the miscalculation of the service area for a nightclub the additional parking spaces required can't be met on site and are not adequate for the zone and the congested area between the Pier and Nobu.

Since there is no longer a restaurant at the site the applicant is in violation of its ABC liquor license. The applicant has a Type 47 license which permits the sale of beer, wine and distilled spirits for consumption on the licensee's premises. To keep this license the site must operate and maintain the premises as a bona fide eating place, maintain suitable kitchen facilities, and make actual and substantial sales of meals for consumption on the premises. Aviator Nation is not serving food, does not have a kitchen staff, and does not have dining tables at the property but continues to serve alcohol at their events.

Finding 3. *The subject site is physically suitable for the type of land use being proposed.* The proposed amendment will not physically alter the size or footprint of the existing building, or the existing paved parking. The proposed tenant improvements involve permanently converting restaurant service area into retail and expanding the existing retail space from 565 square feet to 1,636 square feet. **The business has operated on the subject property since the 1950s and the existing restaurant use has been operating for eleven years under the approved CUP No. 09-009. A total of 46 parking spaces are required for the proposed uses, which reflects a reduction of 7 required parking spaces. All other conditions of approval of City Council Resolution**

The square footages and service areas of the use as originally permitted are being reduced by the amendment. Therefore, the proposed project has been conditioned to comply with all applicable provisions of the MMC.

Finding 1 Cannot be made

This site received a CUP to operate primarily a restaurant that would serve breakfast lunch and dinner and incidentally have events. The restaurant operation no longer exists and the main use is a nightclub /event venue. More parking spaces are needed for these events not less. By reducing the required parking spaces the applicant no longer has the minimum parking spaces required for the events.

Staff miscalculated the service area. Staff based calculations on restaurant numbers, not nightclub numbers. Currently the property is a bar and nightclub.

The Malibu Inn is massively underparked for 300 patrons and the 20 plus employees and vendors and or musicians appearing there. It is not possible to accommodate parking for 300 people, which is required by the code and the LIP. Even with the JUPA, according to our calculations, the Malibu Inn should be required to have more parking spaces because they did not take into consideration the nightclub service area and are using the wrong formula. The service area becomes dramatically larger and the parking requirements should be calculated on the highest use.

Moreover, employees and patrons will take street parking and displace visitor parking and access.

In addition, the wastewater system is for 94 individuals which is city approved and the CUP allows up to 300 patrons which is well over capacity. The backup leach field is not on the Aviator Nation property as required.

Finding 2. *The proposed use would not impair the integrity and character of the zoning district in which it is located.* The proposed amendment would not impair the integrity and character of the zoning district in which it is located, **and is compatible with the existing land uses on the site and surrounding neighborhood, as the amended use is still a commercial use on commercially zoned property. The restaurant use has occupied the subject property for several decades** for eleven years under the approved CUP No. 09-009, and associated amendments. The property is located within a long strip of CV-1 zoned properties located on the landward side of PCH that extends east of the Malibu Page 9 of 14 Agenda Item 4.A. Pier. **The existing restaurant has ABC liquor and entertainment licenses and is operated as a restaurant that already has an interior and exterior bar and interior live entertainment.**

No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein. Therefore, the site is physically suitable for the use being proposed.

Finding 3 cannot be made.

There is no restaurant operating on site and the conditions of approval are not being enforced. Without strict enforcement the subject site is not physically suitable for the type of land use being proposed. The reduction of available parking also makes it unsuitable for its current use as an events/nightclub venue.

Finding 4. *The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.* The proposed amendment will not affect the use's compatibility with the land uses presently on the subject property and in the surrounding neighborhood. The restaurant has operated at the subject property since the 1950s and the existing restaurant has been operating for eleven years under the approved CUP No. 09-009. The property is surrounded by both commercial and residential uses. There is a mix of commercial, office and retail uses in the immediate vicinity of the site. The proposed retail use expansion is similarly an allowed commercial use in the zone. All other conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, remain in effect, unless modified herein. Therefore, **this proposed use is compatible with the land uses in the surrounding neighborhood.**

Finding 4 cannot be made.

The proposed use was a restaurant that could have events. The restaurant ceased to exist when Casa Escobar closed almost 2 years ago. The CUP was granted for a restaurant and thus the CUP is no longer valid and under the 2010 CUP the conditions of approval must be revoked.

In addition, since the area is a mix use area – both residential and commercial - allowing a nightclub to run ignores the rights and needs of residents, the religious organization and pre-school nearby. The area is not a “nightclub” zone, therefore the proposed use would create a nightclub environment.

Finding 5. *The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located. The proposed amendment will not affect the compatibility of the existing use.*

The use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses are Page 10 of 14 Agenda Item 4.A.

comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space, and residential uses to the south.

Finding 5 cannot be made.

The use is now an event venue/night club and is not compatible with the surrounding area uses comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space, and residential houses to the south. The event use conflicts with these uses especially if an event is during the day. At night the event use creates a nuisance disturbing the peace and quiet of the neighbors and therefore is not compatible with the residential use.

Future land use by a proposed motel known by the city has not been taken into consideration as required by this finding.

Finding 6 There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff. The proposed amendment will not alter the existing utilities. Existing utilities will continue to serve the existing site. The LACFD and LACSD reviewed the original CUP No. 09-009 and indicated that the amendment did not require additional review. **In addition, the City Environmental Health**

Administrator reviewed the CUPA and determined that the existing OWTS is adequate for the proposed use. No changes to the exterior of the existing structure are proposed, so no impacts to solar access or public or private views will occur. The proposed project will not create any shade or shadow impacts that would impede solar access. The existing commercial structure at 22969 PCH will not change under this amendment and therefore, will not adversely impact existing public and private views.

Finding 6 cannot be made.

Sanitation is not adequate for 300 patrons and an expanded site for this system doesn't exist. Due to the extensive nightclub use a sewer connection under phase 2 is required by the RQWCB MOU.

Finding 7. There would be adequate provisions for public access to serve the subject proposal. As discussed in Finding 3, the existing use has adequate parking for public access and will not obstruct public traffic circulation. The number of required parking spaces is reduced from 53 to 46, and all parking will be maintained onsite, and offsite on the adjacent property pursuant to JUPA No. 14-001. The existing traffic circulation will remain unmodified.

Finding 7 cannot be made.

Parking is not adequate due to the change in use and undercounting of increased service area. It will obstruct traffic circulation due to the lack of traffic control to prevent highway backup as required of the Seaview Hotel. State beach parking, Nobu and Soho house and pier parking continuously creates a backup on PCH effectively closing one eastbound lane. A similar backup situation occurs at Aviator Nation with large events.

Finding 8. *The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.* The proposed amendment will not change the nature of the existing conditionally permitted use. The restaurant and bar use are conditionally permitted in the CV-1 zoning district and provides live entertainment as an ancillary use. **The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City.** The proposed project meets the goals of the following land use policies of the General Plan: Page 11 of 14 Agenda Item 4.A. LU Policy 3.1.1: **The City shall ensure visitor serving and recreational uses are compatible with the natural resources and aesthetic values of the area.**

LU Policy 3.2.1: The City shall permit the development of commercial recreational and visitor servicing facilities at suitable locations which provide convenient public access, adequate infrastructure, convenient parking and, when feasible, are located where existing low cost recreational uses will be enhanced. LU Policy 4.4.1: The City shall encourage establishment and continued operation of small neighborhood and community serving businesses. The proposed project, as conditioned, is consistent with goals, objectives and policies of the General Plan because the proposed amendment, as conditioned, will continue to provide for visitor and resident serving uses in a manner compatible with the surrounding area, with safe traffic circulation and parking.

Finding 8 cannot be made.

The proposed use does not meet the goals of following land use policies of the General Plan because it is not compatible with the rural and natural environment of Malibu, it will also obstruct public access and it does not provide enough convenient parking for residents and visitors.

3.1.1 Allowing large events does not respect the rural character and natural environmental setting. It does not protect the surrounding properties or ensure safe traffic circulation. Under the General Plan “Rural” is defined to include

respect for 'Residential Privacy' which has not been respected for over 10 years due to the excessive noise invading neighbors' homes.

3.2.1: Large events are not suitable at this location, there is not adequate infrastructure, convenient public access, adequate or convenient parking

LU Policy 4.4.1: The City shall encourage establishment and continued operation of small neighborhood and community serving businesses. Large events aren't small neighborhood businesses or community serving. Aviator Nation is not a small business operator.

Thus policy 3.1.1, 3.2.1 and 4.4.1 are not met.

Finding 9. *The proposed project complies with all applicable requirements of state and local law.* The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the LACSD.

Finding 9 cannot be made.

he proposed project violates applicable requirements of State and local law.

The ABC license has been violated since Aviator Nation has not been complying with its conditions. Therefore, requirements of the state law are not being met. See finding 2 above.

LU policies 3.1.1, 3.2.1 and 4.4.1 are not being met. Therefore State and Local law requirements are not being met.

Furthermore, allowing a nightclub to exist so close to residential structures with large numbers of people and loud music would constitute a **public or private nuisance** under California Civil Code Sections 3479, 3480, and 3481

Finding 10. *The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.* The proposed amendment is a reduction in service area of the existing restaurant, and will not otherwise affect the existing restaurant and bar, which are a conditionally permitted use in a commercial zone. Conditions of City Council Resolution No. 10-59 which required that the property owner notify the LACSD no less than three days prior to a large entertainment event will remain in effect. Finally, as demonstrated through an ABC license query the property owner maintains a valid ABC license and has not been subject to any disciplinary infractions in the past with regard to a liquor license. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein, including those that prohibit noise impacts and facilitate traffic and parking safety. As

conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare.

Finding 10 cannot be made.

An updated traffic study has not been done and obvious ingress and egress and congestion problems exist with no adequate solution. The aviator Nation intersection is rated high on the list of dangerous intersections for traffic accidents by the recent city highway safety study.

Furthermore, a nightclub with live entertainment events in combination with late night drinking will increase the probability of intoxication, drunk driving, accidents, vandalism, loitering, graffiti, and noise.

Because of the lack of the ability to enforce compliance, the CUP is allowing the Malibu Inn/Aviator Nation to create a public and private nuisance and shifts the burden of enforcement from the city and law enforcement to residents.

Aviator nation security can only monitor onsite disturbances and patrons. Once away from the applicant's premises, intoxicated patrons will drive, disturb the peace and quiet of residents, create a nuisance, possible fights, and increase the risk of harm to both residents and visitors nearby and along the highway.

Joint Use Parking Agreement Amendment

A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use

Condition not met

This condition cannot be met due to the current use of the adjacent parking lot for public parking. Finding A would require removal of parking for the general public. The Malibu Surfrider agreement also reduces the parking by 5 spaces.

C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.

Condition not Met

There currently is a parking agreement between the Applicant and the Malibu Surfrider Motel for 5 spaces which has not been approved by the city. There is a current conflict between the operation of a parking lot during the hours of operation of Aviator Nation.

Respectfully Submitted,
Patt Healy as an individual and
on behalf of
The Malibu Coalition for Slow Growth

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 22-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. 13-006 AND JOINT USE PARKING AGREEMENT NO. 14-001 AMENDING CONDITIONAL USE PERMIT NO. 09-009 AND JOINT USE PARKING AGREEMENT NO. 10-001 FOR THE REDUCTION OF THE RESTAURANT SERVICE AREA IN ORDER TO ACCOMMODATE THE PERMANENT EXPANSION OF EXISTING RETAIL TENANT SPACE, AND DECREASE THE NUMBER OF REQUIRED OFF-SITE PARKING SPACES (22959 PACIFIC COAST HIGHWAY) IN THE JUPA TO REFLECT THE NEW NUMBER OF REQUIRED OFFSITE PARKING SPACES AT AN EXISTING RESTAURANT (AVIATOR NATION DREAMLAND) IN THE COMMERCIAL VISITOR SERVING-I ZONING DISTRICT LOCATED AT 22969 AND 22959 PACIFIC COAST HIGHWAY (SKA GROUP, LLC AND SURFRIDER PLAZA, LLC)

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

SECTION 1. Recitals.

A. On December 3, 2009, Conditional Use Permit (CUP) No. 09-009 and Joint Use Parking Agreement (JUPA) No. 10-001 were submitted to the Planning Department.

B. On September 7, 2010, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, public testimony and all related information. At the conclusion of the hearing, the Planning Commission adopted Resolution No. 10-79 approving CUP No. 09-009 and JUPA No. 10-001.

C. On September 16, 2010, Appeal No. 10-002 was filed by Klaus Obermeyer (proprietor owner at 23006 Pacific Coast Highway) and Robert J. Allan (proprietor owner at 23018 Pacific Coast Highway).

D. On November 22, 2010, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record, and denied the appeal and approved the applications. The approval allowed for eight small live entertainment events, two large events, set hours for operation and alcohol sales, and prohibited live entertainment on the outdoor patio. Low level amplified music on the patio was allowed from 7:00 a.m. to 10:00 p.m. daily.

E. On February 22, 2011, the City of Malibu approved Over-the-Counter (OC) Permit No. 11-019 to allow parking lot restriping of the 22 spaces (20 standard size parking spaces plus two Americans with Disabilities (ADA) accessible parking spaces) which involved no change in the number of parking spaces from CUP No. 09-009, a site wall, and ADA upgrades.

F. On August 2, 2011, the Planning Commission adopted Planning Commission Resolution No. 11-72 to extend the hours of operation to 7 a.m. to 2 a.m. daily.

G. On December 11, 2013, an application for CUPA No. 13-006 and JUPA No. 14-001 was submitted to the Planning Department, on behalf of the property owner, SKA Group, LLC to reduce the restaurant service area, to allow for the creation of a new retail tenant space, and decrease the number of required off-site parking spaces consistent with the new required parking at an existing restaurant. The application was routed to the City Environmental Health Administrator for review.

H. On July 8, 2021, the application was deemed complete.

I. On August 5, 2021, a Notice of 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 26, 2021, a Notice of Adjournment was issued adjourning the August 26, 2021 Special Planning Commission meeting to the September 8, 2021 Adjourned Regular Planning Commission meeting to allow staff additional time to gather additional information.

K. On September 8, 2021, the Planning Commission continued the item to the November 1, 2021 Regular Planning Commission meeting.

L. On November 1, 2021, the Planning Commission continued the item to the December 6, 2021 Regular Planning Commission meeting.

M. On December 6, 2021, the Planning Commission continued the item to the January 11, 2022 Special Planning Commission meeting.

N. On January 11, 2022, the Planning Commission continued the item to the April 4, 2022 Regular Planning Commission meeting.

O. On April 4, 2022, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposed project. The Planning Commission found 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 15301 - Existing Facilities. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

SECTION 3. Amendment of Conditional Use Permit Findings of Fact.

Pursuant to Malibu Municipal Code (MMC) Section 17.66.020, a CUP may be amended upon submittal of an application by the permittee. On November 22, 2010, the Planning Commission made all required findings for the approval of CUP No. 09-009 to permit a restaurant use (the Malibu Inn restaurant) with live entertainment which serves liquor, and approved by the City Council on November 22, 2010. All other findings and conditions of approval set forth in City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments are hereby incorporated by reference and remain in full force and effect. Based on the findings of fact, the Planning Commission hereby approves CUPA No. 13-006, amending CUP No. 09-009 and JUPA No. 10-001 to allow the reduction of the restaurant service area in order to accommodate the permanent expansion of existing retail tenant space, and decrease the number of required off-site parking spaces in the JUPA to reflect the new number of required offsite parking spaces at an existing restaurant (Aviator Nation Dreamland) in the Commercial Visitor Serving-One (CV-1) zoning district located at 22969 Pacific Coast Highway (PCH).

MMC Findings

A. Conditional Use Permit Findings (MMC Section 17.66.080)

1. The proposed amendment will not affect the finding previously made and the use is still a conditionally permitted use. A restaurant with an interior capacity in excess of 125 people, a nightclub and a bar are all conditionally permitted uses in the CV-1 zoning district. The project has been conditioned to comply with all applicable provisions of the MMC and conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, are incorporated herein by reference.

2. The proposed amendment will not affect the use as it is still a commercial use on commercially zoned property and therefore, would not impair the integrity and character of the CV-1 zoning district. A restaurant has occupied the subject property since the 1950s and the existing restaurant has been operating for eleven years under the approved CUP No. 09-009. Furthermore, the proposed amendment project is not anticipated to result in a change from the existing conditions within the zoning district. Finally, the existing restaurant has an ABC liquor and entertainment licenses and operated as a restaurant with a bar and live entertainment.

3. The proposed amendment will not physically alter the size or footprint of the existing building, or the existing paved parking. The proposed tenant improvements involve permanently converting restaurant service area into retail and expanding the existing retail space from 565 square feet to 1,636 square feet. The restaurant service area is being reduced, and can continue to use and occupy the existing space. The business has operated on the subject property since the 1950s and the existing restaurant has been operating for eleven years under the approved CUP No. 09-009. A total of 46 parking spaces are required for the proposed uses, which reflects a reduction of seven required parking spaces. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein. Therefore, the site is physically suitable for the use being proposed.

4. The proposed amendment will not affect the compatibility with the land uses presently on the subject property and in the surrounding neighborhood. The property is surrounded by both commercial and residential uses. There is a mix of commercial, office and retail uses in the immediate vicinity of the site. The proposed retail use expansion is similarly an allowed commercial use in the zone. All other conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, remain in effect, unless modified herein.

5. The proposed amendment will not affect the compatibility of the existing use. The use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses are comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space and residential uses to the south.

6. The proposed amendment will not alter the existing utilities. Existing utilities will continue to serve the existing site. The LACFD and LACSD reviewed the original CUP No. 09-009 and indicated that the amendment did not require additional review. In addition, the City Environmental Health Administrator reviewed the CUPA and determined that the existing OWTS is adequate for the proposed use. No changes to the exterior of the existing structure are proposed, so no impacts to solar access or public or private views will occur.

