

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Th20b



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original staff report

ADDENDUM

DATE: February 9, 2015
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item Th20b, City of Malibu LCP Amendment No. LCP-4-MAL-14-0408-1
Thursday, February 12, 2015

The purpose of this addendum is to (1) make changes and clarifications to the staff report, (2) attach *Ex Parte* Notices received from Commissioners, and (3) attach correspondence received since publication of the staff report.

1. Staff Report Modifications.

- a) The Escrow Agreement and Declaration of Covenants, included as Exhibit 10a and 10b of the January 22, 2015 staff report, have been modified to include minor clarifications regarding the timing of recordation and deposit of funds into the escrow account, and to change the open space requirement from a direct dedication of a fee interest in a portion of the property to the Mountains Recreation and Conservation Authority (MRCA) to an open space conservation easement. Revised Exhibits 10a (Escrow Agreement) and 10b (Declaration of Covenants) that reflect these changes are attached as **Attachment 1** of this addendum.
- b) The last paragraph on Page 2 in the Summary of Staff Recommendation of the January 22, 2015 staff report shall be modified as follows (Note: underline indicates text to be added; ~~strikeout~~ indicates text to be deleted):

To address the City's concerns and provide an effective alternative mechanism for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission to provide a \$2,000,000 in-lieu fee to the California Department of Parks and Recreation, through an escrow account, for use in developing lower cost visitor accommodations at the former Topanga Ranch Motel within Lower Topanga State Park, to be released upon the owner securing of entitlements to subdivide and to develop the site with a mix of residential and recreational uses. ~~The agreement also provides for the owner's execution of a covenant on the property, to be recorded if the escrow funds are returned to the developer in accordance with the escrow agreement, in which payment of the \$2,000,000 runs with the land and is binding on any future owners should the current owner sell the property prior to securing entitlements.~~ The agreement also provides for the delivery into escrow of a Declaration of Covenants by the current property owner, to be recorded upon satisfaction of certain conditions specified in the escrow agreement. If the

conditions for recordation of the Declaration of Covenants are met, the obligation for payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners. This provision thus provides extra assurances that the loss of visitor serving accommodations that result from the change in land use designation will be mitigated even if the current property owner decides not to pursue the project. As such, the agreement is structured to provide the Commission with assurance of payment of the fee, which is necessary to mitigate for the loss of a higher priority use and represents an excellent opportunity to provide lower cost visitor-serving accommodations elsewhere in the City. And using an escrow arrangement provides the property owner assurance that the required fee will only be transferred upon securing final entitlements for the planned development.

- c) The second sentence of the last paragraph on Page 5 (Section I.B Public Participation) of the January 22, 2015 staff report shall be modified as follows (Note: underline indicates text to be added):

The City held public hearings on October 2, 2008, June 7, 2012, May 6, 2013, January 6, 2014 February 24, 2014, and May 19, 2014.

- d) The first paragraph on Page 23 of the January 22, 2015 staff report shall be modified as follows (Note: underline indicates text to be added; ~~strikeout~~ indicates text to be deleted):

However, this proposed fee is not reflected in the proposed LCP amendment request given the City's concerns regarding a specific in-lieu mitigation fee amount being specified in the LCP. To address the City's concerns and provide an effective alternative mechanism for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay a \$2,000,000 in-lieu fee to the California Department of Parks and Recreation for use in developing lower cost visitor accommodations at lower Topanga State Park, to be released upon the owner securing of entitlements to subdivide and to develop the site with a mix of residential and recreational uses (Exhibit 10a). ~~The agreement also provides for the recordation of a covenant on the property by the current owner in which payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners should the current owner sell the property prior to securing entitlements~~ The agreement also provides for the delivery into escrow of a Declaration of Covenants by the current property owner, to be recorded upon satisfaction of certain conditions specified in the escrow agreement. If the conditions for recordation of the Declaration of Covenants are met, the obligation for payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners, thereby providing a high degree of assurance that the land use impacts resulting from the re-designation of the site from CV-2 to PD will be mitigated even if the current property owner decides not to pursue the project (Exhibit 10b). This issue is discussed in more detail in the section to follow.

- e) The second full paragraph on Page 27 of the January 22, 2015 staff report shall be modified as follows (Note: underline indicates text to be added; ~~strikeout~~ indicates text to be deleted):

The property owner has submitted a study to Commission staff that inventories and analyzes lower cost overnight accommodations serving the City of Malibu and its vicinity. The study asserts that commercial offerings in Malibu generally cater to more affluent visitors/consumers

rather than visitors seeking low cost overnight accommodations, due in part to the high cost of land in Malibu, which is a major obstacle in constructing new low-cost overnight accommodations. The subject property, in particular, is considered prime real estate given its bluff-top location adjacent to Pacific Coast Highway and overlooking the ocean. Adjacent land to the west is a City park and State public parkland. Adjacent land to the east and south is residential, at a maximum density of four dwelling units per acre. Adjacent land to the north and northeast is considered Malibu's Civic Center area and is zoned for Commercial and Commercial Visitor-Serving uses. Based on the foregoing considerations, the study concludes that the proposed conversion of the subject property is appropriate and would not represent a significant loss of visitor-serving opportunity because the site is not well-suited or economically viable for such a use. However, the study does demonstrate that a high-end, "boutique" hotel-type of visitor serving use appears ~~economically~~ potentially viable on the site. However, an additional analysis provided by the applicant concludes that even a high-end hotel development on the site would not be economically feasible given the physical and operational constraints of the property such as the lack of beach access, height restrictions, constraints regarding sewage disposal and access from Pacific Coast Highway (Exhibit 11).