The proposed project will not create any shade or shadow impacts that would impede solar access. The existing commercial structure at 22969 PCH will not change under this amendment, and therefore, will not adversely impact existing public and private views.

7. The existing use will have adequate parking for public access and will not obstruct public traffic circulation. The number of required parking spaces is reduced from 53 to 46.

8. The proposed amendment will not change the nature of the existing conditionally permitted use. The use is a conditionally permitted commercial use in the CV-1 zoning district. The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall be consistent with compatible accessory uses, shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City.

9. The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the LACSD.

10. The proposed amendment will not affect the existing restaurant and bar, which are a conditionally permitted use in a commercial zone. Conditions of City Council Resolution No. 10-59 which required that the property owner notify the LACSD no less than three days prior to a large entertainment event will remain in effect. Finally, as demonstrated through an ABC license query the property owner maintains a valid ABC license and has not been subject to any disciplinary infractions in the past with regard to a liquor license. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and

associated amendments remain in effect, unless modified herein, including those that prohibit noise impacts and facilitate traffic and parking safety.

11. The project will not be at risk from earth movement and flood hazards since the application only involves an amendment of conditions of approval to a previously existing use within the existing commercial structure. The building will not change; therefore, there is no new impact related to earth movement, flooding or liquefaction.

SECTION 4. Joint Use Parking Agreement Amendment Approval

JUPA No. 14-001 is requested to decrease the number of required off-site parking spaces in to reflect the new number of required offsite parking spaces for the uses at 22969 PCH. A total of 53 parking spaces were required and now 46 parking spaces are required for the proposed use. There are 22 parking spaces onsite, and JUPA No. 14-001 provides for 31 spaces to be located on the adjacent property. JUPA No. 14-001 will reduce the required number of donor parking spaces from 31 to 23, which is sufficient to meet the required number of spaces for the proposed restaurant and retail use on the property. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein.

A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use; provided, that such reciprocal parking arrangement shall comply with subsection C of this section.

The hours of operation for the restaurant will be revised to as stated in Condition No. 7 of this resolution. No additional parking, except for as stated in Condition No. 13, is required for the proposed reduction in the restaurant service area.

B. The Planning Commission may reduce parking requirements for common parking facilities by up to 25 percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.

The property owner has not requested to reduce the required parking spaces. The reciprocal parking agreement will provide additional parking spaces in excess of what is required for the existing use.

C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.

The existing restaurant will continue to operate from 7:00 a.m. to 2:00 a.m. daily, with live entertainment events primarily being held in the evenings. There will be no substantial conflict in the principal operating hours for the two properties. Prior to the approval of any project on the adjacent lot, all code required parking will need to be provided, and the required parking for the

proposed JUPA amendment will be included. A legal agreement between the City and the property owner is required as a condition of approval. The agreement will contain requirements for an annual review by the Planning Director with authority to modify the agreement as necessary to maintain onsite parking arrangements.

SECTION 5. Planning Commission Approval.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CUPA No. 13-006 and JUPA No. 14-001, subject to the following conditions. No other changes to the conditions contained in City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, are made by this amendment and all other applicable findings, terms, and/or conditions remain in full force and effect.

SECTION 6. 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. This approval is to allow the reduction of the restaurant service area in order to accommodate the creation of a new retail tenant space, and decrease the number of required off-site parking spaces in JUPA No. 14-001, to reflect the new number of required offsite parking spaces for the uses onsite.
3. This conditional use permit amendment shall not be effective until all appeals are exhausted and the property owner, applicant and the business operator execute the Affidavit of the Acceptance of Conditions. Said documents shall be recorded with the Los Angeles County Recorder and a certified copy of said recordation shall be filed with the Planning Department within 10 days of the effective date of the approval.
4. A review of the proposed amendment and compliance with the conditions of approval shall be conducted by Planning Department staff and reported to the Planning Commission within one year, and again within five years, of commencement of operations. Staff will report whether the amendment is operating in compliance with the Planning Commission's findings and all approved conditions, and whether it recommends initiating proceedings to modify or revoke the permit.
5. The third driveway curb cut from west to east must be removed.

Joint Use Parking Agreement

6. The number of required parking spaces required to be provided for the restaurant service area will be reduced to 23 parking spaces to reflect a restaurant service area of 1,935 square feet.

Operations

7. The approved hours of operation are from 7:00 a.m. to 12:00 a.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 2:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that the use may be open until 2:00 a.m. only on those Sundays when the following Monday is a federal holiday. Closure must be complete, and all employees must vacate the premises no more than one hour after closing, daily. No afterhours operation shall be permitted.
8. The restaurant service area is 1,935 square feet, and allocated as follows:
 - a. Interior service area: 1,184 square feet; and
 - b. Outdoor patio: 751 square feet.
9. The retail space area is 1,636 square feet.
10. The total number of seats shall not exceed 92 and the total number of patrons for large events is limited to 300.
11. Seating, dining or drinking by non-employees is not permitted within the employee lounge area.

Site-Specific Conditions

12. The retail space must be separated with a physical barrier from the restaurant with a fence or wall at least 42 inches in height.
13. All events authorized by Condition No. 19 of Resolution 10-59 must be approved by the Planning Director in advance as described in the following sentence and any condition approved by the Planning Director which may be added to mitigate impacts of the event must be complied with: A six-month event schedule shall be submitted for approval every six months and any changes to such approval must be approved at least a month in advance before the event.

Fixed Conditions

14. If it has cause to believe that grounds for revocation or modification may exist, the Planning Commission shall hold a public hearing upon the question of modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C). The conditional use permit may be revoked if the Planning Commission finds that one or more of the following conditions exists:
 - a. The conditional use permit was obtained in a fraudulent manner.

- b. The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.
 - c. One or more of the conditions found within this resolution have not been substantially met.
15. Prior to the approval of any project on the adjacent lot, all code required parking will need to be provided. A legal agreement between the City and the property owner is required as a condition of approval. The agreement will contain requirements for an annual review by the Planning Manager with authority to modify the agreement as necessary to maintain onsite parking arrangements.
16. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement (JUPA).
17. All other conditions of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments are hereby incorporated by reference and remain in full force and effect.


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

PASSED, APPROVED AND ADOPTED this 4th day of April 2022.



KRAIG HILL, Planning Commission Chair

ATTEST:



REBECCA EVANS, Recording Secretary

LOCAL APPEAL - Pursuant to Malibu Municipal Code Section 17.04.220 (Appeal of Action), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms and fee schedule may be found online at www.malibucity.org/planningforms, in person, or by calling (310) 456-2489, extension 245.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 22-01 was passed and adopted by the Planning Commission of the City of Malibu at the special meeting held on the 4th day of April 2022 by the following vote:

AYES: 3
NOES: 2
ABSTAIN: 0
ABSENT: 0

Commissioners: Jennings, Smith and Wetton
Commissioners: Mazza and Hill



REBECCA EVANS, Recording Secretary



Supplement Commission Agenda Report

Planning Commission
Meeting
04-04-22

Item 4.A.

To: Chair Hill and Members of the Planning Commission

Prepared by: Adrian Fernandez, Assistant Planning Director

Approved by: Richard Mollica, Planning Director

Date prepared: April 1, 2022 Meeting date: April 4, 2022

Subject: Conditional Use Permit Amendment No 13-006 and Joint Use Parking Agreement No. 14-001 – An application to amend Conditional Use Permit No. 09-009 and Joint Use Parking Agreement No. 10-001 to reduce the restaurant service area in order to accommodate for the creation of a new retail tenant space, and decrease the number of required off-site parking spaces (Aviator Nation) (Continued from January 11, 2022)

Locations: 22969 and 22959 Pacific Coast Highway
APNs: 4452-019-004 and -005
Owners: SKA Group, LLC and Surfrider Plaza, LLC
Tenant: Aviator Nation Dreamland/Aviator Nation

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 22-01 (Attachment 1) determining the project is categorically exempt from the California Environmental Quality Act, and approving Conditional Use Permit Amendment No. 13-006 and Joint Use Parking Agreement (JUPA) No. 14-001 amending Conditional Use Permit No. 09-009 and JUPA No. 10-001 for the reduction of the restaurant service area in order to accommodate the permanent expansion of existing retail tenant space, and decrease the number of required off-site parking spaces (22959 Pacific Coast Highway) in the JUPA to reflect the new number of required offsite parking spaces at an existing restaurant (Aviator Nation Dreamland) located in the Commercial Visitor Serving-One zoning district at 22969 and 22959 Pacific Coast Highway (SKA Group, LLC).

DISCUSSION: This supplemental report is provided to clarify that the subject project is a distinct and sperate project from Coastal Development Permit No. 09-067 (Malibu Inn Motel). In addition, this report is provided to correct statements contained in the original report for this hearing and to provide clarity regarding the JUPA request. The *Background and Existing Approvals* section of the original report states that the separate

application for the Malibu Inn Motel (22959 PCH) on the immediately adjacent parking lot property is scheduled before the Planning Commission on the same hearing date as the subject application. This is no longer the case as the Malibu Inn Motel item will be continued to a date uncertain.

The *Correspondence* section of the original report states that the proposed JUPA amendment is directly related to the proposed motel on the adjacent lot. These two items are inherent linked because they have common ownership and JUPA No. 09-001 was issued for the Malibu Inn to occupy 31 parking spaces on the adjacent parking lot. However, the subject item consists of a separate and independent application from the Malibu Inn Motel and should be considered based on its own merits.

The original staff report for this hearing states that the subject item includes an amendment to JUPA No. 09-001 and therefore, includes the adjacent parking lot by reference. The Public Hearing Notice for this project also included both properties. In any event, the proposed JUPA amendment would not grant an entitlement to the adjacent parking lot. Therefore, a separate resolution for the adjacent parking lot is not required. This is consistent with past practice and consistent with the original JUPA granted for Malibu Inn. The recommended action and project information on the cover sheet have been updated to include the adjacent parking lot information. Corollary changes would be recommended for Planning Commission Resolution No. 22-01.

ATTACHMENTS: None



Commission Agenda Report

Planning Commission
Meeting
04-04-22

Item 4.A.

To: Chair Hill and Members of the Planning Commission

Prepared by: Adrian Fernandez, Assistant Planning Director

Approved by: Richard Mollica, Planning Director

Date prepared: March 24, 2022 Meeting date: April 4, 2022

Subject: Conditional Use Permit Amendment No 13-006 and Joint Use Parking Agreement No. 14-001 – An application to amend Conditional Use Permit No. 09-009 and Joint Use Parking Agreement No. 10-001 to reduce the restaurant service area in order to accommodate for the creation of a new retail tenant space, and decrease the number of required off-site parking spaces (Aviator Nation) (Continued from January 11, 2022)

Location: 22969 Pacific Coast Highway
APN: 4452-019-004
Owner: SKA Group, LLC
Tenant: Aviator Nation Dreamland/Aviator Nation

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 22-01 (Attachment 1) determining the project is categorically exempt from the California Environmental Quality Act (CEQA), and approving Conditional Use Permit Amendment (CUPA) No. 13-006 and Joint Use Parking Agreement (JUPA) No. 14-001 amending Conditional Use Permit (CUP) No. 09-009 and JUPA No. 10-001 for the reduction of the restaurant service area in order to accommodate the permanent expansion of existing retail tenant space, and decrease the number of required off-site parking spaces in the JUPA to reflect the new number of required offsite parking spaces at an existing restaurant (Aviator Nation Dreamland) located in the Commercial Visitor Serving-One (CV-1) zoning district at 22969 Pacific Coast Highway (PCH) (SKA Group, LLC).

DISCUSSION: This agenda report provides a project overview, project description, summary of surrounding land uses and project setting, and analysis of the recommended project's consistency with the applicable provisions of the Malibu Municipal Code (MMC), and environmental review pursuant to CEQA. The analysis and

findings contained herein demonstrate the recommended project is consistent with the MMC.

The item was originally scheduled for the August 26, 2021 Special Planning Commission meeting. Prior to the opening of any public hearings, the item has been continued several times up to the April 4, 2022 Regular Planning Commission meeting. No notable changes to this agenda report have been made since September 8, 2021.

Project Overview

The property at 22969 Pacific Coast Highway (PCH) is developed with a commercial building which is currently occupied by a restaurant, Aviator Nation Dreamland (formerly Casa Escobar and Malibu Inn). Fifty parking spaces are required for the existing use, thirty-one of them are located offsite at 22959 PCH pursuant to a JUPA.

On December 11, 2013, the applicant submitted a request pursuant to Malibu Municipal Code (MMC) Chapter 17.66 to amend CUP No. 09-009 in conjunction with an interior tenant remodel that will subdivide the single tenant building into two separate and independent tenant spaces. The existing restaurant that has been approved to occupy almost the entirety of the building will be permanently reduced in size to allow for the increase of the retail space 565 square feet to 1,636 square feet. As a result, the 2,474 square feet of restaurant service area is being reduced to 1,935 square feet, and the existing retail store with a gross floor area of 1,636 square feet will continue to remain (Attachment 2 – As-Built Floor Plan). The total required parking for the restaurant and retail use is 46 parking spaces. There are 23 onsite parking spaces, and 23 offsite parking spaces proposed.

The change of use alters the required parking for the site because the MMC parking requirements for a restaurant use are different, and more than, that required for a retail use. The parking requirement for restaurants is based upon service area, with one space required for every 50 square feet of service area. Retail has a lower parking requirement, with one space required for every 225 square feet of gross floor area.

The existing restaurant service area of 2,474 square feet required 50 parking spaces and the retail space of 565 square feet required 3 parking spaces. The 1,935 square feet of proposed service area reduces the required restaurant parking to 39 parking spaces. The number of parking spaces required for the 1,636 square feet of proposed retail area is 7 spaces. The overall required parking is decreased from 53 spaces to 46 spaces with the proposed project.

As a result of the reduction in the overall number of required parking spaces the existing JUPA will be amended. The JUPA currently allows for 31 offsite spaces and that number will now be reduced to 23. The 23 offsite spaces when combined with the existing 23 onsite spaces satisfy the City's requirement for the proposed onsite uses.

Staff received comments that the former Billiard Room (currently employee lounge) is currently used as service area. The employee lounge has a sign that states "No Service Area". Both the owners and operator have attested that the area is not used for service area. Additionally, a condition has been added to the resolution indicating that dining or drink service is not permitted in this area. If the Planning Commission has concerns about service area or venues spilling into the employee lounge or retail space, additional conditions can be added to physically separate these spaces.

Background and Existing Approvals

On September 7, 2010, the Planning Commission adopted Resolution No. 10-79, approving CUP No. 09-009 and JUPA No. 10-001 to permit a restaurant use (the Malibu Inn restaurant) with live entertainment which serves liquor. The approval allowed the use to operate between the hours of 7:00 a.m. and 2:00 a.m., with a maximum dining seating capacity of 94 patrons and a maximum event capacity of 340 patrons for entertainment events, plus 565 square feet of retail space at the existing 8,960 square foot commercial building. The approval allowed for eight small events and two large events per month. JUPA No. 10-001 allows the vacant adjacent parcel to the east (22959 PCH, APN 4452-019-005) to subsidize the 31 additional required parking spaces for the subject property's use.

On September 16, 2010, an appeal of the Planning Commission's approval was filed by property owners of residences located across PCH and south of the subject property.

On November 22, 2010, the City Council denied the appeal and approved CUP No. 09-009 and JUPA No. 10-001. The eight small events and two large events allowed did not change; however, the Council revised the permitted hours of operation and alcohol sales. City Council Resolution No. 10-59 (Attachment 3) indicates that the approved hours of operation for the Malibu Inn are from 7:00 a.m. to 12:00 a.m. on Sundays, Mondays, Tuesdays, and Wednesdays and from 7:00 a.m. to 2:00 a.m. on Thursdays, Fridays, and Saturdays, with the exception that the use may be open until 2:00 a.m. only on those Sundays when the following Monday is a federal holiday. Furthermore, the approved hours of alcohol sales are from 7:00 a.m. to 11:00 p.m. on Sundays, Mondays, Tuesdays, and Wednesdays and from 7:00 a.m. to 1:00 a.m. on Thursdays, Fridays, and Saturdays, with the exception that alcohol may be served until 1:00 a.m. only on those Sundays when the following Monday is a federal holiday. Low level amplified music on the patio was allowed from 7:00 a.m. to 10:00 p.m. daily.

On February 22, 2011, the City of Malibu approved Over-the-Counter (OC) Permit No. 11-019 to allow parking lot restriping of the 22 spaces (20 standard size parking spaces plus two Americans with Disabilities (ADA) accessible parking spaces) which involved no change in the number of parking spaces from CUP No. 09-009, a site wall, and ADA upgrades.

On September 7, 2010, the Planning Commission adopted Resolution No. 10-79 approving CUPA No. 11-001 amending City Council Resolution No. 10-59 to allow the hours of operation from 7:00 a.m. to 2:00 a.m. daily. Regulation of alcohol service during hours of operation was deferred to the authority of the California Department of Alcoholic Beverage Control (ABC) requirements.

December 19, 2018, a CUPA request to amend CUP No. 09-009 was submitted to the Planning Department to add outdoor live entertainment on the exterior patio and to convert three of the currently allowed small events into large events for a total of five large events per month. The application was withdrawn a year later. At that time, Casa Escobar operated the restaurant and Aviator Nation operated the retail space.

The property owner of the adjacent property to the east (22959 PCH) has submitted a separate application, Coastal Development Permit (CDP) No. 09-067 and associated requests, to fully develop the property into a motel. CDP No. 09-067 is scheduled before the Planning Commission on the same hearing date as the subject application. The future development at 22959 PCH would continue to provide 23 required parking spaces for the subject restaurant and retail uses.