- f) The first full paragraph on Page 28 of the January 22, 2015 staff report shall be modified as follows (Note: underline indicates text to be added; ~~strikeout~~ indicates text to be deleted):

Commercial visitor-serving uses allowed in the CV-2 zone include hotels/motels and a wide variety of retail uses, general services uses, office and health care related uses, dining drinking and entertainment uses and a variety of public, quasi-public or non-profit uses. Camping is specifically prohibited use on CV-2 zoned property. Although the site is located in a visible, well-traveled location near State-owned park lands and could potentially support some form of commercial and/or recreational development there are a number of constraints that would limit the range and amount of visitor-serving uses that could be accommodated on the site. Given the bluff top location of the "Crummer" site adjacent to Pacific Coast Highway, an LCP designated scenic highway, any development on the site would have to consist of very low-profile type structures, limited to one or possibly two stories. In addition, with required bluff top setbacks per the LCP, the area of the property available for development is significantly reduced (approximately 8.9 acres). Further, there are operational constraints related to sewage disposal, access from Pacific Coast Highway, and the lack of beach access from the site. The landowner has indicated that given the constraints of the property ~~the only type of overnight accommodation that would be economically feasible would be~~ even a very high-end luxury boutique-type hotel of approximately 100 units would not be economically feasible (Exhibit 11).

- g) The last paragraph on Page 30 of the January 22, 2015 staff report shall be modified as follows (Note: underline indicates text to be added; ~~strikeout~~ indicates text to be deleted):

To address the City's concerns and provide an effective alternative method for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay a \$2,000,000 in-lieu fee to the California Department of Parks and Recreation for use in developing lower cost visitor accommodations, to be released upon the owner securing of entitlements to subdivide and to develop the site with a mix of residential and recreational uses (Exhibit 10a). ~~The agreement also provides for the~~

~~owner's execution of a covenant on the property, to be recorded if the escrow funds are returned to the developer in accordance with the escrow agreement, in which payment of the \$2,000,000 is an obligation that runs with the land and is binding on any future owners should the current owner sell the property prior to securing entitlements or otherwise exercise its rights under the escrow agreement to terminate the agreement under certain conditions. The agreement also provides for the delivery into escrow of a Declaration of Covenants by the current property owner, to be recorded upon satisfaction of certain conditions specified in the escrow agreement. If the conditions for recordation of the Declaration of Covenants are met, the obligation for payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners. This provision thus provides extra assurances that the loss of visitor serving accommodations that result from the change in land use designation will be mitigated even if the current property owner decides not to pursue the project (Exhibit 10b).~~ As such, the agreement is structured to provide the Commission with assurance of payment of the fee, which is necessary to mitigate for the loss of a higher priority use. Using an escrow arrangement provides the property owner assurance that the required fee will only be transferred upon securing final entitlements for the planned development. In order to ensure that the proposed amendment will not result in the loss of visitor-serving and recreational opportunities in the Coastal Zone, the Commission is requiring a suggested modification to implement the property owner's mitigation fee offer and the terms described above. Thus, Suggested Modification No. 1 would delete Land Use Plan Policy 2.78 and replace it with a provision in Chapter 5 of the Land Use Plan regarding the PD Land Use Designation (Suggested Modification No. 2) that notes the agreement between the Coastal Commission and the property owner regarding payment of the fee (while respecting the City's desire to not include a specific fee amount in the LCP) as a condition of the land use change from commercial visitor-serving to a mix of residential and recreational use in order to mitigate for the loss of visitor-serving land. The purpose of the fee would be to fund new lower cost overnight visitor accommodations at the former Topanga Ranch Motel within Lower Topanga State Park by CDPR.

- h) Add the following file documents as an Exhibit (#11) to the January 22, 2015 staff report.
- "Study of Lower Cost Overnight Accommodations Serving the City of Malibu and its Vicinity," by AZ Winter Mesa LLC, dated September 2008 (**Attachment 2** of this addendum)
 - "Feasibility Analysis" of a Potential Hotel Development, by PKF Consulting, dated February 5, 2010 (**Attachment 3** of this addendum)

2. **Ex Parte Notices.** *Ex Parte* Communication Notices received from Commissioners are attached as **Attachment 4** of this addendum.

3. **Correspondence Received.**

- a) A letter dated February 2, 2015 was submitted by State Parks Angeles District Superintendent, Craig Sap. The letter conveys State Parks intent to enter into a Memorandum of Understanding with the Commission upon approval of the subject LCP amendment in order to receive the subject \$2,000,000 in-lieu mitigation fee for use in developing lower cost overnight accommodations and related public access improvements in Lower Topanga State Park. The letter is attached as **Attachment 5** of this addendum.

- b) A letter dated February 4, 2015 was submitted by Fred Gaines, representative of the property owner (Green Acres, LLC) at 4000 Malibu Canyon Road in the vicinity of the proposed planned development. The letter is attached as **Attachment 6** of this addendum. Mr. Gaines' letter expresses opposition to the subject LCP amendment and staff recommendation. The letter asserts that the planned development is inconsistent with the scenic resource protection provisions of the Malibu LCP because the residential structures would block prominent public bluewater views and scenic vistas, particularly from inland viewing locations such as the Green Acres, LLC property on the inland side of Pacific Coast Highway and from Malibu Canyon Road. In response, Commission staff would note that the issue of the planned development's consistency with the scenic resource protection policies of the Malibu LCP are addressed in Section V.B.2 of the January 22, 2015 staff report. The letter also asserts that conversion of the site from a commercial visitor-serving use to a residential/recreational use and the in-lieu mitigation fee are not adequately justified in this case. In response, Commission staff would note that this issue is addressed in Section V.B.1 of the January 22, 2015 staff report.
- c) Correspondence has been received from a number of interested parties expressing opposition to the proposed LCP amendment and staff recommendation due to concerns regarding the scale of the five residences and public view impacts. Due to the large volume of similar letters received to-date (approx. 91 letters), only a representative sample of letters is attached for reference as **Attachment 7** of this addendum. However, all letters received are included as part of the administrative record and are available for review in the Commission's Ventura Office.
- d) A letter was submitted by Malibu Coalition for Slow Growth, Preserve Malibu Coalition, and Malibu Township Council on February 9, 2015. The letter is attached as **Attachment 8** of this addendum. The letter expresses opposition to the subject LCP amendment and staff recommendation. The letter asserts that impacts to scenic resources have not been minimized in this case and that alternatives exist, such as reducing height of all structures to 18 feet and limiting the number and footprint of structures. The letter also asserts that the \$2,000,000 in-lieu mitigation fee may not be sufficient mitigation and that there is no assurance that the fee will be used at the Topanga Ranch Motel site for overnight accommodation. In response, Commission staff would note that these issues are addressed in Sections V.B.1 and V.B.2 of the January 22, 2015 staff report.

ESCROW AGREEMENT

This Escrow Agreement (this “**Agreement**”) is entered into as of February __, 2015 by PCH Project Owner, LLC, a Delaware limited liability corporation (“**PCH**”) and the California Coastal Commission, a California state agency (the “**Commission**”). Each of PCH and the Commission is referred to herein as a “**Party**” and together they are referred to as the “**Parties**”.

RECITALS

A. PCH is the owner of an approximately 24-acre vacant parcel in the City of Malibu, California (the “**City**”), adjacent to Malibu Bluffs Park, commonly referred to as the “Crummer Trust” parcel and located at 21420 Pacific Coast Highway (APNs 4458-018-018, 4458-018-019, 4458-018-002) (the “**Property**”).

B. PCH has applied to the City to develop five single-family residences and ancillary facilities (the “**Project**”) on the Property. On February 24, 2014, the Malibu City Council took the following actions with respect to the Project: (i) adopted Resolution 14-11 certifying a Final Environmental Impact Report for the Project, (ii) adopted Resolution 14-12, approving a Vesting Tentative Tract Map No. 070038 (“**VTTM**”) and a Coastal Development Permit (“**CDP 07-144**”) for the subdivision of the Property, (iii) adopted Resolution 14-13, approving a Local Coastal Program Amendment (“**LCPA**”) deleting LUP Policy 2.78 and amending land use designations (collectively, “**LCPA 12-001**”), and (iv) adopted Ordinance No. 379, approving LCPA 12-001, amending the Local Implementation Plan to specify the type, density, uses, and development standards for the Property, and amending the Malibu Municipal Code to establish the Malibu Coast Estate Planned Development District on the Property.

C. On May 19, 2014, the Malibu Planning Commission conditionally approved Coastal Development Permits for five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 07-145, 07-146, 07-148 and 07-149 (together with CDP 07-144 and such CDPs may be amended in a manner acceptable to PCH in its sole and absolute discretion, the “**City CDPs**”).

D. The City submitted LCPA 12-001 (also referred to as “**LCPA 4-MAL-14-0408-1**”) to the Commission on April 21, 2014. On June 6, 2014, the Executive Director of the Commission determined that the City’s LCP amendment submittal was in proper order and legally adequate to comply with the requirements of Coastal Act Section 30510(b).

E. The Commission staff recommended that the Commission adopt certain modifications to LCPA 12-001, which modifications are shown on Exhibit 2 attached hereto (the “**Suggested Modifications**”).

F. In connection with LCPA 12-001, PCH has proposed to (i) make an in lieu payment of Two Million Dollars (\$2,000,000.00) (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the California Department of State Parks and Recreation (“**State Parks**”) in the general area, (ii) deliver a Grant of Conservation Easement substantially in the form of Exhibit 4 attached hereto (the “**Grant**”) an open space conservation easement to the Mountains and Recreation

Attachment 1

Conservancy Authority (“**MRCA**”) on behalf of the people of the State of California over an approximately 6.23 acre area including all of the bluff slopes and approximately 2 acres of the canyon area of the Property as depicted on Exhibit 5 attached hereto, for the purpose of habitat protection (the “**Conservation Easement**”), and (iii) provide MRCA with a payment of Twenty Five Thousand Dollars (\$25,000) as an endowment to monitor the Conservation Easement (the “**Easement Endowment**”). In addition, PCH shall work cooperatively with the MRCA to minimize fuel modification and identify habitat restoration opportunities within the 6.23 acre easement area. PCH and the Commission desire to establish and utilize an escrow so that, upon the fulfillment of all conditions stated in this Agreement, the In Lieu Payment, the Grant and the Easement Endowment shall be implemented in a self-executing manner.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Deposit of the In-Lieu Payment.** No later than two (2) business day prior to the Commission hearing on LCPA 12-001, presently scheduled for February 12, 2015, PCH shall provide proof to the Commission that PCH has deposited the In Lieu Payment and the Easement Endowment into a deposit account with Chicago Title Company (“**Escrow Agent**”), which Escrow Agent is acceptable to both PCH and the Commission. Escrow Agent will establish an interest bearing escrow account for the In Lieu Payment. PCH and the Commission acknowledge and agree that the additional escrow instructions (“**Escrow Instructions**”) attached hereto as Exhibit 1 are incorporated herein. PCH and the Commission shall execute such supplemental instructions and other documents and instruments as requested by Escrow Agent in connection with establishing the escrow. Escrow Agent’s fees and costs shall be paid by PCH.

2. **Deposit of Declaration of Covenants and Grant.** In order to provide further assurances to the Commission regarding the eventual payment of the In Lieu Payment, PCH has executed that certain Declaration of Covenants in the form of Exhibit 3 attached hereto (the “**Declaration of Covenants**”) and deposited it with Escrow Agent to be handled in accordance with this Agreement. In addition, PCH has deposited the Grant with Escrow Agent to be handled in accordance with this Agreement. Neither the Declaration of Covenants nor the Grant shall be delivered or otherwise effective until it is recorded in the Official Records of Los Angeles County in accordance with this Agreement.