Project Description

The applicant is seeking to amend the existing CUP No. 09-009 and JUPA No. 10-001 to allow the reduction of the restaurant service area, to accommodate the creation of a new retail tenant space, and decrease the number of required off-site parking spaces in the JUPA to reflect the new number of required offsite parking spaces at an existing restaurant.

The existing and proposed uses, and associated required parking are represented in Tables 1 and 2 below.

Table 1 – Existing and Proposed Uses		
Uses	Existing	Proposed
Restaurant (Service Area Sq.Ft.)	2,474 sq. ft.	1,935 sq.ft.
Interior	1,184 sq.ft.	1184 sq.ft.
Outdoor Patio	751 sq.ft.	751 sq.ft.
Banquet Room	539 sq.ft.	None
Retail (Gross Floor Area Sq.Ft.)	565	1,636 sq.ft.

Table 2 – Required Parking			
Uses	Parking Requirement	Proposed	Required
Restaurant	one space for each 50 square feet of service area	1,935 sq. ft. service area / 50 sq. ft.	39 spaces
General Retail Store	one space for each 225 square feet of gross floor area	1,636 sq. ft. of gross floor area / 225 sq. ft.	7 spaces
Total	Onsite: 23 spaces Offsite: 23 spaces		46 spaces

Parking

The existing required onsite parking is comprised of 20 regular and compact parking spaces plus two ADA accessible parking spaces. There are four driveway curb cuts which provide access to the property off of PCH. There is a traffic signal and cross walk immediately south of the property, which provides safe access across PCH to the Malibu Pier and its adjacent public parking lot. The farthest curb cut to the east will be shared with the motel project to east. The next onsite curb cut to the east is conditioned to be removed for safety reasons. Per the JUPA, the adjacent 22959 PCH lot to the east provides 31 additional donor parking spaces at all times during the permitted operating hours. The JUPA is being amended to reduce the number of required donor spaces from 31 to 23, to reflect the reduction in the number of required parking spaces, and provide the number of offsite parking spaces required for the project in conformance with the MMC parking requirements.

All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72 (Attachment 4), and associated amendments remain in effect, unless modified herein.

Hours of Operation

The proposed hours of operation would remain the same at seven days a week from 7:00 a.m. to 2:00 a.m.

Daily Operations

The daily operations would remain the same.

The restaurant will maintain a full menu that is served during all hours of operation, including breakfast, brunch, lunch and dinner offerings. On days featuring live music, dinner will continue to be served as normal and the kitchen will be open until 2:00 a.m.

Deliveries are planned for Mondays, Wednesdays and Fridays every week. All deliveries are scheduled between 8:00 a.m. and 11:00 a.m. on those days.

Liquor and Entertainment Licenses

The current liquor and entertainment licenses approved under CUP No. 09-009 will remain in effect. The applicant has an ABC Type 47 license which permits the sale of beer, wine and distilled spirits for consumption on the licensed premises. The license holder must operate and maintain the premises as a bona fide eating place. They must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on premises that hold this type of license.

In addition, the applicant has an entertainment license from the Los Angeles County Sheriff's Department (LACSD) to permit dancing and live entertainment.

Signs

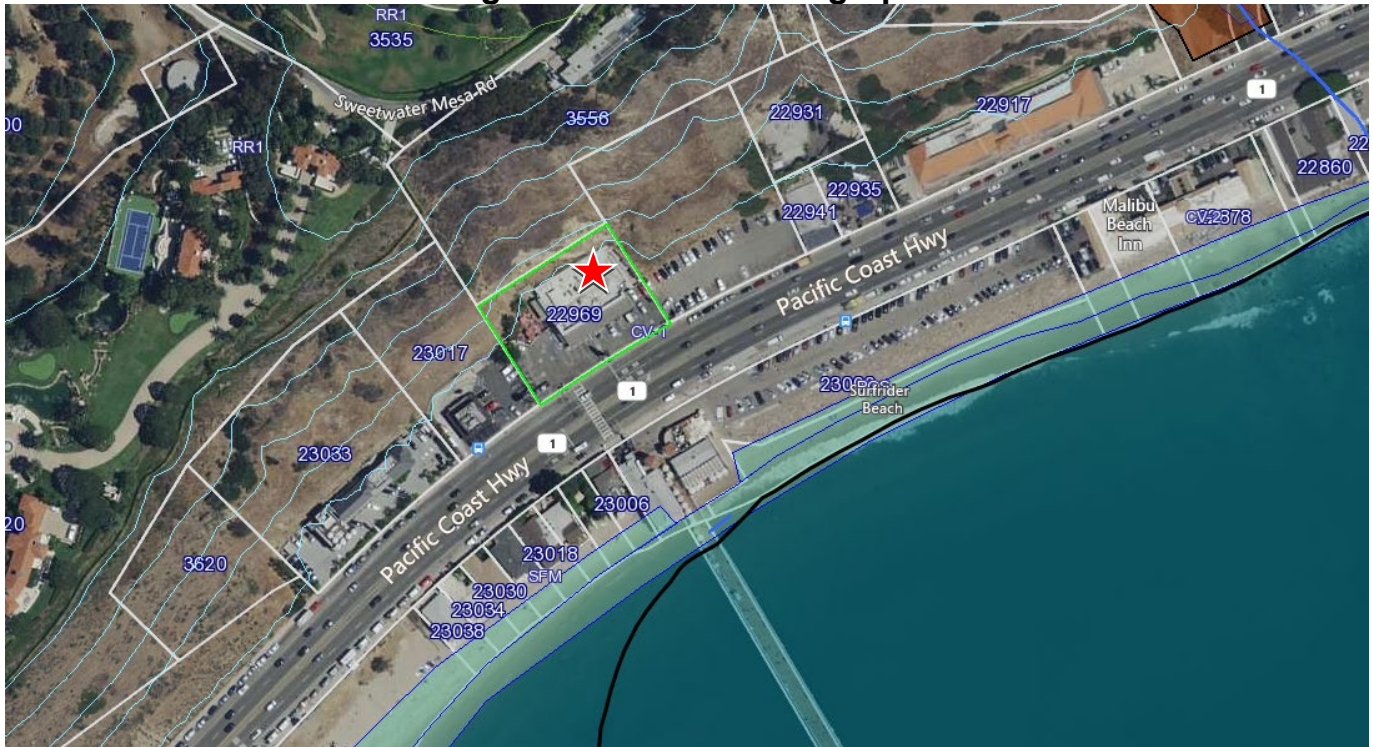
No change to the existing signage is proposed. Any future proposed changes to the existing signs would require review for the requirements set forth in MMC Chapter 17.52 (Signs).

Surrounding Land Use and Setting

The subject property is located on the inland side of PCH, north of the Pacific Ocean and Malibu Pier. The vacant adjacent easterly lot at 22959 PCH is also zoned CV-1, and has an application for a motel project submitted to the City. That lot currently contains a surface parking lot providing the 31 donor spaces under the current JUPA. Another CV-1 property is located to the west and is occupied by a fast-food restaurant (Jack in the Box). A steep parcel zoned Rural Residential-One Acre (RR-1) is located adjacent to the north property line. Both Single-Family Medium (SFM) and Public Open Space zoned properties (Malibu Pier and public parking) exist to the south of the subject site. In addition, there is a small grouping of six beachfront residences located adjacent to the Pier, across PCH to the southwest.

Figure 1 shows the subject property location and the vicinity.

Figure 1 – Aerial Photograph



Source: GovClarity 2019

The subject property is approximately 30,108 square feet in size and is rectangular in shape. The site contains an existing 8,960 square foot building that is one-story in height, with the exception of a small 220 square foot dressing room and restroom located above the first floor restroom area. Refer to Attachments 5 and 2 for site photos and the as-built floor plan. The building currently has five restrooms, two which serve the main service area; one is located on the upper level in the dressing room and two are located adjacent to the retail space. The space also includes a large bar, a stage and dance floor area and a billiards room that is current used as an employee lounge.

MMC ANALYSIS

Pursuant to MMC Sections 17.26.020(A) and (B), and 17.26.030(A) permitted and conditionally permitted uses in the CV-1 zone include all permitted and conditionally permitted uses in the Community Commercial (CC) zone, and retail stores selling recreational equipment and clothes, and souvenirs and jewelry. In the CC zone, subject to the approval of a CUP, MMC Section 17.24.030 (B-D) allows for: 1) restaurants, exceeding a maximum interior occupancy of 125; 2) bars; and 3) live entertainment. The existing restaurant use is a conditionally permitted use, while the proposed retail use is a permitted use that does not otherwise require a use permit.

Onsite Wastewater Treatment System

The proposed amendment would not require any modifications to the existing Onsite Wastewater Treatment System (OWTS). The application was routed to the City Environmental Health Administrator who indicated that no review was required for the subject application because the proposed amendment does not represent an expansion, modification or change in the type or intensity of the use that would affect the design of the existing OWTS. All OWTS conditions of approval in City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments, remain in effect.

MMC Findings

A. Conditional Use Permit Findings (MMC Section 17.66.080)

CUPA No. 13-008 is requested to amend CUP No. 08-008 to allow the reduction of the restaurant service area in order to accommodate the permanent expansion of the existing retail tenant space. The Planning Commission may approve, deny and/or modify an amendment to a CUPA in whole or in part, with or without conditions, provided that it makes all of the findings of fact required by MMC Section 17.66.080. The CUPA can be supported based on the findings below:

Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

The proposed amendment will not affect the finding previously made by the Planning Commission in that the proposed use remains consistent with the provisions of MMC Title 17 and is still a conditionally permitted use within the zone. A restaurant with an interior capacity in excess of 125 people, nightclub, and bar are all conditionally permitted uses in the CV-1 zoning district. The square footages and service areas of the use as originally permitted are being reduced by the amendment. Therefore, the proposed project has been conditioned to comply with all applicable provisions of the MMC.

Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The proposed amendment would not impair the integrity and character of the zoning district in which it is located, and is compatible with the existing land uses on the site and surrounding neighborhood, as the amended use is still a commercial use on commercially zoned property. The restaurant use has occupied the subject property for several decades and has been operating for eleven years under the approved CUP No. 09-009, and associated amendments. The property is located within a long strip of CV-1 zoned properties located on the landward side of PCH that extends east of the Malibu

Pier. The existing restaurant has ABC liquor and entertainment licenses and is operated as a restaurant that already has an interior and exterior bar and interior live entertainment. The restaurant will now provide a reduced service area, with no other change to operations. The project has been conditioned to comply with all applicable provisions of the MMC and will continue to provide the necessary parking consistent with past operational practices on the adjacent property via the amendment to JUPA No. 14-001. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein. For these reasons, the amendment is not anticipated to result in a change from the existing conditions within the zoning district.

Finding 3. The subject site is physically suitable for the type of land use being proposed.

The proposed amendment will not physically alter the size or footprint of the existing building, or the existing paved parking. The proposed tenant improvements involve permanently converting restaurant service area into retail and expanding the existing retail space from 565 square feet to 1,636 square feet. The business has operated on the subject property since the 1950s and the existing restaurant use has been operating for eleven years under the approved CUP No. 09-009. A total of 46 parking spaces are required for the proposed uses, which reflects a reduction of 7 required parking spaces. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein. Therefore, the site is physically suitable for the use being proposed.

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The proposed amendment will not affect the use's compatibility with the land uses presently on the subject property and in the surrounding neighborhood. The restaurant has operated at the subject property since the 1950s and the existing restaurant has been operating for eleven years under the approved CUP No. 09-009. The property is surrounded by both commercial and residential uses. There is a mix of commercial, office and retail uses in the immediate vicinity of the site. The proposed retail use expansion is similarly an allowed commercial use in the zone. All other conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, remain in effect, unless modified herein. Therefore, this proposed use is compatible with the land uses in the surrounding neighborhood.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

The proposed amendment will not affect the compatibility of the existing use. The use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses are

comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space, and residential uses to the south.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

The proposed amendment will not alter the existing utilities. Existing utilities will continue to serve the existing site. The LACFD and LACSD reviewed the original CUP No. 09-009 and indicated that the amendment did not require additional review. In addition, the City Environmental Health Administrator reviewed the CUPA and determined that the existing OWTS is adequate for the proposed use. No changes to the exterior of the existing structure are proposed, so no impacts to solar access or public or private views will occur.

The proposed project will not create any shade or shadow impacts that would impede solar access. The existing commercial structure at 22969 PCH will not change under this amendment and therefore, will not adversely impact existing public and private views.

Finding 7. There would be adequate provisions for public access to serve the subject proposal.

As discussed in Finding 3, the existing use has adequate parking for public access and will not obstruct public traffic circulation. The number of required parking spaces is reduced from 53 to 46, and all parking will be maintained onsite, and offsite on the adjacent property pursuant to JUPA No. 14-001. The existing traffic circulation will remain unmodified.

Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

The proposed amendment will not change the nature of the existing conditionally permitted use. The restaurant and bar use are conditionally permitted in the CV-1 zoning district and provides live entertainment as an ancillary use. The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City.

The proposed project meets the goals of the following land use policies of the General Plan:

LU Policy 3.1.1: The City shall ensure visitor serving and recreational uses are compatible with the natural resources and aesthetic values of the area.

LU Policy 3.2.1: The City shall permit the development of commercial recreational and visitor servicing facilities at suitable locations which provide convenient public access, adequate infrastructure, convenient parking and, when feasible, are located where existing low cost recreational uses will be enhanced.

LU Policy 4.4.1: The City shall encourage establishment and continued operation of small neighborhood and community serving businesses.

The proposed project, as conditioned, is consistent with goals, objectives and policies of the General Plan because the proposed amendment, as conditioned, will continue to provide for visitor and resident serving uses in a manner compatible with the surrounding area, with safe traffic circulation and parking.

Finding 9. The proposed project complies with all applicable requirements of state and local law.

The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the LACSD.

Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

The proposed amendment is a reduction in service area of the existing restaurant, and will not otherwise affect the existing restaurant and bar, which are a conditionally permitted use in a commercial zone. Conditions of City Council Resolution No. 10-59 which required that the property owner notify the LACSD no less than three days prior to a large entertainment event will remain in effect. Finally, as demonstrated through an ABC license query the property owner maintains a valid ABC license and has not been subject to any disciplinary infractions in the past with regard to a liquor license. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein, including those that prohibit noise impacts and facilitate traffic and parking safety. As conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare.

Finding 11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

The project will not be at risk from earth movement and flood hazards since the application only involves an amendment to the service area of an existing restaurant use within the existing commercial structure. The existing building will not change; therefore, there is no new impact related to earth movement, flooding or liquefaction.

B. Joint Use Parking Agreement Amendment No. 18-001 (MMC Section 17.48.040)

JUPA No. 14-001 is requested to decrease the number of required off-site parking spaces in to reflect the new number of required offsite parking spaces for the uses at 22969 PCH. A total of 53 parking spaces were required and now 46 parking spaces are required for the proposed use. There are 22 parking spaces onsite, and JUPA No. 14-001 provides for 31 spaces to be located on the adjacent property. JUPA No. 14-001 will reduce the required number of donor parking spaces from 31 to 23, which is sufficient to meet the required number of spaces for the proposed restaurant and retail use on the property. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein.

A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use; provided, that such reciprocal parking arrangement shall comply with subsection C of this section.

The hours of operation for the restaurant will remain 7 to 2 a.m. No additional parking is required for the proposed reduction in the restaurant service area.

B. The Planning Commission may reduce parking requirements for common parking facilities by up to 25 percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.

The property owner has not requested to reduce the required parking spaces. The reciprocal parking agreement will provide additional parking spaces in excess of what is required for the existing use.

C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.

The existing restaurant will continue to operate from 7:00 a.m. to 2:00 a.m. daily, with live entertainment events primarily being held in the evenings. There will be no substantial conflict in the principal operating hours for the two properties. Prior to the

approval of any project on the adjacent lot, all code required parking will need to be provided, and the required parking for the proposed JUPA amendment will be included. A legal agreement between the City and the property owner is required as a condition of approval. The agreement will contain requirements for an annual review by the Planning Director with authority to modify the agreement as necessary to maintain onsite parking arrangements.

ENVIRONMENTAL REVIEW: Pursuant to the authority and criteria contained in CEQA, the Planning Director has analyzed the proposed project. The Planning Director found 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 15301 - Existing Facilities. The Planning Director has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

CORRESPONDENCE: Staff received four records of public correspondence regarding the subject agenda item (Attachment 7). Three of the four records provided comments that only pertain to the Malibu Inn Motel thereby are not addressed herein. On August 26, 2021, staff received an email from Ms. Patt Healy regarding this project. Ms. Healy states that the parking was incorrectly calculated in terms of service area and employees, and that the amendment to the JUPA should only be considered if the hotel is constructed as proposed.

The Malibu Inn consists of two uses (restaurant and retail). The parking for restaurant is based on service area and retail is based on gross square footage. Pursuant to both the LCP and MMC, the number of employees is not used in the parking regulations for either of these two uses. Service area for restaurants is not defined in the code and has been a topic of debate over the years. In the case of the Malibu Inn, the CUP issued in 2010 excluded all walkways and only included the areas around the tables and chairs, and bar areas. As this method of calculating the service area for the Malibu Inn was established using the same code language as it exists today, staff did not request the applicant to modify this method. The service area (besides the banquet hall) is not requested to be significantly modified as part of this application. Most service areas for Aviator Nation Dreamland are well depicted on slightly elevated platforms.

The request to amend the JUPA is directly related to the proposed motel on the adjacent lot. The Planning Commission may agree to add a condition to the requested CUPA that the amendment to the JUPA be subject to the construction of the adjacent motel. This, of course, provides the property owner with the most flexibility in the future to expand the restaurant service area into the banquet hall space should they choose to.

PUBLIC NOTICE: Staff published a Notice of Public Hearing in a newspaper of general circulation within the City of Malibu on August 5, 2021 and mailed the notice to all property owners and occupants within a 500-foot radius of the subject property (Attachment 8).