3. **Conditions Precedent to Disbursement of In Lieu Payment.** Pursuant to this Agreement, Escrow Agent shall release the In Lieu Payment to State Parks only upon the occurrence of the following: (i) written confirmation from the Commission staff to Escrow Agent, and (ii) written confirmation from PCH to Escrow Agent, in each case confirming that all of the following conditions precedent have been satisfied (the Parties’ duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met):

- a. The Commission has approved and certified LCPA 12-001 (including the Suggested Modifications);

- b. If the Commission has modified or otherwise adopted changes to LCPA 12-001 (other than the Suggested Modifications) (such modifications or changes being the “**Commission Modifications**”), PCH has determined, in its sole and absolute discretion, that such modifications or changes are acceptable to allow the Project to continue and has communicated its determination in writing to the Commission;
- c. If PCH has notified the Commission of PCH’s lack of objection to the Commission Modifications in the manner specified in subsection 3(b) above, and the City Council of the City has subsequently (i) accepted and agreed to the Suggested Modifications and the Commission Modifications to LCPA 12-001 as required and approved pursuant to the Commission’s certification of LCPA 12-001, and (ii) has taken whatever formal legal action is required to incorporate the Suggested Modifications and Commission Modifications to LCPA 12-001 into the City’s Local Coastal Plan;
- d. The Executive Director of the Commission has determined that the City’s actions described in Subsection (c) above are legally adequate to satisfy the Commission’s certification of LCPA 12-001, the Executive Director has reported such determination to the Commission, the Commission has not objected to such determination, and notice of certification of LCPA 12-001 has been filed with the Secretary of the Resources Agency for posting (the “**Final Certified LCPA**”);
- e. Any applicable appeals period and the statutes of limitation period for lawsuits and any other legal challenges to LCPA 12-001 have expired without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been commenced, or any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (i) such adjudication or resolution has upheld, in its entirety, the validity of LCPA 12-001, or (ii) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of LCPA 12-001 (as modified), but such actions are acceptable to PCH in its sole and absolute discretion such that the LCPA 12-001 is final, valid and in full force and effect;
- f. Following the foregoing actions of the City Council of the City and the Commission as set forth in in Subsections 3(a), (b), (c) and (d) above, the City has issued Notices of Final Action as to the City CDPs, without modification unless PCH has notified the Commission in writing of its determination, in its sole and absolute discretion, that such modifications are acceptable for the continuance of the Project; and
- g. Either (i) the applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits and any other legal challenges to the City CDPs, the Final Environmental Impact Report and the other City approvals have expired without any Legal Challenges having been commenced, or (ii) any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (A) such

adjudication or resolution has upheld, in their entirety, the validity of the City CDPs, the Final Environmental Impact Report and the other City approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the City CDPs, the Final Environmental Impact Report and the other City approvals, but such actions are acceptable to PCH in its sole and absolute discretion and PCH has indicated such in writing.

Upon the satisfaction of all of the foregoing conditions precedent and the written confirmation by PCH and the Commission delivered to Escrow Agent, Escrow Agent shall (i) disburse the In Lieu Payment to State Parks in accordance with instructions to be delivered to Escrow Agent by the Commission, (ii) disburse the interest earned on the In Lieu Payment to PCH in accordance with instructions to be delivered to Escrow Agent by PCH, (iii) record the Grant in the Official Records of the County of Los Angeles, (iv) disburse the Easement Endowment in accordance with the agreement between PCH and MRCA, and (v) record the Termination of Declaration as defined in Section 4 below.

4. **Recordation of the Declaration of Covenants.** If the conditions precedent set forth in Subsections 3(a), (b), (c) and (d) above are satisfied and the Final Certified LCPA is in effect and the Commission and PCH have delivered written confirmation (the Parties' duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met), Escrow Agent shall concurrently (i) cause the Declaration of Covenants to be recorded in the Official Records of the County of Los Angeles, and (ii) provide conformed copies of the Declaration of Covenants to PCH and the Commission evidencing such recordation. If the conditions precedent set forth in Section 3(a) – (g) are satisfied, the Commission shall execute and deliver to Escrow Agent an instrument in recordable form and approved by PCH as sufficient to terminate and extinguish the Declaration of Covenants (the “**Termination of Declaration**”).

5. **Reservation of Rights.** PCH shall have the right (but not the obligation) to elect to terminate this Agreement by delivering written notice (the “**Termination Notice**”) to the Commission and Escrow Agent, which election shall be in PCH's sole and absolute discretion, if at any time (i) any of the conditions precedent enumerated in Subsections 3(a), (b), (c), (d), (e), (f) or (g) fail to occur, or (ii) a Legal Challenge covered by Subsection 3(g) has been commenced and PCH determines in its sole and absolute discretion that it does not wish to defend against or otherwise participate in such Legal Challenge and elects to terminate this Agreement. Upon delivery of the Termination Notice to the Commission and Escrow Agent, Escrow Agent shall take the following actions: (1) promptly disburse the In Lieu Payment and all interest earned thereon to PCH, (2) promptly disburse the Easement Endowment and all interest earned thereon to PCH, (3) if the Declaration of Covenants has not been recorded, return the Declaration of Covenants to PCH, (4) return the Grant to PCH, and (5) if a Termination of Declaration has been delivered to Escrow Agent, record the Termination of Declaration. Upon Escrow Agent taking such actions, the rights and obligations of the Parties hereunder shall terminate. However, nothing in this Agreement shall limit or interfere with the exercise of discretion by the Commission or the City in acting on LCPA 12-001 or the City CDPs. Similarly, except as agreed to in Section 1 and 2 above and the satisfaction of the conditions precedent to the delivery of the In Lieu Payment, nothing in this Agreement shall limit or interfere with the right of PCH to preserve its legal position that the inclusion of an in-lieu fee mitigation requirement in LCPA

12-001 or as a condition of the CDP 07-144 or the City CDPs would be contrary to applicable state and federal constitutional and statutory law.

6. **Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties. Neither Party may assign this Agreement to any other person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld. If PCH transfers the Property prior to the recordation of the Declaration of Covenants, PCH shall cause the transferee to assume the obligations of this Agreement and the transferee will be bound by such obligations.

7. **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision in the future.

8. **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of California.

9. **Conflict in Agreements.** In the event of a conflict between the general escrow instructions and the terms of this agreement, the terms of this agreement shall take priority.

10. **Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Exhibits attached hereto are incorporated herein by this reference for all purposes.

11. **Time.** Time is of the essence in the performance of this Agreement.

12. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange by facsimile or email counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in Section 15 below.

13. **Further Assurances.** In addition to the acts recited herein and contemplated to be performed, executed and/or delivered by either Party, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

14. **No Third Party Beneficiary.** The provisions of this Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party, and accordingly,

no third party shall have the right to enforce the provisions of this Agreement or any of the documents to be executed and delivered in connection herewith.

15. **Notices.** All notices, consents, requests, reports, demands or other communications hereunder shall be in writing and may be given personally, by registered or certified mail, by email or by Federal Express (or other reputable overnight delivery service) as follows:

If to PCH:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, California 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, California 90071
Attn: Cary Kleinman, Justin Guichard and Jared Lazarus

Paul Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, California 90071
Attn: Alan W. Weakland

If to the Commission:

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attention: Deanna Christensen

with a copy to:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 9410
Attention: Chief Counsel

If to Escrow Agent:

Chicago Title Company
725 S. Figueroa Street, Suite 200
Los Angeles, CA 90017
213-612-4161
joan.hawkins@ctt.com
Attention Joan Hawkins, Commercial Escrow Officer:

or to such other address or such other person as the addressee party shall have last designated by notice to the other party. All notices shall be deemed to have been given when received. All notices given by telecopy shall be followed by the delivery of a hard copy of such notice, provided that such notice shall be deemed to have been given when received by telecopy.

16. **Attorneys' Fees.** In the event that any Party shall bring an action to enforce its rights under this Agreement, or relating to the interpretation hereof, whether for declaratory or other relief, the prevailing Party in any such proceeding shall be entitled to recover from the other Party reasonable attorneys' fees and all costs, expenses and disbursements that the prevailing Party incurred in connection with such proceeding and any appeal thereof (including, but not limited to, reasonable attorneys' fees and costs).

[Signatures on next page]

SIGNATURE PAGE TO ESCROW AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written below.

“PCH”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: _____
Richard Ackerman
Authorized Signatory

“Commission”

California Coastal Commission,
a California state agency

By: _____
Name: _____
Title: _____

JOINDER BY ESCROW AGENT:

The undersigned Escrow Agent hereby accepts the foregoing Agreement and agrees to act as Escrow Agent under this Agreement in strict accordance with its terms.

Chicago Title Company

By: _____
Name: _____
Title: _____

Date executed by Escrow Agent:

February ____, 2015

EXHIBIT 1

ESCROW INSTRUCTIONS



Chicago Title Company

725 South Figueroa Street, Suite 200, Los Angeles, CA 90017
Phone: (213) 612-4161 • Fax: (213) 488-4384

1/13/2015

Date: January 13, 2015
Escrow No.: _____
Escrow Officer: Joan Hawkins

GENERAL PROVISIONS

1. DEPOSIT OF FUNDS

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all findings should be wire transfer. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

Deposit of funds into general escrow account unless instructed otherwise. You may instruct Escrow Holder to deposit your funds into an interest bearing account by signing and returning the "Escrow Instructions -Interest Bearing Account", which has been provided to you. If you do not so instruct us, then all funds received in this escrow shall be deposited with other escrow funds in one or more general escrow trust accounts, which include both non-interest bearing demand accounts and other depository accounts of Escrow Holder, in any state or national bank or savings and loan association insured by the Federal Deposit Insurance Corporation (the "depository institutions") and may be transferred to other such escrow trust accounts of Escrow Holder or one of its affiliates, either within or outside the State of California. A general escrow trust account is restricted and protected against claims by third parties and creditors of Escrow Holder and its affiliates.

Receipt of benefits by Escrow Holder and affiliates. The parties to this escrow acknowledge that the maintenance of such general escrow trust accounts with some depository institutions may result in Escrow Holder or its affiliates being provided with an array of bank services, accommodations or other benefits by the depository institution. Some or all of these benefits may be considered interest due you under California Insurance Code Section 12413.5. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations, and other benefits shall accrue to Escrow Holder or its affiliates and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations, interest or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Chicago Title Company. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.

3. SUPPLEMENTAL TAXES

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this escrow. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

4. UTILITIES/POSSESSION

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

5. PREPARATION AND RECORDATION OF INSTRUMENTS

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

6. AUTHORIZATION TO FURNISH COPIES

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

7. RIGHT OF CANCELLATION

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver, one copy of such notice to each of the other principals at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH DELIVERY, YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

8. PERSONAL PROPERTY

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested. By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

9. RIGHT OF RESIGNATION

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow. Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

11. ACTION IN INTERPLEADER

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the

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principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

12. TERMINATION OF AGENCY OBLIGATION

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due **Chicago Title Company**, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

13. CONFLICTING INSTRUCTIONS

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

14. DELIVERY/RECEIPT

Delivery to principals as used in these instructions unless otherwise stated herein is to be by hand in person to the principal, regular mail, email or fax to any of the contact information provided in these instructions. If delivered by regular mail receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned may be delivered to the contact information shown herein. All notices, change of instructions, communications and documents are to be delivered in writing to the office of **Chicago Title Company** as set forth herein.

15. STATE/FEDERAL CODE NOTIFICATIONS

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the County in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said County and Escrow Holder shall debit the account of Buyer for same at close of escrow.