SUMMARY: The required CUPA findings can be made. Further, the Planning Department's findings of fact are supported by substantial evidence in the record. Based on the analysis contained in this report, staff is recommending approval of this project subject to the conditions of approval contained in Section 6 (Conditions of Approval) of Planning Commission Resolution No. 22-01. The project has been reviewed and conditionally approved for conformance with the MMC.

ATTACHMENTS:

1. Planning Commission Resolution No. 22-01
2. As-Built Floor Plan
3. City Council Resolution No. 10-59
4. Planning Commission Resolution No. 11-72
5. Site Photos
6. Environmental Health Department Review
7. Public Correspondence
8. Public Hearing Notice

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 22-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. 13-006 AND JOINT USE PARKING AGREEMENT NO. 14-001 AMENDING CONDITIONAL USE PERMIT NO. 09-009 AND JOINT USE PARKING AGREEMENT NO. 10-001 FOR THE REDUCTION OF THE RESTAURANT SERVICE AREA IN ORDER TO ACCOMMODATE THE PERMANENT EXPANSION OF EXISTING RETAIL TENANT SPACE, AND DECREASE THE NUMBER OF REQUIRED OFF-SITE PARKING SPACES IN THE JUPA TO REFLECT THE NEW NUMBER OF REQUIRED OFFSITE PARKING SPACES AT AN EXISTING RESTAURANT (AVIATOR NATION DREAMLAND) IN THE COMMERCIAL VISITOR SERVING-1 ZONING DISTRICT LOCATED AT 22969 PACIFIC COAST HIGHWAY (SKA GROUP, LLC)

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

SECTION 1. Recitals.

A. On December 3, 2009, Conditional Use Permit (CUP) No. 09-009 and Joint Use Parking Agreement (JUPA) No. 10-001 were submitted to the Planning Department.

B. On September 7, 2010, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, public testimony and all related information. At the conclusion of the hearing, the Planning Commission adopted Resolution No. 10-79 approving CUP No. 09-009 and JUPA No. 10-001.

C. On September 16, 2010, Appeal No. 10-002 was filed by Klaus Obermeyer (property owner at 23006 Pacific Coast Highway) and Robert J. Allan (property owner at 23018 Pacific Coast Highway).

D. On November 22, 2010, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record, and denied the appeal and approved the applications. The approval allowed for eight small live entertainment events, two large events, set hours for operation and alcohol sales, and prohibited live entertainment on the outdoor patio. Low level amplified music on the patio was allowed from 7:00 a.m. to 10:00 p.m. daily.

E. On February 22, 2011, the City of Malibu approved Over-the-Counter (OC) Permit No. 11-019 to allow parking lot restriping of the 22 spaces (20 standard size parking spaces plus two Americans with Disabilities (ADA) accessible parking spaces) which involved no change in the number of parking spaces from CUP No. 09-009, a site wall, and ADA upgrades.

F. On August 2, 2011, the Planning Commission adopted Planning Commission Resolution No. 11-72 to extend the hours of operation to 7 a.m. to 2 a.m. daily.

ATTACHMENT 1

G. On December 11, 2013, an application for CUPA No. 13-006 and JUPA No. 14-001 was submitted to the Planning Department, on behalf of the property owner, SKA Group, LLC to reduce the restaurant service area, to allow for the creation of a new retail tenant space, and decrease the number of required off-site parking spaces consistent with the new required parking at an existing restaurant. The application was routed to the City Environmental Health Administrator for review.

H. On July 8, 2021, the application was deemed complete.

I. On August 5, 2021, a Notice of 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 26, 2021, a Notice of Adjournment was issued adjourning the August 26, 2021 Special Planning Commission meeting to the September 8, 2021 Adjourned Regular Planning Commission meeting to allow staff additional time to gather additional information.

K. On September 8, 2021, the Planning Commission continued the item to the November 1, 2021 Regular Planning Commission meeting.

L. On November 1, 2021, the Planning Commission continued the item to the December 6, 2021 Regular Planning Commission meeting.

M. On December 6, 2021, the Planning Commission continued the item to the January 11, 2022 Special Planning Commission meeting.

N. On January 11, 2022, the Planning Commission continued the item to the April 4, 2022 Regular Planning Commission meeting.

O. On April 4, 2022, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposed project. The Planning Commission found 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 15301 - Existing Facilities. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

SECTION 3. Amendment of Conditional Use Permit Findings of Fact.

Pursuant to Malibu Municipal Code (MMC) Section 17.66.020, a CUP may be amended upon submittal of an application by the permittee. On November 22, 2010, the Planning Commission made all required findings for the approval of CUP No. 09-009 to permit a restaurant use (the Malibu Inn restaurant) with live entertainment which serves liquor, and approved by the City Council on November 22, 2010. All other findings and conditions of approval set forth in City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments are hereby incorporated by reference and remain in full force and effect. Based on the findings of fact, the Planning Commission hereby approves CUPA No. 13-006, amending CUP No. 09-009 and JUPA No. 10-001 to allow the reduction of the restaurant service area in order to accommodate the permanent expansion of existing retail tenant space, and decrease the number of required off-site parking spaces in the JUPA to reflect the new number of required offsite parking spaces at an existing restaurant (Aviator Nation Dreamland) in the Commercial Visitor Serving-One (CV-1) zoning district located at 22969 Pacific Coast Highway (PCH).

MMC Findings

A. Conditional Use Permit Findings (MMC Section 17.66.080)

1. The proposed amendment will not affect the finding previously made and the use is still a conditionally permitted use. A restaurant with an interior capacity in excess of 125 people, a nightclub and a bar are all conditionally permitted uses in the CV-1 zoning district. The project has been conditioned to comply with all applicable provisions of the MMC and conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, are incorporated herein by reference.

2. The proposed amendment will not affect the use as it is still a commercial use on commercially zoned property and therefore, would not impair the integrity and character of the CV-1 zoning district. A restaurant has occupied the subject property since the 1950s and the existing restaurant has been operating for eleven years under the approved CUP No. 09-009. Furthermore, the proposed amendment project is not anticipated to result in a change from the existing conditions within the zoning district. Finally, the existing restaurant has an ABC liquor and entertainment licenses and operated as a restaurant with a bar and live entertainment.

3. The proposed amendment will not physically alter the size or footprint of the existing building, or the existing paved parking. The proposed tenant improvements involve permanently converting restaurant service area into retail and expanding the existing retail space from 565 square feet to 1,636 square feet. The restaurant service area is being reduced, and can continue to use and occupy the existing space. The business has operated on the subject property since the 1950s and the existing restaurant has been operating for eleven years under the approved CUP No. 09-009. A total of 46 parking spaces are required for the proposed uses, which reflects a reduction of seven required parking spaces. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein. Therefore, the site is physically suitable for the use being proposed.

4. The proposed amendment will not affect the compatibility with the land uses presently on the subject property and in the surrounding neighborhood. The property is surrounded by both commercial and residential uses. There is a mix of commercial, office and retail uses in the immediate vicinity of the site. The proposed retail use expansion is similarly an allowed commercial use in the zone. All other conditions of approval of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, remain in effect, unless modified herein.

5. The proposed amendment will not affect the compatibility of the existing use. The use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses are comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space and residential uses to the south.

6. The proposed amendment will not alter the existing utilities. Existing utilities will continue to serve the existing site. The LACFD and LACSD reviewed the original CUP No. 09-009 and indicated that the amendment did not require additional review. In addition, the City Environmental Health Administrator reviewed the CUPA and determined that the existing OWTS is adequate for the proposed use. No changes to the exterior of the existing structure are proposed, so no impacts to solar access or public or private views will occur.

The proposed project will not create any shade or shadow impacts that would impede solar access. The existing commercial structure at 22969 PCH will not change under this amendment, and therefore, will not adversely impact existing public and private views.

7. The existing use will have adequate parking for public access and will not obstruct public traffic circulation. The number of required parking spaces is reduced from 53 to 46.

8. The proposed amendment will not change the nature of the existing conditionally permitted use. The use is a conditionally permitted commercial use in the CV-1 zoning district. The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall be consistent with compatible accessory uses, shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City.

9. The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the LACSD.

10. The proposed amendment will not affect the existing restaurant and bar, which are a conditionally permitted use in a commercial zone. Conditions of City Council Resolution No. 10-59 which required that the property owner notify the LACSD no less than three days prior to a large entertainment event will remain in effect. Finally, as demonstrated through an ABC license query the property owner maintains a valid ABC license and has not been subject to any disciplinary infractions in the past with regard to a liquor license. All other conditions of approval

of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein, including those that prohibit noise impacts and facilitate traffic and parking safety.

11. The project will not be at risk from earth movement and flood hazards since the application only involves an amendment of conditions of approval to a previously existing use within the existing commercial structure. The building will not change; therefore, there is no new impact related to earth movement, flooding or liquefaction.

SECTION 4. Joint Use Parking Agreement Amendment Approval

JUPA No. 14-001 is requested to decrease the number of required off-site parking spaces in to reflect the new number of required offsite parking spaces for the uses at 22969 PCH. A total of 53 parking spaces were required and now 46 parking spaces are required for the proposed use. There are 22 parking spaces onsite, and JUPA No. 14-001 provides for 31 spaces to be located on the adjacent property. JUPA No. 14-001 will reduce the required number of donor parking spaces from 31 to 23, which is sufficient to meet the required number of spaces for the proposed restaurant and retail use on the property. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement. All other conditions of approval of City Council Resolution No. 10-59 and Planning Commission Resolution No. 11-72, and associated amendments remain in effect, unless modified herein.

A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use; provided, that such reciprocal parking arrangement shall comply with subsection C of this section.

The hours of operation for the restaurant will remain 7 to 2:00 a.m. No additional parking is required for the proposed reduction in the restaurant service area.

B. The Planning Commission may reduce parking requirements for common parking facilities by up to 25 percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.

The property owner has not requested to reduce the required parking spaces. The reciprocal parking agreement will provide additional parking spaces in excess of what is required for the existing use.

C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.

The existing restaurant will continue to operate from 7:00 a.m. to 2:00 a.m. daily, with live entertainment events primarily being held in the evenings. There will be no substantial conflict in the principal operating hours for the two properties. Prior to the approval of any project on the adjacent lot, all code required parking will need to be provided, and the required parking for the

proposed JUPA amendment will be included. A legal agreement between the City and the property owner is required as a condition of approval. The agreement will contain requirements for an annual review by the Planning Director with authority to modify the agreement as necessary to maintain onsite parking arrangements.

SECTION 5. Planning Commission Approval.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CUPA No. 13-006 and JUPA No. 14-001, subject to the following conditions. No other changes to the conditions contained in City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments, are made by this amendment and all other applicable findings, terms, and/or conditions remain in full force and effect.

SECTION 6. 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. This approval is to allow the reduction of the restaurant service area in order to accommodate the creation of a new retail tenant space, and decrease the number of required off-site parking spaces in JUPA No. 14-001, to reflect the new number of required offsite parking spaces for the uses onsite.
3. This conditional use permit amendment shall not be effective until all appeals are exhausted and the property owner, applicant and the business operator execute the Affidavit of the Acceptance of Conditions. Said documents shall be recorded with the Los Angeles County Recorder and a certified copy of said recordation shall be filed with the Planning Department within 10 days of the effective date of the approval.
4. A review of the proposed amendment and compliance with the conditions of approval shall be conducted by Planning Department staff and reported to the Planning Commission within one year, and again within five years, of commencement of operations. Staff will report whether the amendment is operating in compliance with the Planning Commission's findings and all approved conditions, and whether it recommends initiating proceedings to modify or revoke the permit.
5. The third driveway curb cut from west to east must be removed.

Joint Use Parking Agreement

6. The number of required parking spaces required to be provided for the restaurant service area will be reduced to 23 parking spaces to reflect a restaurant service area of 1,935 square feet.

Operations

7. The restaurant service area is 1,935 square feet, and allocated as follows:
 - a. Interior service area: 1,184 square feet; and
 - b. Outdoor patio: 751 square feet.
8. The retail space area is 1,636 square feet.
9. The total number of seats shall not exceed 92 and the total number of patrons for large events is limited to 300.
10. Dining or drink service is not permitted within the employee lounge area.

Fixed Conditions

11. If it has cause to believe that grounds for revocation or modification may exist, the Planning Commission shall hold a public hearing upon the question of modification or revocation of this conditional use permit pursuant to MMC Section 17.66.100(C). The conditional use permit may be revoked if the Planning Commission finds that one or more of the following conditions exists:
 - a. The conditional use permit was obtained in a fraudulent manner.
 - b. The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.
 - c. One or more of the conditions found within this resolution have not been substantially met.
12. Prior to the approval of any project on the adjacent lot, all code required parking will need to be provided. A legal agreement between the City and the property owner is required as a condition of approval. The agreement will contain requirements for an annual review by the Planning Manager with authority to modify the agreement as necessary to maintain onsite parking arrangements.
13. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement (JUPA).
14. All other conditions of City Council Resolution No. 10-59, and Planning Commission Resolution No. 11-72, and associated amendments are hereby incorporated by reference and remain in full force and effect.

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

PASSED, APPROVED AND ADOPTED this 4th day of April 2022.

KRAIG HILL, Planning Commission Chair

ATTEST:

REBECCA EVANS, Recording Secretary

LOCAL APPEAL - Pursuant to Malibu Municipal Code Section 17.04.220 (Appeal of Action), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms and fee schedule may be found online at www.malibucity.org/planningforms, in person, or by calling (310) 456-2489, extension 245.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 22-01 was passed and adopted by the Planning Commission of the City of Malibu at the special meeting held on the 4th day of April 2022 by the following vote:

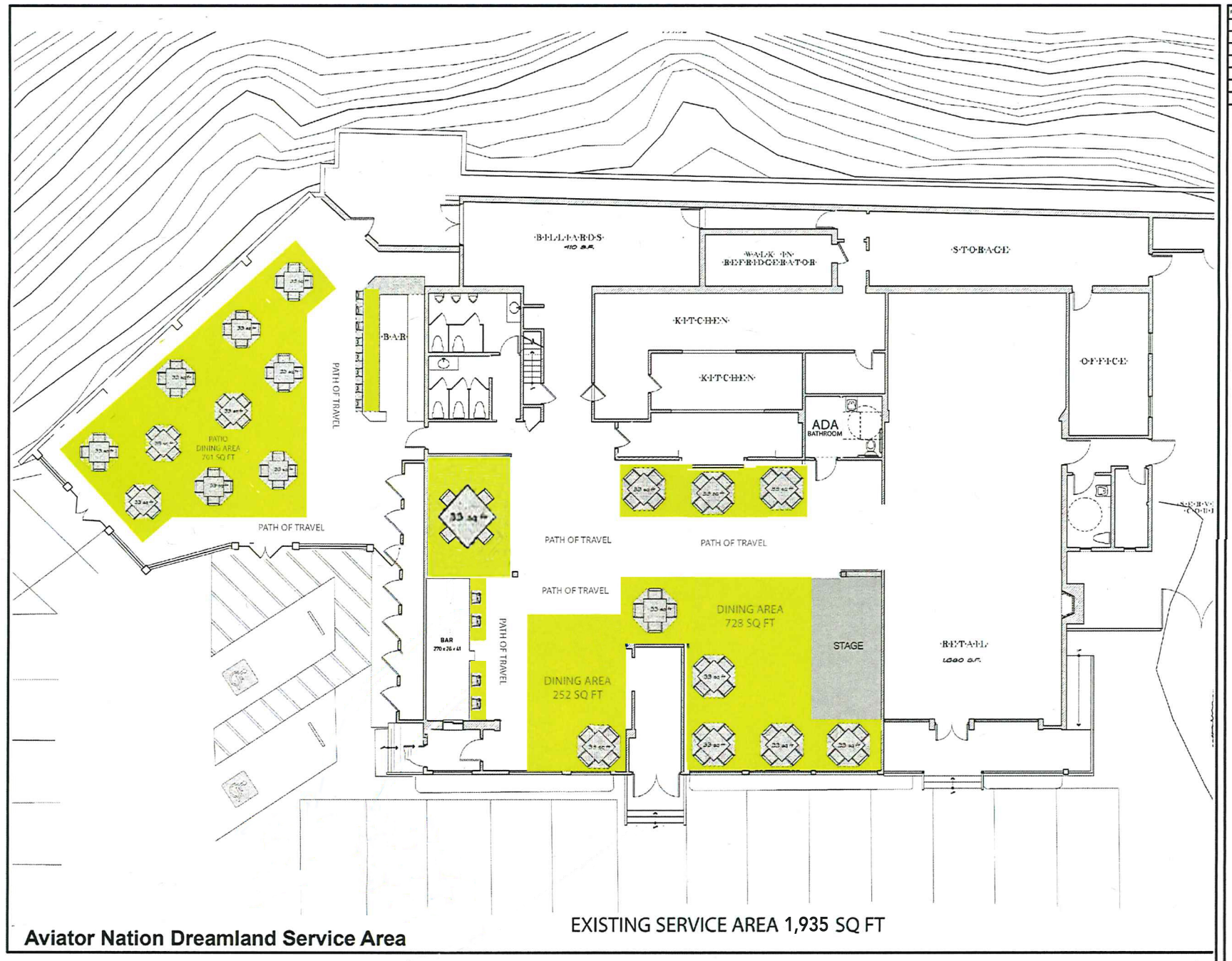
AYES:

NOES:

ABSTAIN:

ABSENT:

REBECCA EVANS, Recording Secretary



RESOLUTION NO. 10-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 10-002, APPROVING CONDITIONAL USE PERMIT NO. 09-009 AND JOINT USE PARKING AGREEMENT NO. 10-001 TO PERMIT THE MALIBU INN RESTAURANT WITH LIVE ENTERTAINMENT WHICH WILL SERVE LIQUOR, OPERATE BETWEEN THE HOURS OF 7:00 A.M. AND 2:00 A.M., AND HAVE A MAXIMUM RESTAURANT SEATING CAPACITY OF 94 PATRONS, A MAXIMUM CAPACITY OF 340 PATRONS FOR ENTERTAINMENT EVENTS AND 565 SQUARE FEET OF RETAIL SPACE AT THE 8,960 SQUARE FOOT COMMERCIAL BUILDING; INCLUDING A JOINT USE PARKING AGREEMENT FOR REQUIRED PARKING SPACES TO BE LOCATED ON THE ADJACENT PROPERTY IN THE COMMERCIAL VISITOR SERVING-1 ZONING DISTRICT LOCATED AT 22969 PACIFIC COAST HIGHWAY (HAKIM)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. The building which houses the Malibu Inn was constructed in 1950 and the adjacent lot has historically provided parking. The use has operated under multiple owners for more than 50 years at the current location.

B. On June 3, 2008, Over the Counter Permit (OC) No. 08-102 was issued to re-open the 565 square foot retail space for the tenant Sabotage.

C. Due to a change in ownership of the subject property, the business closed in December 2008 and the restaurant and entertainment venue use ceased.

D. On May 26, 2009, breakfast and lunch service at the restaurant resumed. Currently, the Malibu Inn typically closes around mid-afternoon / early evening, after patrons have finished lunch.

E. On December 3, 2009, Conditional Use Permit (CUP) No. 09-009 and Joint Use Parking Agreement (JUPA) No. 10-001 was submitted to the Planning Division by Elizabeth Peterson. The application was routed to the City Environmental Health Administrator, the Los Angeles County Fire Department (LACFD) and the Los Angeles County Sheriff's Department (LACSD) for review.

F. On January 12, 2010, a Courtesy Notice of Proposed Project was mailed to all property owners and occupants within a 500 foot radius of the subject property.

G. On May 26, 2010, the application was deemed complete for processing.

H. On July 8, 2010, a Notice of Planning Commission Public Hearing was published in a

ATTACHMENT 3

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 August 3, 2010, at the request of the applicant, the public hearing was continued to the September 7, 2010 Regular Planning Commission meeting.

J. On September 7, 2010, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, public testimony and all related information. At the conclusion of the hearing, the Planning Commission adopted Resolution No. 10-79 approving CUP No. 09-009 and JUPA No. 10-001.

K. On September 16, 2010, Appeal No. 10-002 was filed by Klaus Obermeyer (property owner at 23006 Pacific Coast Highway) and Robert J. Allan (property owner at 23018 Pacific Coast Highway).

L. On September 27, 2010, in accordance with Malibu Municipal Code (M.M.C.) Section 17.04.220(C), the appellants submitted additional information related to the appeal before the 10 day deadline.

M. On October 12, 2010, the appeal was deemed complete by staff.

N. On October 28, 2010, 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 interested parties, regional, state and federal agencies, local libraries and media, and the California Coastal Commission (CCC).

O. On November 22, 2010, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Appeal of Action.

The appellants appealed Planning Commission Resolution No. 10-79, contending that the proposed conditional use permit is not consistent with various sections of the M.M.C. as well as the General Plan. Additional information submitted with the appeal includes numerous statements in support of the appeal. Planning Division staff prepared an extensive agenda report responding to each of the appellant's contentions. The City Council concurs with the findings and conclusions of staff as set forth in the report and adopts staff's analysis, findings, and conclusions as though fully set forth herein.

Section 3. Conditional Use Permit Approval and Findings.

Pursuant to M.M.C. Section 17.66.080, the City Council may approve, deny and/or modify an

application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. The City Council hereby makes the following findings of fact to approve CUP No. 09-009.

CUP Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

A restaurant with an interior capacity in excess of 125 people, a nightclub and a bar are all conditionally permitted uses in the Commercial Visitor Serving-1 (CV-1) zoning district. The existing commercial structure includes a total interior square footage of 8,960 square feet, with a service area that totals 2,474 square feet (comprised of 1,184 square foot interior service area which includes the bar, a 751 square foot service area on the outdoor patio which includes a bar and a 539 square foot service area in the banquet room). The project has been conditioned to comply with all applicable provisions of the M.M.C.

CUP Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The proposed use is a commercial use on commercially zoned property and therefore, would not impair the integrity and character of the CV-1 zoning district. The Malibu Inn has occupied the subject property for several decades and is located within a long strip of commercial properties located on the landward side of Pacific Coast Highway, east of the Pier. Furthermore, the proposed project will conditionally permit the previously operating restaurant and therefore is not anticipated to result in a change from the existing conditions within the zoning district. Finally, the use previously had a California Department of Alcohol Beverage Control (ABC) Liquor Licenses and operated as a restaurant with a bar and live entertainment.

CUP Finding 3. The subject site is physically suitable for the type of land use being proposed.

The project site contains existing commercial development. The proposed tenant improvements consist of a minor interior remodel only and no exterior changes are included in the project scope. The business has operated on the subject property since the 1950s. A total of 53 parking spaces are required for the proposed use. There are 22 parking spaces that exist onsite and the property owner has agreed to a joint use parking agreement to provide for the remaining 31 spaces to be located on the adjacent property that he also owns. The parking spaces will be provided for the use of the patrons and employees of the Malibu Inn. Therefore, the site is physically suitable for the use being proposed.

CUP Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The Malibu Inn has operated at the subject property since the 1950s. It closed briefly at the end of 2008 due to the sale of the property. The property is surrounded by both commercial, open space and

residential uses. There is a mix of commercial, office and retail uses in the immediate vicinity of the site. There are very few residences located within close proximity to the subject property.

The property owner has agreed to a condition of approval which will prohibit live entertainment on the exterior patio. In addition, further conditions of approval which limit noise from the patio have been included for this project in compliance with the M.M.C. Noise Ordinance. Furthermore, conditions of approval have been included to require that the property owner notify the City Code Enforcement Officer and the Los Angeles County Sheriff's Department no less than three days prior to a large entertainment event (defined as any event with 100 or more persons in attendance) and to provide security personnel onsite seven days a week from 9:00 p.m. to closing to ensure that noisy and rowdy patrons leaving the establishment will not adversely affect the welfare of neighborhood residents.

A Security Plan which was submitted to the Planning Commission on September 7, 2010 details a listing of goals which include:

- Creation of a safe and secure environment within the Malibu Inn for all patrons;
- Provision of a level of control and safety for all arriving and departing guests;
- Mitigation of any noise or inappropriate conduct directed at the immediate neighbors and leaseholds by patrons upon entry or departure; and
- Diffusion of all situations as they occur.

The Security Plan demonstrates an understanding of neighbor concerns and strives to address these concerns through the following actions:

- Full disclosure and cooperation with law enforcement personnel and other City officials;
- Requirement that security personnel wear easily identifiable uniforms and identification badges at all times;
- Provision of one security guard per 50 patrons, with security staff being present at all times the venue is hosting dancing or live entertainment;
- Includes a detailed listing of responsibilities that each security guard will have – including stationary, roving and patio guards;
- Security guards will take part in the following training programs: 1) Licensee Education on Alcohol and Drugs (L.E.A.D) which is put on by the Department of Alcoholic Beverage Control; 2) proper cueing to lessen the impact of foot traffic and traffic flow for motor vehicles; 3) emergency preparedness including all safety devices present onsite and emergency escape routes; and 4) Standard First Aid provided through the Red Cross.

Finally, the Planning Commission, at its September 7, 2010 meeting, added an additional condition of approval which set a limit on live entertainment events not to exceed two large events and eight small events per month. The provisions included in the Security Plan are specifically intended to allow the proposed use to be compatible with adjacent neighbors. With the incorporation of all the aforementioned conditions of approval, this proposed use is compatible with the land uses in the surrounding neighborhood.

CUP Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

The proposed use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses are comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space to the south. The only vacant property in the immediate vicinity (22959 Pacific Coast Highway) is owned by the subject property owner and is zoned for commercial development.

CUP Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

Existing utilities will serve the proposed project. The LACFD reviewed the CUP and issued a conditional approval on February 18, 2010. Some of the conditions require that applicant test existing fire hydrants and submit plans to the Fire Prevention Engineering Department.

In order to confirm conformance with percolation test requirements as outlined in the Malibu Plumbing Code (MPC), Ensitu Engineering Inc. oversaw flow testing at the subject property. The testing required isolation of the front, east and west leachfields prior to beginning the test. On the first day of the test, a license soils engineer introduced 6,497 gallons of water to the three dispersal fields in order to pre-soak the leachfields prior to performing water absorption measurements on the three following consecutive days. On each of the following three consecutive days, the soils engineer introduced an additional 6,497 gallons of water to the three fields. A final additional test was performed on the fifth day. Using the allocations of restaurant / retail and entertainment flows outlined in the MPC, the water was metered according to the proportion of total absorption area contributed by each leachfield.

After a five day testing period, Ensitu determined the following: 1) the existing grease interceptor capacity is sized to accommodate a full day's flow, rather than the code required minimum; 2) the site is currently served by two 3,000 gallon septic tanks (providing storage for 6,000 gallons total), which meet the required septic tank capacity of 5,998 gallons; and 3) the absorption area of the existing leachfields is 3,360 square feet and the existing seepage pits will be abandoned. The existing leachfield size exceeds the minimum required effective absorption area which is 3,187 square feet. As a result of the testing, Ensitu concluded that the OWTS is acceptable for the use proposed. The City Environmental Health Administrator reviewed the CUP and Ensitu's report and determined that the existing onsite wastewater treatment system (OWTS) is adequate for the proposed use.

As conditioned, the proposed conditional use permit would limit the hours of operation from 7:00 a.m. to 2:00 a.m. daily. No changes to the exterior of the existing structure are proposed, so no

impacts to solar access or public or private views will occur. The existing commercial structure at 22969 Pacific Coast Highway will not change under this application, and therefore, will not adversely impact existing public and private views.

CUP Finding 7. There would be adequate provisions for public access to serve the subject proposal.

No change to the site or circulation plan for the existing commercial property is proposed by this CUP. Upon completion of the construction of the commercial building on the adjacent parcel to the east, parking will be accommodated in accordance with the joint use parking agreement. The proposed use will have adequate parking for public access and will not obstruct public traffic circulation. It is anticipated that the reopening of the previously existing use would not substantially impact public access or circulation.

CUP Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

The use is a conditionally permitted commercial use in the CV-1 zoning district. The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall be consistent with compatible accessory uses, shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City. The proposed project meets the goals of the following land use policies of the General Plan:

- | | |
|------------------------|---|
| Land Use Policy 3.1.1: | The City shall ensure visitor serving and recreational uses are compatible with the natural resources and aesthetic values of the area. |
| Land Use Policy 3.2.1: | The City shall permit the development of commercial recreational and visitor servicing facilities at suitable locations which provide convenient public access, adequate infrastructure, convenient parking and, when feasible, are located where existing low cost recreational uses will be enhanced. |
| Land Use Policy 4.4.1: | The City shall encourage establishment and continued operation of small neighborhood and community serving businesses. |

As such, the proposed project, as conditioned, is consistent with goals, objectives and policies of the General Plan.

CUP Finding 9. The proposed project complies with all applicable requirements of state and local law.

The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the Los Angeles County Sheriff's Department.

CUP Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

The proposed project will reopen a previously existing restaurant and bar that provides live entertainment, which is a conditionally permitted use in a commercial zone. As stated in Finding 6, the LACFD has conditionally approved the CUP and set maximum occupancy for both dining and live entertainment events. In addition, the Los Angeles County Sheriff's Department issued a conditional approval of the CUP on May 13, 2010, specifically requiring that the property owner notify the department of all planned entertainment events. A condition is included in Section 7 of this resolution which requires that the property owner notify the City Code Enforcement Officer and the Los Angeles County Sheriff's Department no less than three days prior to a large entertainment event (defined as any event with 100 or more persons in attendance).

Furthermore, specific conditions have been included in Section 7 of this resolution which require: 1) training for bartenders and servers through the TIPS program (Training for Intervention Procedures) which is designed to prevent intoxication, underage drinking and drunk driving; 2) training for security personnel through the Licensee Education on Alcohol and Drugs (L.E.A.D) program which is put on by the Department of Alcoholic Beverage Control; 3) extensive conditions limiting noise during hours of operation; and 4) the provision of a detailed security plan to monitor patrons both within and outside of the Malibu Inn. All of these requirements are intended to maintain public health, safety and welfare.

Finally, the report generated in conjunction with the ABC application indicates that the current property owner has not been subject to any disciplinary infractions in the past with regard to a liquor license. As conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare.

CUP Finding 11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

The project will not be at risk from earth movement and flood hazards since the application only involves reopening a previously existing use within the existing commercial structure. The building footprint and envelope will not change; therefore, there is no new impact related to earth movement, flooding or liquefaction.

Section 4. Joint Use Parking Agreement Approval.

As stated in M.M.C. Section 17.48.050(A)(1), the decision making body may approve parking on a separate lot, via a Joint Use Parking Agreement, under the following conditions (which are set forth in M.M.C. Section 17.48.040). The agreement will be between 22959 Pacific Coast Highway and 22969 Pacific Coast Highway, which are under common ownership. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement. The City Council finds that the evidence in the record supports the three following conditions.

JUPA Condition A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use; provided, that such reciprocal parking arrangement shall comply with subsection C of this section.

The proposed hours of operation for the subject use are from 7:00 a.m. to 2:00 a.m. The adjacent property at 22959 Pacific Coast Highway is undeveloped with the exception of the parking lot historically used to provide parking for the Malibu Inn. However, an application (CDP No. 09-67) for a commercial building for that site has been submitted to the Planning Division. The new commercial building design will incorporate the required parking for any proposed office / retail use as well as maintain the required parking for the Malibu Inn pursuant to the joint use parking agreement.

Although the commercial building is not expected to be approved in the near future, staff has anticipated parking impacts during the course of construction and provided conditions of approval to maintain required parking. Parking displaced during construction would be temporarily relocated to the commercial / office building located at 22761 Pacific Coast Highway since it is also owned by the same owner as the Malibu Inn.

Historically, the heaviest parking demand at the Malibu Inn is primarily evenings and weekends. Commercial development on the adjacent parcel is anticipated to be either office or retail with primarily daytime operating hours. In addition, the 31 spaces required for the Malibu Inn will be supplementary to the parking spaces required for the new commercial development, so the uses will not be in conflict. Therefore, the reciprocal parking arrangement will comply with JUPA Condition C.

JUPA Condition B. The planning commission may reduce parking requirements for common parking facilities by up to 25 percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.

The property owner has not requested to reduce the required parking spaces. The reciprocal parking agreement will provide additional parking spaces in excess of what is required for the proposed use.

JUPA Condition C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.

The subject property owner owns the subject property and the other commercial property involved in the joint use parking agreement. The subject property will operate from 7:00 a.m. to 2:00 a.m. daily, with live entertainment events primarily being held in the evenings. The other property is proposed to be office / retail uses with principal operating hours during the daytime. There will be no substantial conflict in the principal operating hours for the two properties. Prior to the approval of any project on the adjacent lot, all code required parking will need to be provided. A legal agreement between the City and the property owner is required as a condition of approval. The agreement will contain requirements for an annual review by the Planning Manager with authority to modify the agreement as necessary to maintain onsite parking arrangements.

Section 5. City Council Action.

Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, the City Council hereby denies Appeal No. 10-002 and approves Conditional Use Permit No. 09-009 and Joint Use Parking Agreement No. 10-001 to permit the operation of the Malibu Inn at 22969 Pacific Coast Highway, subject to the conditions set forth herein.

Section 6. Conditions of Approval.

Standard Conditions

1. The applicants and 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. This approval is to allow for the following:
 - a. Operation of a restaurant with live entertainment;
 - b. Maximum dining seating capacity of 94 patrons and maximum event capacity of 340 patrons;
 - c. Service of distilled liquor;
 - d. Interior improvements including:
 - i. Replacing existing flooring,
 - ii. Refinishing the bars,

- iii. Upgrading televisions,
 - iv. Changing furniture and lighting fixtures, and
 - v. Replacing windows with double pane soundproof glass; and
 - e. Joint use parking agreement between properties addressed as 22959 Pacific Coast Highway and 22969 Pacific Coast Highway.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Division. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. 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 Division within 10 days of this decision and prior to issuance of any development permits.
5. This conditional use permit shall be reviewed on a semi-annual basis for the first year, and then on an annual basis thereafter, starting on November 22, 2010. At this time, the property owner shall provide evidence that the joint use parking agreement is still in effect. At least two weeks prior to the review date, the applicant shall pay the Planning Division staff site inspection fee in effect at the time of request for site inspection. A staff planner will conduct a site visit to verify compliance with the provisions set forth in this resolution. If necessary, the conditional use permit may be brought back to the Planning Commission for additional conditions to mitigate and/or prevent nuisances that were identified. Possible mitigation measures can include:
- a. Modifying the hours of operation;
 - b. Restricting alcohol service;
 - c. Hiring additional security personnel;
 - d. Prohibiting music;
 - e. Installing noise mitigating measures / devices; or
 - f. Other measures deemed necessary by the Planning Commission.
6. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
7. All interior tenant improvements shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Environmental Health Administrator and City Public Works Department, as applicable. Notwithstanding this review, all required permits shall be secured.
8. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. Revised plans reflecting the minor changes and additional fees shall be required.

Site Specific Conditions

Fire Department

9. All applicable requirements of the Los Angeles County Fire Department Land Development Unit – Fire Prevention Division set forth in the review sheet dated February 18, 2010 shall apply.