16. NON-RESIDENT ALIEN

The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations thereunder, provide in part, that a transferee (buyer) of a U.S. real property interest from a foreign person (non-resident alien) must withhold a tax equal to ten percent (10%) of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service within twenty (20) days after the transfer. **Chicago Title Company** has not and will not participate in any determination of whether the FIRPTA tax provisions are applicable to the subject transaction, nor act as a Qualified Substitute nor furnish tax advice to any party to the transaction. **Chicago Title Company** is not responsible for determining whether the transaction will qualify for an exception or an exemption and is not responsible for the filing of any tax forms with the Internal Revenue Service as they relate to FIRPTA. **Chicago Title Company** is not the agent for the Buyer for the purposes of receiving and analyzing any evidence or documentation that the Seller in the subject transaction is a U.S. citizen or resident alien. The Buyer is advised they must independently make a determination of whether the contemplated transaction is taxable or non-

taxable and the applicability of the withholding requirement to the subject transaction, and should seek the advice of their attorney or accountant. **Chicago Title Company** is not responsible for the payment of this tax and/or penalty and/or interest incurred in connection therewith and such taxes are not a matter covered by the Owner's Policy of Title Insurance to be issued to the Buyer. The Buyer is advised they bear full responsibility for compliance with the tax withholding requirement if applicable and/or for payment of any tax, interest, penalties and/or other expenses that may be due on the subject transaction.

17. ENCUMBRANCES

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

You are authorized, without the need for further approval, to debit my account for any fees and charges that I have agreed to pay in connection with this escrow, and for any amounts that I am obligated to pay to the holder of any lien or encumbrance to establish the title as insured by the policy of title insurance called for in these instructions. If for any reason my account is not debited for such amounts at the time of closing, I agree to pay them immediately upon demand, or to reimburse any other person or entity who has paid them.

18. ENVIRONMENTAL ISSUES

Chicago Title Company has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. **Chicago Title Company** is released of any responsibility and/or liability in connection therewith.

19. USURY

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

20. DISCLOSURE

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

21. FACSIMILE SIGNATURE

Escrow Holder is hereby authorized and instructed that, in the event any party utilizes "facsimile" transmitted signed documents or instructions to Escrow Holder, you are to rely on the same for all escrow instruction purposes and the closing of escrow as if they bore original signatures.

22. CLARIFICATION OF DUTIES

Chicago Title Company serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

23. FUNDS HELD IN ESCROW

When the company has funds remaining in escrow over 90 days after close of escrow or estimated close of escrow, the Company shall impose a monthly holding fee of \$25.00 that is to be charged against the funds held by the Company.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

CHICAGO TITLE COMPANY CONDUCTS ESCROW BUSINESS UNDER CERTIFICATE OF AUTHORITY NO. 350 ISSUED BY THE CALIFORNIA DEPARTMENT OF INSURANCE.

CreoPro

EXHIBIT 2

LCPA 12-001

[INSERT FULL TEXT OF LCPA WITH SUGGESTED MODIFICATIONS]

EXHIBIT 3

FORM OF DECLARATION OF COVENANTS

[INSERT DECLARATION OF COVENANTS]

EXHIBIT 4

FORM OF GRANT OF CONSERVATION EASEMENT

[INSERT FORM OF GRANT OF CONSERVATION EASEMENT]

EXHIBIT 5

LOCATION OF CONSERVATION EASEMENT

[INSERT MAP SHOWING LOCATION OF CONSERVATION EASEMENT]

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attn: Deanna Christensen

ABOVE SPACE RESERVED FOR RECORDER'S USE ONLY

DECLARATION OF COVENANTS

This Declaration of Covenants (this “**Declaration**”), is made as of _____, 201__, by **PCH PROJECT OWNER LLC**, a Delaware limited liability company (“**Owner**”) for the benefit of the **CALIFORNIA COASTAL COMMISSION**, a California state agency (together with its successors and assigns, the “**CCC**”).

RECITALS

A. Owner owns certain real property located in the City of Malibu, State of California, which real property is more fully described and shown in the attached Exhibit A (the “**Real Property**”).

B. The term “**Owner**” as used herein means Owner and each of Owner’s successors in interest, including heirs, successors and assigns, and including all successors-in-interest to all or any portion of the Real Property, including portions or parcels resulting from the subdivision of the Real Property.

C. The City of Malibu (the “**City**”) has approved and submitted to the CCC its Local Coastal Plan Amendment 12-001 also referred to as “LCPA 4-MAL-14—408-1 (the “**LCPA**”) for approval and certification which, *inter alia*, allows the Real Property to be improved with five single-family residences totaling 49,611 square feet and 1.74 acres of park and open space (collectively the “**Residential Entitlement**”).

D. On May 19, 2014, the City of Malibu Planning Commission conditionally approved Coastal Development Permits and granted other approvals for the development of five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 14-03, 14-04, 14-05, 14-06, and 14-07 (collectively, the “**City CDPs**”) for the Real Property.

E. On _____, 2015, the CCC approved the LCPA with certain suggested modifications. Subsequently, the City Council of the City accepted and approved the LCPA with

such modifications and the LCPA became final, valid and in full force and effect (the “**Final Certified LCPA**”).

F. In connection with the CCC approval of the LCPA, Owner has agreed to make an in lieu payment of Two Million Dollars (\$2,000,000.00) under certain conditions (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the California Department of State Parks and Recreation (“**State Parks**”) in the general area.

G. In connection with the In Lieu Payment, Owner has agreed to execute and record this Declaration to assure CCC that the In Lieu Payment will be made under certain conditions specified herein.

H. Owner desires to enter into and record this Declaration to ensure that all subsequent owners of any portion of the Real Property will acquire such interests with full knowledge of and subject to the obligations set forth in this Declaration.

I. Owner, as declarant under this Declaration, declares that the Real Property is, and shall be, held, conveyed, hypothecated, encumbered, licensed, leased, rented, used and occupied subject to the following covenants. All of the covenants, conditions and restrictions set forth in this Declaration shall run with the land, and shall be binding upon the Real Property and the Owner and all parties having or acquiring any right, title or interest in the Real Property, or any portion thereof, and shall inure to the benefit of CCC and the successors and assigns of CCC.

J. This Declaration shall not have any legal effect until it has been recorded in the Official Records of the County of Los Angeles.