Environmental Health

10. Except as specifically required by the conditions of approval, no renovation of the septic tank and drainfield system is required. The City Environmental Health Administrator's approval dated May 13, 2010, does not represent an expansion, modification or change in the type or intensity of use of the existing onsite wastewater treatment system.
11. The piping connections between the grease interceptor, septic tanks and distribution boxes shall be brought into conformance with the Malibu Plumbing Code (MPC). Prior to the authorization to operate the restaurant during dinner and/or nightclub hours, a piping plan shall be submitted for review and approval, and a final construction permit shall be submitted to the Environmental Health Administrator.
12. The subject Environmental Health approval pertains only to the use of the premises not to exceed 94 restaurant seats, 340 nightclub patrons and 565 square feet of retail space.

Sheriff's Department

13. The property owner shall be required to notify the Sheriff's Department (Malibu / Lost Hills Station) and the City of Malibu of any live entertainment event (including DJs) scheduled to take place within the Malibu Inn, especially pertaining to live bands, no less than three days prior to the event. If the property owner books a larger event (in excess of 100 attendees), the property owner shall discuss potential requirements for contracting for a law enforcement presence to handle any crowd and traffic control with the Sheriff's Department. Additionally, the plan shall include a contact phone number of an individual who will be available during entertainment events to address complaints.

Joint Use Parking Agreement

14. The property at 22959 Pacific Coast Highway shall serve as a donor site for no less than 31 parking spaces for the subject property at 22969 Pacific Coast Highway. A legal agreement (Joint Use and Common Parking Facilities Agreement) between the City and the property shall be required. The agreement shall be submitted to the City prior to the commencement of alcohol service and shall contain requirements for an annual review by the City Planning Manager with authority to modify the agreement as necessary to maintain onsite parking

arrangements. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement. Should the 31 offsite parking spaces at any point be provided elsewhere, the legal agreement shall be amended to reflect the new offsite parking location. The 31 parking spaces at 22959 Pacific Coast Highway may be reallocated to any future development on this site.

15. An amendment to the conditions set forth in the CUP shall be required if there is a proposed change to the joint use parking agreement.

Operations

16. The approved hours of operation are from 7:00 a.m. to 12:00 a.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 2:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that the use may be open until 2:00 a.m. only on those Sundays when the following Monday is a federal holiday. Closure must be complete and all employees must vacate the premises no more than one hour after closing, daily. No after hours operation shall be permitted.
17. The approved hours for alcohol sales are from 7:00 a.m. to 11:00 p.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 1:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that alcohol may be served until 1:00 a.m. only on those Sundays when the following Monday is a federal holiday.
18. A maximum of 94 seats for dining are approved under this permit. The maximum interior and exterior occupancy for entertainment events is 340 patrons.
19. Live entertainment events shall be limited to a maximum of two large events (defined as events with 100 or more attendees) and eight small events (events with less than 100 attendees) per month.
20. Valet parking must be provided for all events with 100 or more attendees.
21. No exterior activity such as trash disposal, recycling pickup, delivery trucks or exterior maintenance is permitted onsite between the hours of 10:00 p.m. and 7:00 a.m. Additionally, bottles and glass containers shall not be emptied into outdoor trash or recycling bins between 10:00 p.m. and 7:00 a.m.
22. This CUP permits the sale of distilled spirits as well as beer and wine with a Type 47 License. The property owner / operator shall obtain all necessary approvals from the California Department of Alcohol Beverage Control. Once obtained, the applicant is required to provide to the Planning Division a copy of the ABC issued On-Premise Consumption License.

23. Prior to the start of employment, employees that serve alcohol shall undergo an alcohol training program such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking and drunk driving. Evidence of completion of this training shall be submitted to the Planning Division.
24. This CUP permits live entertainment and dancing. Once obtained, the applicant is required to provide to the Planning Division a copy of the Los Angeles County Sheriff's Department Entertainment License.
25. No live entertainment is permitted on the exterior patio at any time. Low level amplified music is permitted on the patio during the hours of 7:00 a.m. to 10:00 p.m., daily. Unnecessary and boisterous noise from the patio between the hours of 10:00 p.m. and 2:00 a.m. shall be prohibited.
26. Prior to the commencement of alcohol service, the property owner / operator shall install small signs in the interior of the business on or near the exit doors requesting that patrons not loiter outside and be courteous and quiet when leaving the building and parking areas.
27. All exterior doors shall remain closed when not being used for ingress/egress purposes. The property owner shall install self-closing door mechanisms on all exterior doors.
28. Noise emanating from the premises shall not be plainly audible at a distance of five feet of any residential dwelling unit between 10:00 p.m. and 7:00 a.m., as required by M.M.C. Section 8.24.050(L).
29. The property owner / operator (or designated representative) shall monitor the noise levels adjacent to nearby residences to check compliance with City noise regulations (i.e. the noise should not be plainly audible within five feet of any residential dwelling unit). If the property owner / operator (or designated representative) determines that the noise level exceeds City noise regulations, they shall immediately notify the musicians to reduce noise levels in compliance with City noise regulations.
30. The property owner / operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject use relating to parking, smoking, litter, noise, loitering, etc.
31. Pursuant to M.M.C. Section 9.34.020, smoking is prohibited in all outdoor dining areas located on private or public property, including the public right-of-way. Smoking is also prohibited within 20 feet of an outdoor dining area, except while actively passing by on the way to another destination.

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32. Per M.M.C. Section 9.34.030, the property owner shall post and maintain “no smoking” signs in conspicuous locations within the outdoor dining area. All such signs shall: 1) be no greater than one square foot in size; 2) be prominently displayed; 3) clearly state “no smoking” and/or use the international “no smoking” symbol; and 4) reference M.M.C. Section 9.34.020.
 33. Prior to commencement of alcohol service, a final security plan shall be submitted to the City Environmental and Community Development Department and the Los Angeles County Sheriff’s Department for review and approval. The plan shall address both physical and operational security issues and shall be no less stringent than the plan submitted to the City on September 7, 2010. Additionally, the plan shall include a contact phone number of an individual who will be available during entertainment events to address complaints. Evidence of the Sheriff’s Department approval of the plan shall be provided to the City.
 34. The property owner / operator (or designated representative) shall regularly monitor the area outside of the restaurant to ensure peace and quiet. Security personnel shall be provided seven days a week from 9:00 p.m. to closing to ensure that noisy patrons leaving the establishment will not adversely affect the welfare of neighborhood residents.
 35. At the close of business each day, the property owner / operator shall clean up any litter or any other items that were likely to have been left by patrons of the subject establishment found on the subject property or along the public right-of-way.
 36. No sign shall be illuminated after 11:30 p.m., or close of business, whichever occurs last.
 37. Any proposed structural changes to the existing signs shall require review for the requirements set forth in M.M.C. Chapter 17.52 (Signs).
 38. Window or other signage visible from the public right-of-way that advertises beer or alcohol shall not be permitted.
 39. No restaurant, food packager, retail food vendor, vendor or nonprofit food provider shall provide prepared food to its customers in any food packaging that utilizes expanded polystyrene. “Expanded polystyrene” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.
 40. The property owner / tenant shall comply with the requirements set forth in M.M.C. Chapter

9.28 (Ban on Plastic Shopping Bags). No retail establishment, restaurant, vendor or nonprofit vendor shall provide plastic bags or compostable bags to customers. This requirement applies to plastic or compostable bags provided at the point of sale for the purpose of carrying away goods.

41. A copy of the conditions of approval must be kept on the premises and presented to the Los Angeles County Sheriff's Department upon request.
42. Parking displaced during any future construction on 22959 Pacific Coast Highway shall be temporarily relocated to the commercial / office building located at 22761 Pacific Coast Highway since it is owned by the same property owner (Kambiz Hakim) as the Malibu Inn. If this situation changes, alternate offsite parking arrangements will need to be coordinated with the Planning Manager prior to building permit issuance for development at 22959 Pacific Coast Highway.
43. Within 60 days of the issuance of the conditional use permit, an after-the-fact building permit shall be obtained for the retaining wall along the hillside at the rear of the property (as identified in Building Permit No. 02-0233), which creates the area for the planter.

Fixed Conditions

44. The conditions under which this conditional use permit was approved may be modified by the City of Malibu without the consent of the property owner or operator if the Planning Commission finds that the use is creating a nuisance.
45. A conditional use permit that is valid and in effect, and was granted pursuant to the provisions of the Malibu Municipal Code shall run with the land and continue to be valid upon change of ownership of the land or any lawfully existing building or structure on the land.
46. Violation of any of the conditions of approval shall be cause for revocation of the conditional use permit and termination of all rights contained therein.
47. This conditional use permit shall become null and void with the demolition of the building.
48. The conditional use permit shall be reviewed by the Planning Manager for compliance with the conditions of approval and a report shall be presented to the Planning Commission no earlier than three months from the date of issuance.
49. If it has cause to believe that grounds for revocation or modification may exist, the Planning Commission shall hold a public hearing upon the question or modification or revocation of this conditional use permit granted under or pursuant to the provisions of M.M.C. Section 17.66.100(C). If a hearing is required, the City shall notify the property owner / operator

more of the following conditions exists:

- a. The conditional use permit was obtained in a fraudulent manner.
- b. The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.
- c. One or more of the conditions found within this resolution have not been substantially met.

Section 7. Certification.

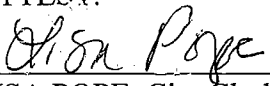
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 22nd day of November 2010.



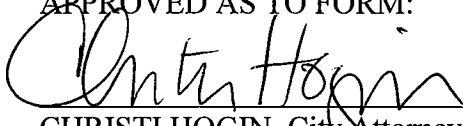
JEFFERSON WAGNER, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

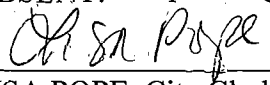


CHRISTI HOGIN, City Attorney

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 M.M.C. 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.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 10-59 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 22nd day of November, 2010, by the following vote:

AYES:	4	Councilmembers:	Conley Ulich, La Monte, Rosenthal, Sibert
NOES:	0		
ABSTAIN:	0		
ABSENT:	1	Councilmember:	Wagner



LISA POPE, City Clerk
(seal)

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 11-72**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. 11-001 TO AMEND CITY COUNCIL RESOLUTION NO. 10-59 (CONDITIONAL USE PERMIT NO. 09-009) TO CHANGE THE MALIBU INN'S HOURS OF OPERATION FROM WHAT WAS APPROVED (7:00 A.M. TO 12:00 A.M. ON SUNDAYS THROUGH WEDNESDAYS AND 7:00 A.M. TO 2:00 A.M. ON THURSDAYS, FRIDAYS AND SATURDAYS, WITH THE EXCEPTION THAT THE USE MAY BE OPEN UNTIL 2:00 A.M. ONLY ON THOSE SUNDAYS WHEN THE FOLLOWING MONDAY IS A FEDERAL HOLIDAY) TO OPERATE BETWEEN THE HOURS OF 7:00 A.M. AND 2:00 A.M. DAILY AT 22969 PACIFIC COAST HIGHWAY (SKA GROUP LLC)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. On December 3, 2009, an application for Conditional Use Permit (CUP) No. 09-009 and Joint Use Parking Agreement (JUPA) No. 10-001 was submitted to the Planning Division to permit the operation of the Malibu Inn Restaurant at 22969 Pacific Coast Highway. The application was routed to the City Environmental Health Administrator, Los Angeles County Sheriff's Department (LACSD) and Los Angeles County Fire Department (LACFD) for Malibu Municipal Code (M.M.C.) conformance review.

B. On September 7, 2010, the Planning Commission held a duly noticed public hearing on the subject application to permit the Malibu Inn with live entertainment which will serve liquor, operate between the hours of 7:00 a.m. and 2:00 a.m., and have a maximum restaurant seating capacity of 94 patrons, a maximum capacity of 340 patrons for entertainment events and 565 square feet of retail space. At the conclusion of the hearing, the Planning Commission adopted Planning Commission Resolution No. 10-79 approving CUP No. 09-009 and JUPA No. 10-001.

C. On September 16, 2010, an appeal (Appeal No. 10-002) of the Planning Commission's approval was filed by Klaus Obermeyer and Robert J. Allan, who are both owners of residences located across Pacific Coast Highway and south of the subject property.

D. On November 22, 2010, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record. At that meeting, the City Council denied the appeal and approved CUP No. 09-009; however, the Council revised the permitted hours of operation and alcohol sales.

E. City Council Resolution No. 10-59 indicates that the approved hours of operation for the Malibu Inn are from 7:00 a.m. to 12:00 a.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 2:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that the use may be open until 2:00 a.m. only on those Sundays when the following Monday is a federal holiday. Furthermore, the approved hours for alcohol sales are from 7:00 a.m. to 11:00 p.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 1:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that alcohol may be served until 1:00 a.m. only on those Sundays when the following Monday is a federal holiday.

F. During the City Council hearing, it was determined that no sooner than three months after the CUP had gone into effect, the applicant could return to the Planning Commission to petition for a change in the hours of operation and liquor sales. The CUP went into effect on April 13, 2011, as designed by the Malibu Inn's re-opening for events, setting the earliest potential follow-up date for a hearing at the Planning Commission for July 13, 2011.

G. On June 16, 2011, the property owners submitted an application for Conditional Use Permit Amendment (CUPA) No. 11-001 to extend the hours of operation to match what was originally approved by the Planning Commission in Planning Commission Resolution No. 10-79.

H. On June 23, 2011, a Notice of Public Hearing for July 19, 2011 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 June 28, 2011, the CUPA application was deemed complete.

J. The July 19, 2011 Planning Commission meeting was canceled due to a lack of quorum.

K. On August 2, 2011, the Planning Commission held a duly noticed public hearing on the subject amendment application, reviewed and considered the staff report, reviewed and considered written correspondence, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has previously analyzed the proposal as described above. A CATEGORICAL EXEMPTION (CE No. 10-068) was previously prepared for CUP No. 09-009 pursuant to CEQA Guidelines Section 15301 – Existing Facilities.

The Planning Commission has found that the proposed amendment is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment, and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued for the amendment pursuant to CEQA Guidelines Section 15301 – Existing Facilities. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

Section 3. Findings of Fact.

1. Pursuant to Malibu Municipal Code (M.M.C.) Section 17.66.020, a CUP may be amended upon submittal of an application by the permittee. CUP No. 09-009 was approved by the Planning Commission on September 1, 2009. The decision of the Planning Commission was appealed and on November 22, 2010, the City Council denied the appeal and approved CUP No. 09-009 with limited hours of operation.

2. The LACSD and City of Malibu Code Enforcement have confirmed that since the re-opening of the Malibu Inn for entertainment, neither has received complaints from the public regarding its operations.

3. Staff completed a site inspection on June 24, 2011, and confirmed that all conditions of approval set forth in City Council Resolution No. 10-59 have been completed.

4. The proposed amendment will extend the hours of operation from 7:00 a.m. to 2:00 a.m. daily.

5. The proposed amendment does not affect any of the required M.M.C. findings for a conditional use permit. All findings and conditions for CUP No. 09-009 remain in effect and are incorporated herein by reference.

Section 4. Amendment of Conditional Use Permit.

Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, and pursuant to M.M.C. Section 17.66.060, the Planning Commission approves CUPA No. 11-001, amending CUP No. 09-009, to change the Malibu Inn's hours of operation from what was approved (7:00 a.m. to 12:00 a.m. on Sundays through Wednesdays and 7:00 a.m. to 2:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that the use may be open until 2:00 a.m. only on those Sundays when the following Monday is a federal holiday) to operate between the hours of 7:00 a.m. and 2:00 a.m. daily.

No other changes to the conditions contained in City Council Resolution No. 10-59 are made by this amendment and all other findings, terms and / or conditions contained in City Council Resolution No. 10-59 shall remain in full force and effect.

Section 5. 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 arising from the City's actions in connection with this resolution, 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 resolution. 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 resolution.

2. The approved hours of operation are from 7:00 a.m. to 2:00 a.m. daily. Alcohol service during hours of operation shall be regulated by California Department of Alcoholic Beverage Control (ABC) requirements. Closure must be complete and all employees must vacate the premises no more than one hour after closing, daily. No after hours operation shall be permitted.
3. All other conditions of City Council Resolution No. 10-59 are incorporated herein by reference.

Section 6. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of July 2011.