ARTICLE I

COVENANTS REGARDING THE ENTITLEMENT OF THE REAL PROPERTY

1. **Owner’s Obligation.** If, at any time, the Real Property receives valid Final Entitlements for the development and use of the Real Property for a proposed residential development, including, without limitation, the Residential Entitlement, then Owner shall pay to State Parks Two Million Dollars (\$2,000,000), within fifteen (15) business days after the Final Entitlements are achieved (the “**Obligation**”) (which amount shall be increased annually on July 1 of each year in accordance with increases in the Consumer Price Index (CPI) California – All Urban Consumers, with July 2015 used as the base year) . As used herein, “**Final Entitlements**” means the Final Certified LCPA, issuance of the requisite Coastal Development Permits, site plan approval, tract map approval, certification of the Final Environmental Impact Report and all other governmental approvals required for the development and construction of the residential units and all related roads, utilities and other infrastructure (the “**Entitlements**”), together with the expiration of all applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits and any other legal challenges to such Entitlements without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been commenced, or (ii) any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either

(A) such adjudication or resolution has upheld, in their entirety, the validity of such Entitlements and any other City or the CCC approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the Entitlements and the other City and the CCC approvals, but such actions are acceptable to Owner in its sole and absolute discretion.

2. **Collection of Obligation, Liens.**

A. **Right to Enforce.** CCC may enforce the Owner's Obligation to pay the amounts provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or CCC may foreclose by judicial proceedings (including, without limitation, injunctive relief) or through the exercise of the power of sale pursuant to Section 2.C enforce the lien rights created or pursue any other lawful remedy. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien rights.

B. **Creation of Lien.** If Owner fails to satisfy the Obligation to pay within the time period stated in Section 1 above, together with the late charge described in Civil Code Section 5650(b), interest at the rate permitted in such Section, and all costs that are incurred by CCC or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against Real Property upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to Owner as provided in Civil Code Section 5675(e).

C. **Notice of Default; Foreclosure.** CCC or its authorized representative may record a notice of default and may cause the Real Property with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, and as provided in Civil Code Sections 5700 through 5715. However, as a condition precedent to the holding of any such sale under Section 2924c appropriate publication shall be made. In connection with any sale under Section 2924c CCC is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

D. **Termination of this Declaration.** This Declaration shall automatically terminate and be of no further force or effect, if (i) the payment of the In Lieu Payment is made by Owner to State Parks, or (ii) at any time the Final Certified LCPA is invalidated, repealed or modified, whether by judicial action or a legislative action by the City, so as to not permit residential development on the Real Property in accordance with the Residential Entitlements. Concurrently with the occurrence of either of the foregoing events, CCC shall execute and deliver to Owner one or more instruments or documents in recordable form as requested by Owner to terminate this Declaration and to release Owner for any liability in connection with this Declaration (a "**Termination of Declaration**").

3. **Sale of Property.** If, at any after the recordation of this Declaration in the Official Records of the County of Los Angeles, Owner sells the Real Property or any portion thereof to an unaffiliated third party purchaser in an arms' length transaction, CCC shall have the right (but

not the obligation) to deliver written notice to Owner declaring the Obligation to be due and payable, in which event Owner shall pay the Obligation to CCC concurrently with the closing of the sale of the Real Property.

ARTICLE II

MISCELLANEOUS

1. **General Provisions.** Except as set forth in Article IV and unless specifically otherwise provided to the contrary in this Declaration, all notices, requests, demands, or other communications required under this Declaration (collectively, “**Notices**”) shall be in writing and delivered (a) personally; (b) by certified mail, return receipt requested and postage prepaid; or (c) by overnight courier (such as UPS, FedEx, or Airborne Express) (any such notice shall be deemed delivered one (1) business day following deposit with such an overnight courier). The initial addressees for any notices to Owner and to CCC shall be as set forth below. All notices given in accordance with the terms hereof shall be deemed given when received as provided above, or upon refusal of delivery.

2. **Notices to Owner.** Notices to Owner pursuant to this Declaration shall be directed as follows:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, CA 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, CA 90071
Attn: Cary Kleinman, Justin Guichard and Jared Lazarus

Paul, Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Attn: Alan W. Weakland

or to such other address as Owner provides in writing CCC at the address(es) set forth in Section 3, below.

3. **Notices to CCC.** Notices to CCC pursuant to this Declaration shall be directed as follows:

South Central Coast District
California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001

Attention: Deanna Christensen

4. **Change of Address(es)**. The addresses above may be changed by providing the new address to the other notice recipients in accordance with Section 1.

5. **Applicable Law**. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

6. **Counterparts**. This Declaration may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one (1) and the same agreement.

7. **Exhibits**. All of the exhibits to this Declaration are hereby incorporated as though fully set forth herein.

8. **Liberal Construction**. The provisions of this Declaration shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

9. **Attorneys' Fees and Costs**. If any party shall bring an action or proceeding (including, without limitation, any cross-complaint, counter-claim, third party claim or arbitration proceeding) against any party by reason of the alleged breach or violation of any provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including but not limited to its reasonable attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award.

10. **Headings**. The headings used in this Declaration are for convenience and reference only and the words contained herein shall not be held to expand, modify, or aid in the interpretation, construction or meaning of this Declaration.

11. **Incorporation of this Declaration into Deeds**. Any deed or other instrument by which all or any portion of the Real Property is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration and any instrument of conveyance shall be deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

12. **Successors and Assigns**. The provisions of this Declaration shall be binding upon all persons acquiring an interest in the Real Property, whether it be fee, easement, leasehold or otherwise, and each of their successors and assigns, and shall be for the benefit of CCC. The Obligations of Owner hereunder are personal to CCC and may not be assigned to any person or entity without Owner's prior written consent, which may be granted or withheld in its sole and absolute discretion.

13. **Severability**. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected

thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

14. **Time of Essence**. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

[Signatures on next page]

IN WITNESS WHEREOF, Owner has executed this Declaration, as of the date first written above.