JEFFREY D. JENNINGS, Planning Commission Chair

ATTEST:


JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - Pursuant to Malibu Municipal Code Section 17.04.220 (Appeal of Action), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms and fee schedule may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, extension 245.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 11-72 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of July 2011, by the following vote:

AYES: COMMISSIONERS: HOUSE, TOLEDO AND JENNINGS

NOES: COMMISSIONERS: MAZZA

ABSTAIN:

ABSENT: COMMISSIONERS: STACK


JESSICA BLAIR, Recording Secretary

Site Photographs



Northeast view of the Malibu Inn, including existing restaurant and retail space



Northeast view of the restaurant and outdoor seating area



North view of the easterly side yard and retail space

Site Photographs



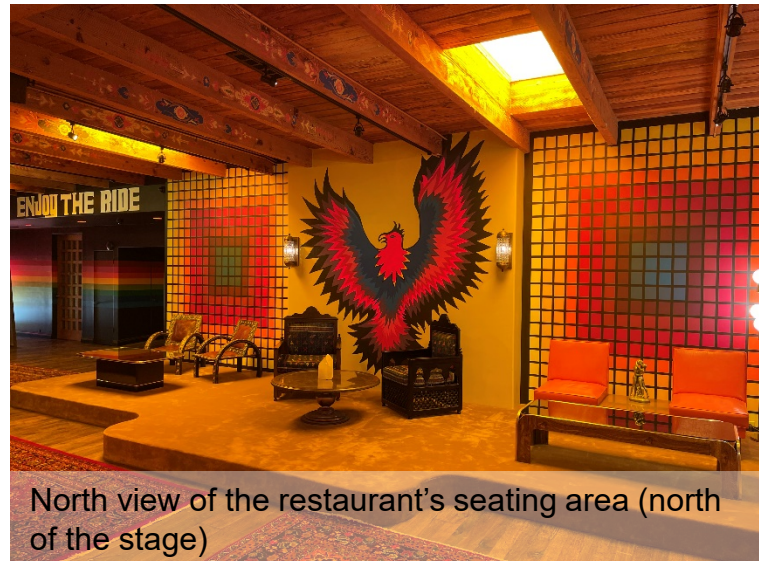
Southeast view of the restaurant's seating area (south of the stage)



Southeast view of the restaurant's seating area (south and west of the stage)



East view of the restaurant's stage



North view of the restaurant's seating area (north of the stage)

Site Photographs



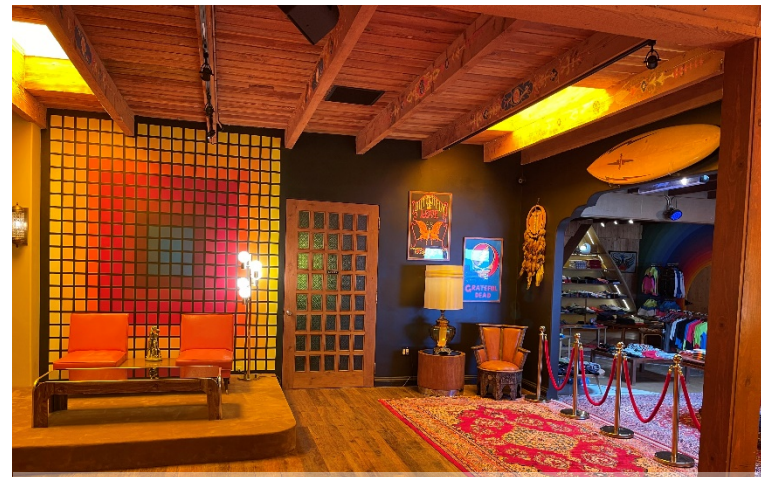
South view of the restaurant's seating area (just north of the entrance)



South view of the restaurant's seating area (southeast of the interior bar)



North view of the restaurant looking into the employee lounge (formerly the billiard room)



Northeast view of the restaurant's opening with the retail space

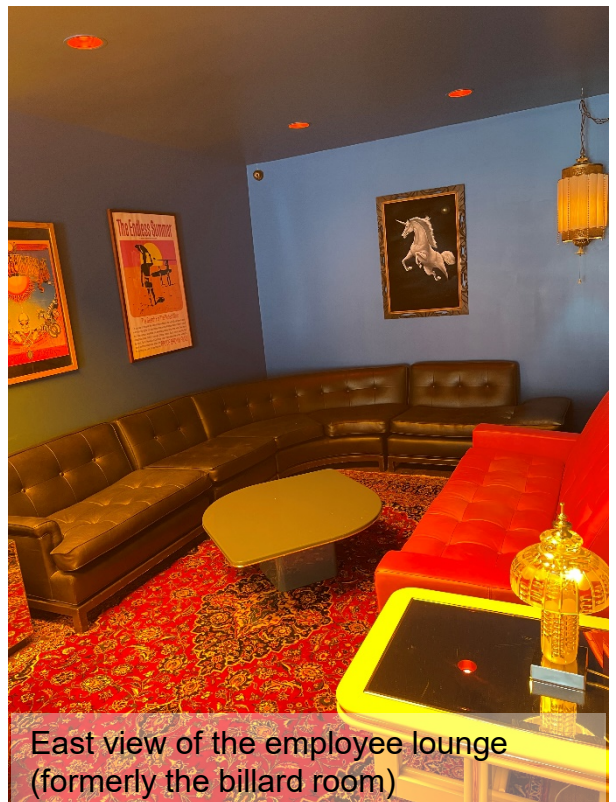
Site Photographs



North view hallway into the employee lounge (formerly the billiard room)



West view of the employee lounge (formerly the billiard room)



East view of the employee lounge (formerly the billiard room)



City of Malibu

23825 Stuart Ranch Rd., Malibu, California CA 90265-4861
(310) 456-2489 FAX (310) 317-1950

ENVIRONMENTAL HEALTH REVIEW REFERRAL SHEET


TO: City of Malibu Environmental Health Administrator DATE: 12/16/2013
FROM: City of Malibu Planning Department

PROJECT NUMBER: OC 13-250
JOB ADDRESS: 22969 PACIFIC COAST HWY
APPLICANT / CONTACT: Jose Iujvidin
APPLICANT ADDRESS: 2420 Sirius St
Thousand Oaks, CA 91360
APPLICANT PHONE #: (310)418-0766
APPLICANT FAX #: (310) 867-8582
APPLICANT EMAIL: jose@joseconsults.com
PROJECT DESCRIPTION: T.I.

TO: Malibu Planning Department and/or Applicant
FROM: Andrew Sheldon, City Environmental Health Administrator

☐ An Onsite Wastewater Treatment System (OWTS) Plot Plan approval IS NOT REQUIRED for the project.

☒ An OWTS Plot Plan approval IS REQUIRED for the project. DO NOT grant your approval until an approved Plot Plan is received. *See conditions of approval below*


SIGNATURE

12-18-2013
DATE

The applicant must submit to the City of Malibu Environmental Health Specialist to determine whether or not a Private Sewage Disposal System Plot Plan approval is required.

Andrew Sheldon, Environmental Health Administrator may be contacted Tuesday and Thursday from 8:00 am to 11:00 am, or by calling (310) 456-2489, extension 364.

CONDITIONS OF APPROVAL In addition to the conditions shown on the attached OWTS plot plan, the following conditions also shall apply: (1) Environmental Health final approval is required; (2) prior to Environmental Health final approval the applicant must submit a seating plan showing the distribution of a maximum of 92 restaurant seats in an alternative configuration that includes patio dining; (3) plans submitted for Building Plan Check and final Planning Department approval must show elimination of the banquet room in coordination with work being done under a separate permit (OC 13-230).

ATTACHMENT 6

RESTURANT:	94 Seats - 92 Seats (R)
NIGHTCLUB:	340 Patrons - 300 Patrons (R)
RETAIL:	565 Sq Ft - 1636 Sq Ft
GREASE INTERCEPTOR:	1 - 10000 Gallon (E)
SEPTIC TANK:	1 - 3000 Gallon (E)
	1 - 3000 Gallon (E)
ACTIVE:	1 - 16' x 100' Drainfield (E)
	1 - 24' x 40' Drainfield (E)
	1 - 20' x 40' Drainfield (E)
FUTURE:	100% (Covenant to use adjacent property)
PERC RATE:	1.94 gpsf (Tested)
REFERENCE:	Ensitu Engineering: Existing OWTs evaluation reports dated 4-28-2010 and 12-6-2013

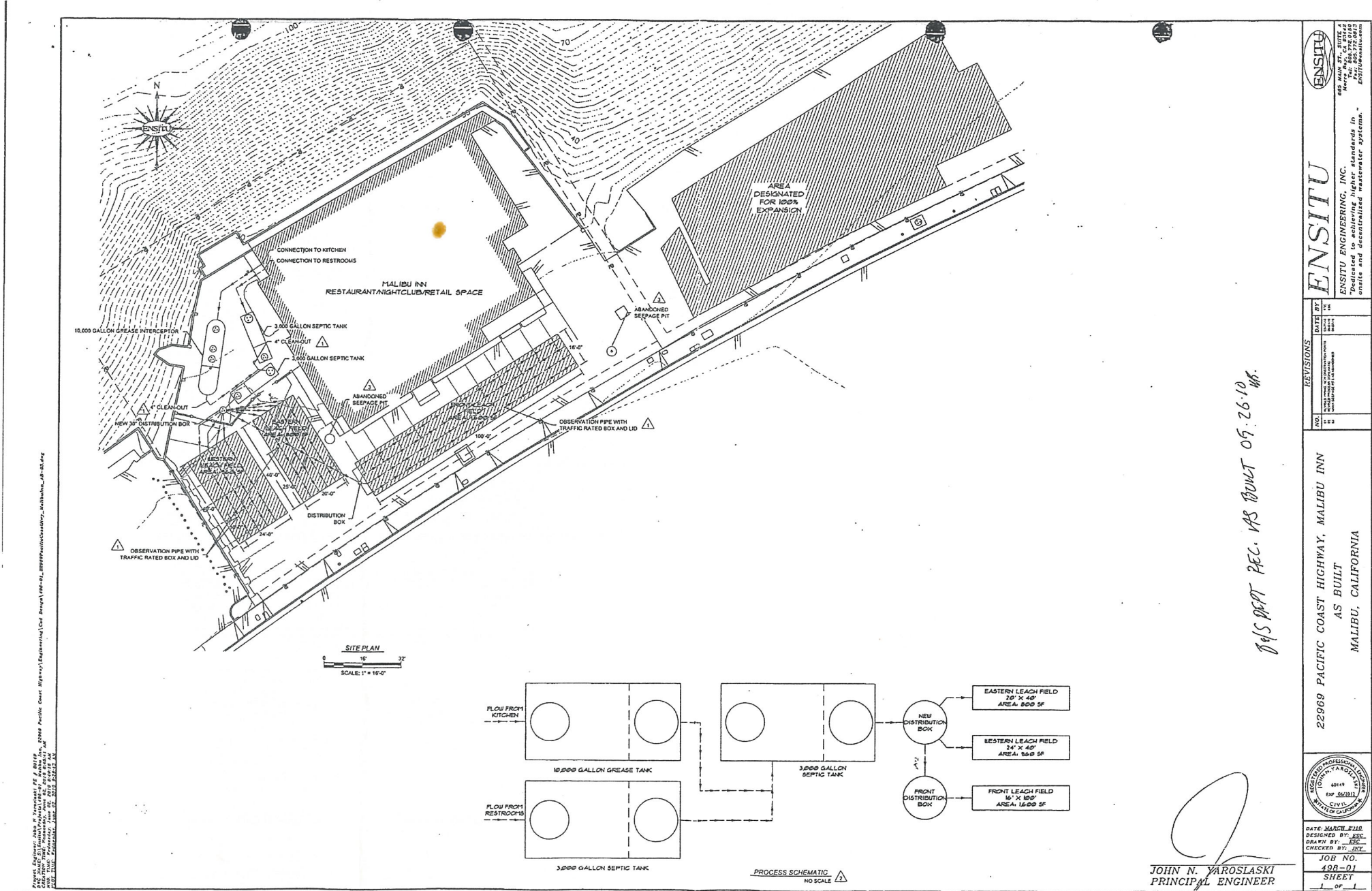
NOTES:

1. This conformance review is for a conditional use permit to operate a restaurant and nightclub. Except as required by the conditions shown below, no renovation of the septic tank and drainfield system is required. This work does not represent an expansion, modification or change in the type or intensity of use of the existing onsite wastewater treatment system.
2. This review relates only to the minimum requirements of the City of Malibu Plumbing Code (MPC) and the Local Coastal Program (LCP), and does not include an evaluation of any geological or other potential problems, which may require an alternative method of wastewater treatment.
3. This review is valid for one year, or until MPC, and/or LCP, and/or Administrative Policy changes render it noncomplying.

CONDITION OF APPROVAL:

1. The Planning Department shall review the existing Conditional Use Permit for the restaurant space to determine consistency with this Environmental Health approval.

CITY OF MALIBU ENVIRONMENTAL SUSTAINABILITY DEPT ENVIRONMENTAL HEALTH CONFORMANCE REVIEW DEC 18 2013 SIGNATURE: <i>A. Sun</i> THIS IS NOT AN APPROVAL. FINAL APPROVAL IS REQUIRED PRIOR TO THE ISSUANCE OF ANY CONSTRUCTION PERMITS.



8/26/21

Planning Dept.

From: [Jason Ernst](#)
To: [Jason Ernst](#)
Subject: FW: Comment Item # 1B - 1C
Date: Thursday, August 26, 2021 12:15:35 PM
Attachments: [Screen Shot 2021-03-17 at 11.33.23 AM.png](#)

From: [REDACTED]
Sent: Thursday, August 26, 2021 11:36 AM
To: Adrian Fernandez <afernandez@malibucity.org>; Patricia Salazar <psalazar@malibucity.org>
Subject: Comment Item # 1B - 1C

Please add this to Malibu Inn Hotel EIR Comments.

COMMENT ON MALIBU INN HOTEL.

Unfortunately, once again, our city has been presented with a staff report dismissing and understating the impacts of new development on Malibu. This project needs an EIR to study noise, traffic, and the impact of a combination of two venues next to each other. A nightclub next to a potential new hotel.

The Malibu Inn Hotel project is proposed at one of the busiest and most dangerous sections of PCH in Malibu. Across from the heavily populated pier, filled Surfrider Beach, the only fast-food spots in Malibu, close proximity to crowded Nobu, Soho House, Malibu Beach Inn, and busy public parking lots. The staff report states that this hotel will hold large events every weekend at the new rooftop bar. These will undoubtedly include weddings, parties, conventions which will bring in hundreds of new cars and yet - staff states only 14 AM and 16 PM new additional daily car trips. This claim flies in the face of the most basic logic and accuracy.

The proposed Project also includes a rooftop bar and pool area, with potential for noise generation, particularly during evening hours. During summer months, events held on the rooftop would be anticipated to occur more frequently, potentially with events or larger gatherings occurring almost every weekend. During winter months, it is anticipated that outdoor events would be less frequent. Any increased permanent noise during the operation of the Project would be controlled by the noise regulations contained in the MMC (Chapter 8.24). Ambient noise associated from the site would continue to be subordinate to noise levels in the existing environment, where ambient noise is dominated by traffic along PCH and nearby commercial areas, and the existing 40-space parking lot that generates ongoing user noise. The project site

Heavy haul trucks will need to run at least 600 - 875 loads to evacuate mounds of dirt on an already overrun PCH.

Approximately 394 cy of the excavated soil would be used as fill material onsite, while the remaining material (approximately 12,255 cy) would be exported from the project site via roughly 600 to 875 heavy haul trucks, depending on the size of trucks utilized (see Section J, below). The total area of ground disturbance would be 0.77 acre, or approximately 33,541 sf. As detailed in

While scaled-down hotels can have advantages, this project at this intersection could not possibly be proposed at a more disruptive location. There is no possible way that this new hotel, in this area, will not greatly impact and cause more disturbance on PCH for visitors and residents. And yet this staff claims this project **"would not result in any cumulative impacts"**. This is a clear example of truth being understated and buried to serve developers, rather than data that protects the city and visitors on PCH.

Please unbury the truth and conduct a proper EIR. Protect this fragile city and Malibu's already overloaded infrastructure. Malibu must demand that a full and accurate traffic study is conducted that includes ingress and egress **of all uses** within a mile of this location including traffic from the pier, Nobu, Malibu Beach Inn,

ATTACHMENT 7

public parking lot, Surfrider Beach, Jack In The Box, Serra entrance, etc.

Thank you for listening, please do the job of planning correctly.

Thank you,

Jae Flora-Katz

Date Received 8/26/2021 Time 11:36am
Planning Commission meeting of 8/26/21
Agenda Item No. 1B/1C
Total No. of Pages 2

Received

8/25/21

Planning Dept.

To: Planning Commission

From: Malibu Coalition for Slow Growth (MCSG) by Patt Healy

Re: item 1B Aviator Nation /Malibu Inn Motel Joint Use Agreement

Date 8-26-21

According to our count, the CUP incorrectly calculates the parking requirements for the restaurant and undercounts both seating area and the number of employees.

In addition, it only makes sense to enter into a new Joint Use Agreement only if the Motel is approved. Otherwise, there is no need to modify the Agreement to reduce the number of parking spaces at this time.

Any approval for reduced parking spaces should be contingent on the motel being constructed as proposed in the next agenda Item 1C.

Date Received 8/25/21 Time 11:12am
Planning Commission meeting of 8/26/21
Agenda Item No. 1B
Total No. of Pages 1

CC: Planning Commission, PD,
Recording Secretary, File

Aaron Gribben

Subject: FW: Correspondence: Malibu Inn and Malibu Inn Motel
Attachments: 22959 Traffic Referral 6.16.20.pdf; COA 22959 Pacific Coast Hwy_CDP 09-067 PW.pdf; CC101122_Item4A.pdf; CC101122_Item 4A_Staff Presentation.pdf; 10-59.pdf; CC101122_Item 4A_Staff Presentation.pdf

From: Adrian Fernandez <afernandez@malibucity.org>
Sent: Wednesday, August 25, 2021 10:59 AM
To: Planning Commissioners <planningcommissioners@malibucity.org>
Subject: Malibu Inn and Malibu Inn Motel

Received
8/25/21
Planning Dept.

Hello Planning Commissioners,

So far there have been questions about adequate noticing and requests for additional information from some of you. Please note that the project was adequately noticed based on code requirements for both the CEQA document review and the public hearing. This project does not require a separate half page add in the newspaper because it is not requesting any amendments to the code unlike the Sea View Hotel and Malibu Country Inn.

Attached are the staff report, resolution and PowerPoint presentation for the original CUP granted for the Malibu Inn. Also, attached are the Public Works Department Review Sheets for the Malibu Inn Motel project. The review sheets were made available to the public using the same link in the agenda report for the initial study but for an unknown reason the Public Works Department Review Sheet attached to the report was corrupted and unreadable.

Link to Department Review Sheets and Initial Study:
<https://www.malibucity.org/810/Malibu-Inn-Motel>

Below are links to the Table 4-zz list and policy memo referenced in the report and initial study:
<https://www.malibucity.org/DocumentCenter/View/320/Projects-with-Entitlements?bidId=>
<https://www.malibucity.org/DocumentCenter/View/310/Environmental-Health-Review-for-Projects-within-the-Civic-Center-Prohibition-Area?bidId=>

Adrian Fernandez
Assistant Planning Director

Planning Department
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
(310) 456-2489, extension 482
Fax: (310) 456-7650
www.malibucity.org

Date Received 8/25/21 Time 10:59am
Planning Commission meeting of 8/26/21
Agenda Item No. 1B1C
Total No. of Pages 267

CC: Planning Commission, PD,
Recording Secretary, File

Connect with the City of Malibu!



Aaron Gribben

Subject: Item 4D hotel and parking lot

Received

9/6/21

Planning Dept.

From: Mark Wallace [REDACTED]

Sent: Monday, September 6, 2021 2:14 PM

To: Patricia Salazar <psalazar@malibucity.org>

Subject: Item 4D hotel and parking lot

I am disgusted that this project is being considered after the developers ignored the prerequisite of representative story poles to allow residents and interested parties to observe the impact of this proposed development. For the planning commission to allow this project to be considered without effective public observation is unconscionable and absolutely unacceptable. It's also unfair to residential builders and rebuilders that are required to place truly representative story poles and public notices.... Especially in such a critical location!!! The planning commission should be ashamed to allow this project to proceed after this suspicious and dubious beginning. It smacks of corruption and conspiracy. Please delay this projects progress until such time as the developers show proper respect and good faith to our community as is required by normal families that seek permits. To do otherwise is proof that the planning commission is merely a corrupt tool of wealthy commercial developers. Mark Wallace and family.

Realtor, Developer,

LA City Fire Captain

And Lifelong Malibu Resident

Date Received 9/6/21 Time 2:14PM
Planning Commission meeting of 9/8/21
Agenda Item No. 4C
Total No. of Pages 1

CC: Planning Commission, PD,

Recording Secretary, File

Aaron Gribben

Subject: Item 4D "motel" and 4C change in Malibu Inn Parking

Received

9/7/21

Planning Dept.

From: Ali Mills [REDACTED]
Sent: Monday, September 6, 2021 10:26 PM
To: Patricia Salazar <psalazar@malibucity.org>
Subject: Item 4D "motel" and 4C change in Malibu Inn Parking

This message is in response to the proposed hotel on PCH and the changes it will inflict on an already overcrowded, hazardous stretch of Malibu. I am opposed to this project and all related projects involving the construction of a motel on PCH.

The story poles that have gone up don't even represent a 1/4 of the developers own rendering of the property. Stop allowing developers to lie and cheat their way into extorting big money from our city.

Malibu's infrastructure cannot handle another influx of tourists in what is an already crammed, central Malibu bottleneck. The vehicle traffic and pedestrian traffic alone makes one wonder how much longer this city will even last in its current shape.

We have so many other problems on our plate as a city, please redirect resources that focus on our own citizens first, before worrying about where to house vacationers!

Sincerely,
Allison Mills

Date Received 9/6/21 Time 10:26pm
Planning Commission meeting of 9/8/21
Agenda Item No. 4C
Total No. of Pages 1

CC: Planning Commission, PD,
Recording Secretary, File

Aaron Gribben

Subject: Item 4D "motel" and 4C change in Malibu Inn Parking

Received

9/7/21

Planning Dept.

From: Ali Mills [REDACTED]
Sent: Monday, September 6, 2021 10:26 PM
To: Patricia Salazar <psalazar@malibucity.org>
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We have so many other problems on our plate as a city, please redirect resources that focus on our own citizens first, before worrying about where to house vacationers!

Sincerely,
Allison Mills

Date Received 9/6/21 **Time** 10:26pm
Planning Commission meeting of 9/8/21
Agenda Item No. 4C
Total No. of Pages 1

CC: Planning Commission, PD,
Recording Secretary, File

Aaron Gribben

Subject: Item 4D hotel and parking lot

Received

9/6/21

Planning Dept.

From: Mark Wallace [REDACTED]

Sent: Monday, September 6, 2021 2:14 PM

To: Patricia Salazar <psalazar@malibucity.org>

Subject: Item 4D hotel and parking lot

I am disgusted that this project is being considered after the developers ignored the prerequisite of representative story poles to allow residents and interested parties to observe the impact of this proposed development. For the planning commission to allow this project to be considered without effective public observation is unconscionable and absolutely unacceptable. It's also unfair to residential builders and rebuilders that are required to place truly representative story poles and public notices.... Especially in such a critical location!!! The planning commission should be ashamed to allow this project to proceed after this suspicious and dubious beginning. It smacks of corruption and conspiracy. Please delay this projects progress until such time as the developers show proper respect and good faith to our community as is required by normal families that seek permits. To do otherwise is proof that the planning commission is merely a corrupt tool of wealthy commercial developers. Mark Wallace and family.

Realtor, Developer,

LA City Fire Captain

And Lifelong Malibu Resident

Date Received 9/6/21 Time 2:14PM
Planning Commission meeting of 9/8/21
Agenda Item No. 4C
Total No. of Pages 1

CC: Planning Commission, PD,
Recording Secretary, File

12/6/21

Planning Commission

Planning Dept. —

From: Mari Stanley [REDACTED]
Sent: Monday, December 6, 2021 3:23 PM
To: Planning Commission
Subject: Plng Comm mtg 12/6/21 - Item 4D & 4E RECUSAL OF JENNINGS FROM VOTING ON MATTERS

Hello,

I request that Chair Jennings make a disclosure this evening as to the firm he has hired to rebuild his Woolsey impacted home to ascertain if there could be a relationship issue that can be seen as improper or beholdng to this project in the expected vote.

Burdge and Associates is a large firm that is handling many of the Woolsey fire rebuilds, I do believe this disclosure is necessary on all development proposals that come before the Planning Commission but in this case I flat out demand a transparent disclosure to insure that the community is assured of full transparency and adherence to the laws. We've already suffered the piss poor - sorry but that is exactly what went down and the applicant deserves no mincing about the disrespect shown by their lack of actions to present a true representation of the project - behavior of the applicant in past meetings and it has not been pretty nor has it advanced the reputation of the applicant's intentions for the community. I am leery and know that many others are as well.

Please exercise the utmost transparency in this project on all matters going forward, not simply this evening. Should never, ever have taken so much to get the story poles in compliance and for that alone I remain distrustful of both staff and applicant for so many other areas of concern - not the least being the separation of the excavations of the retaining wall and the underground area of the motel itself - combine those two to present the true excavation of the site that is involved in both agenda items this evening.

Thank you,
 Mari Stanley
 Zumirez Dr., Malibu, CA

CC: Planning Commission, PD,

Recording Secretary, File

Date Received 12/6/21 Time 3:23 PM
 Planning Commission meeting of 12/6/21
 Agenda Item No. 4D/4E
 Total No. of Pages 1



City Of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Phone (310) 456-2489
www.malibucity.org

PLANNING DEPARTMENT
NOTICE OF PUBLIC HEARING

22969 PCH



22959 PCH



NOTICE OF PUBLIC HEARING

The Malibu Planning Commission will hold a public hearing on **THURSDAY, August 26, 2021, at 6:30 p.m.** on the project identified below via teleconference only in order to reduce the risk of spreading COVID-19, pursuant to the Governor's Executive Orders N-25-20 & N-29-20 & the County of Los Angeles Public Health Officer's Safer at Home Order.

CONDITIONAL USE PERMIT AMENDMENT NO. 13-006 AND JOINT USE PARKING AGREEMENT NO. 14-001 - An application to amend Conditional Use Permit No. 09-009 and Joint Use Parking Agreement (JUPA) No. 10-001 to allow the reduction of the restaurant service area in order to accommodate the creation of a new retail tenant space, and decrease the number of required off-site parking spaces in the JUPA to reflect the new number of required offsite parking spaces at an existing restaurant (Aviation Nation Dreamland)

LOCATION / APN / ZONING: 22969 Pacific Coast Highway / 4452-019-004 / Commercial Visitor-Serving-One (CV-1)
APPLICANT / OWNER: Steven Hakim
APPEALABLE TO: City Council
ENVIRONMENTAL REVIEW: Categorical Exemption CEQA Guidelines Section 15301
APPLICATION FILED: December 11, 2013

For the project listed above with a categorical exemption for environmental review, pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Director has analyzed this proposed project and found that it 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. The Planning Director has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

COASTAL DEVELOPMENT PERMIT NO. 09-067, CONDITIONAL USE PERMIT NO. 18-002, JOINT USE PARKING AGREEMENT NO. 18-001, INITIAL STUDY NO. 20-003, MITIGATED NEGATIVE DECLARATION NO. 20-003, VARIANCE NOS. 18-029, 18-030, 18-031 AND 20-035, AND SITE PLAN REVIEW NO. 18-025 - An application for the construction of a new 7,995 square foot, 20-room motel above a new subterranean parking garage, surface parking lot, rooftop deck with swimming pool, spa and bar area, grading, retaining walls, landscaping, a new onsite wastewater treatment system and authorization for the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol; including a conditional use permit for a motel in the Commercial Visitor-Serving-One zoning district and sale of alcohol, a variance for non-exempt grading in excess of 1,000 cubic yards per acre of commercial development, a variance for construction on slopes steeper than 3 to 1, a variance for a retaining wall that is an integral part of the building in excess of 12 feet in height, a variance for surface parking within the required front yard setback, a site plan review for a building height in excess of 18 feet, not to exceed 24 feet for a flat roof, and a joint use parking agreement to share the parking spaces with the adjacent lot to the east (22969 Pacific Coast Highway - Malibu Inn)

LOCATION / APN / ZONING: 22959 Pacific Coast Highway / 4452-019-005 / Commercial Visitor-Serving-One (CV-1)
APPLICANT / OWNER: Burdge and Associates Architects, Inc. / Surfrider Plaza, LLC
APPEALABLE TO: City Council and California Coastal Commission
ENVIRONMENTAL REVIEW: Initial Study/Mitigated Negative Declaration (SCH No. 2021020396) CEQA Guidelines 15164
APPLICATION FILED: June 11, 2018

For the project listed above with an initial study for environmental review, pursuant to CEQA, the City adopted an initial study and mitigated negative declaration finding that the project would have no significant adverse effects on the environment (CEQA Guidelines Section 15070).

STAFF CONTACT CASE PLANNER: Adrian Fernandez, Assistant Planning Director, afernandez@malibucity.org (310) 456-2489, ext. 482

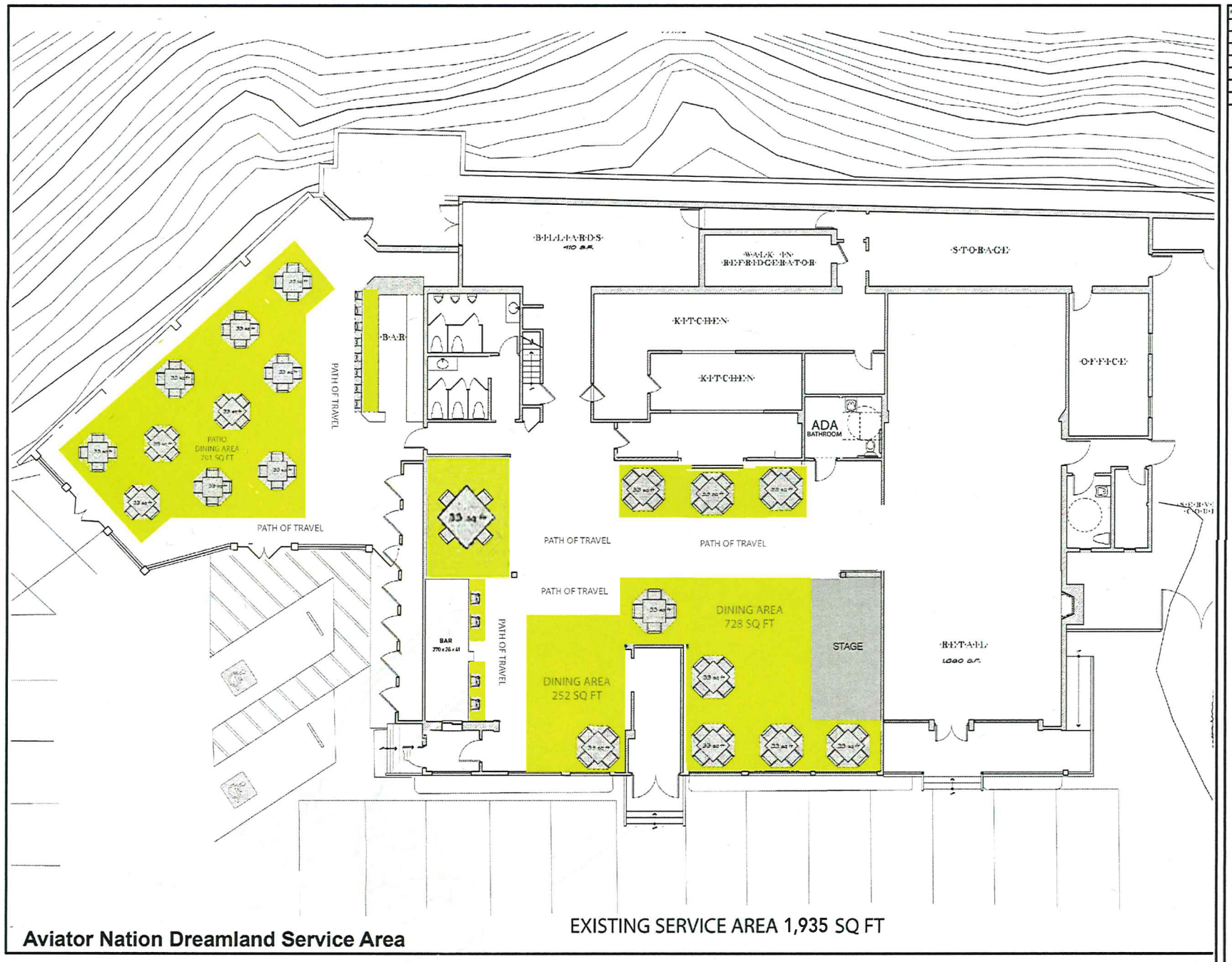
A written staff report will be available at or before the hearing for the project, typically 10 days before the hearing in the Agenda Center: <http://www.malibucity.org/agendacenter>. Related documents are available for review by contacting the Case Planner during regular business hours. You will have an opportunity to testify at the public hearing; written comments which shall be considered public record, may be submitted any time prior to the beginning of the public hearing. If the City's action is challenged in court, testimony may be limited to issues raised before or at the public hearing. To view or sign up to speak during the meeting, visit www.malibucity.org/virtualmeeting.

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org/planningforms, in person, or by calling (310) 456-2489, ext. 245.

COASTAL COMMISSION APPEAL - For the project appealable to the Coastal Commission, an aggrieved person may appeal the Planning Commission's approval directly to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. More information may be found online at www.coastal.ca.gov or by calling 805-585-1800.

RICHARD MOLLICA, Planning Director

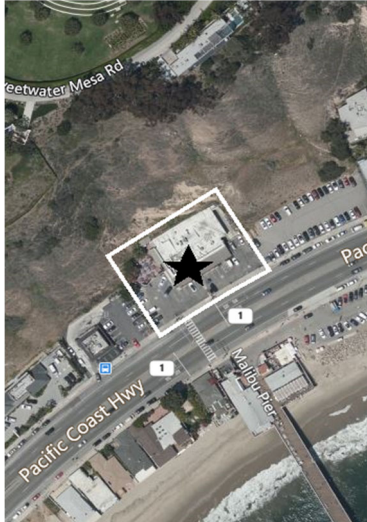
Date: August 5, 2021





City Of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Phone (310) 456-2489
www.malibucity.org

**PLANNING DEPARTMENT
NOTICE OF PUBLIC HEARING**



NOTICE OF PUBLIC HEARING

The Malibu City Council will hold a public hearing on **Monday, October 10, 2022 at 6:30 p.m.** for the project identified below which will be held via teleconference only in order to reduce the risk of spreading COVID-19 pursuant to AB 361 and the County of Los Angeles Public Health Officer's Safer at Home Order.

APPEAL NOS. 22-002 and 22-003- Appeals of Planning Commission Resolution No. 22-01, approving an application for Conditional Use Permit Amendment No. 13-006 and Joint Use Parking Agreement No. 14-001 amending Conditional Use Permit No. 09-009 and Joint Use Parking Agreement No. 10-001 for the reduction of the restaurant service area in order to accommodate the permanent expansion of existing retail tenant space, and decrease the number of required off-site parking spaces (22959 Pacific Coast Highway) in the Joint Use Parking Agreement to reflect the new number of required offsite parking spaces at an existing restaurant (Aviator Nation Dreamland)

LOCATIONS / APN:

22969 Pacific Coast Hwy/APN 4452-019-004

ZONING:

22959 Pacific Coast Hwy/APN 4452-019-005
Commercial Visitor-Serving-1 (CV-1)

Appellants:

Mani Brothers Real Estate Group/Mani MBI (DE), LLC
Pat Healy, Malibu Coalition for Slow Growth

Appeals Filed:

April 14, 2022

APPLICANT / OWNER:

SKA Group, LLC and Surfrider Plaza, LLC

ENVIRONMENTAL REVIEW:

Categorical Exemption CEQA Guidelines Section 15301

APPLICATION FILED:

December 11, 2013

CASE PLANNER:

Adrian Fernandez, Assistant Planning Director, afernandez@malibucity.org
(310) 456-2489, ext. 482

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Director has analyzed the proposed project and found that it 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 CEQA Guidelines Section 15301 – Existing Facilities. The Planning Director has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

A written staff report will be available at or before the hearing for the projects. All persons wishing to address the Council regarding these matters will be afforded an opportunity in accordance with the Council's procedures.

Copies of all related documents can be reviewed by any interested person at City Hall during regular business hours. Oral and written comments may be presented to the City Council on, or before, the date of the meeting.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

RICHARD MOLLICA, Planning Director

Date: September 15, 2022

EXHIBIT G