“Owner”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: _____
Richard Ackerman
Authorized Signatory

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

A PARCEL OF LAND, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING PORTIONS OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGES 407 ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 2 IN THE WESTERLY BOUNDARY OF PARCEL 1 AS DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO STATHAM INSTRUMENTS, INC., RECORDED DECEMBER 30, 1957, AS INSTRUMENT NO. 1542 IN BOOK 56325 PAGE 391, OF OFFICIAL RECORDS OF COUNTY OF LOS ANGELES, CALIFORNIA, THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, NORTHWESTERLY ALONG A TANGENT CURVE (A TANGENT AT SAID CORNER BEARING SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 130 FEET THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 204.20 FEET; THENCE TANGENT TO SAID CURVE SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 130 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 204.20 FEET TO A POINT IN THE WESTERLY BOUNDARY OF SAID PARCEL 1; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST ALONG SAID WESTERLY BOUNDARY 75.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON, BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 2:

BEGINNING AT A POINT IN THE CENTER LINE OF THE STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY DESCRIBED IN PARCEL 1 OF THE DEED TO THE STATE OF CALIFORNIA, RECORDED ON MARCH 22, 1944 AS INSTRUMENT NO. 1279 IN BOOK 20743 PAGE 271, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING IN THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS HAVING A BEARING AND LENGTH OF NORTH 85 DEGREES 35 MINUTES 30

SECONDS EAST 5221.78 FEET AND BEING MARKED BY A BRASS CAP MONUMENT "SOLSTICE CANON L-B", AS SHOWN IN THE COUNTY OF LOS ANGELES SURVEYOR'S FIELD BOOK 1652 PAGES 67 AND 68 ON FILE IN THE OFFICE OF THE COUNTY SURVEYOR OF SAID COUNTY; THENCE ALONG SAID CENTER LINE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 370.32 FEET; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 50.00 FEET TO THE TRUE POINT OF BEGINNING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND; THENCE CONTINUING SOUTH 5 DEGREES 24 MINUTES 30 SECONDS EAST 437.77 FEET; THENCE SOUTH 31 DEGREES 48 MINUTES 00 SECONDS EAST 119.06 FEET; THENCE SOUTH 38 DEGREES 14 MINUTES 53 SECONDS EAST 249.12 FEET; THENCE SOUTH 18 DEGREES 51 MINUTES 46 SECONDS EAST 71.80 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO CECILE A. TREBAOL, ET AL., RECORDED AUGUST 27, 1943 AS INSTRUMENT NO. 705 IN BOOK 20185 PAGE 361, OF SAID OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE DEED TO MARK R. MILLER AND WIFE, RECORDED NOVEMBER 12, 1943 AS INSTRUMENT NO. 883 IN BOOK 20375 PAGE 377 OF SAID OFFICIAL RECORDS, NORTH 73 DEGREES 42 MINUTES 05 SECONDS EAST 305.76 FEET TO THE NORTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO CARL R. HENDERSON AND WIFE RECORDED ON MAY 21, 1943 AS INSTRUMENT NO. 184 IN BOOK 20004 PAGE 197 OF SAID OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE LAST MENTIONED DEED AS FOLLOWS: SOUTH 78 DEGREES 21 MINUTES 55 SECONDS EAST 210.16 FEET; NORTH 86 DEGREES 45 MINUTES 34 SECONDS EAST 315.61 FEET AND NORTH 77 DEGREES 35 MINUTES 06 SECONDS EAST 214.39 FEET TO THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO CLICERIO MINORINI AND WIFE, RECORDED ON FEBRUARY 11, 1942 AS INSTRUMENT NO. 576, IN BOOK 19075 PAGE 301, OFFICIAL RECORDS, SAID SOUTHWEST CORNER BEING A POINT IN THE NORTHERLY LINE OF THE LAND DESCRIBED IN PARCEL 1 OF THE DEED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 2, 1939 AS INSTRUMENT NO. 668, IN BOOK 16845 PAGE 253, OF SAID OFFICIAL RECORDS; THENCE ALONG THE WESTERLY LINE OF THE LAND DESCRIBED IN THE ABOVE MENTIONED DEED TO MINORINI, NORTH 20 DEGREES 00 MINUTES 23 SECONDS WEST 719.46 FEET AND NORTH 14 DEGREES 39 MINUTES 24 SECONDS WEST 118.48 FEET TO THE SOUTHERLY LINE OF SAID STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY; THENCE ALONG SAID PACIFIC COAST HIGHWAY SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 1033.71 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 3:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL 2 ABOVE DESCRIBED, SAID CORNER BEING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND, KNOWN AS PACIFIC COAST HIGHWAY; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 433.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 25 FEET; THENCE SOUTHEASTERLY ALONG

SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE, NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY , HAVING A RADIUS OF 130 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES ARC DISTANCE OF 204.20 FEET TO A POINT IN THE WESTERLY BOUNDARY OF SAID PARCEL 2, DISTANT THEREON SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 255.00 FEET FROM THE NORTHWEST CORNER OF SAID PARCEL; THENCE NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST 255.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953, IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 4:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 1 ABOVE DESCRIBED, SAID CORNER BEING THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO CECILE A. TREBAOL, ET AL., RECORDED AUGUST 27, 1943 AS INSTRUMENT NO. 705 IN BOOK 20185 PAGE 361, OFFICIAL RECORDS; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 2, NORTH 18 DEGREES 51 MINUTES 46 SECONDS WEST 71.80 FEET; NORTH 38 DEGREES 14 MINUTES 53 SECONDS WEST 249.12 FEET, AND NORTH 31 DEGREES 48 MINUTES 00 SECONDS WEST 119.60 FEET TO AN ANGLE POINT IN SAID WESTERLY BOUNDARY, SAID POINT BEING ALSO IN THE EASTERLY LINE OF THE STRIP OF LAND 60 FEET IN WIDTH, HEREINAFTER DESCRIBED AS PARCEL 4; THENCE ALONG SAID EASTERLY LINE AS FOLLOWS: SOUTHEASTERLY ALONG A CURVE, (A TANGENT AT SAID POINT BEARING NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST) CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 70 FEET THROUGH A CENTRAL ANGLE OF 14 DEGREES 30 MINUTES 00 SECONDS AN ARC DISTANCE OF 17.72 FEET, TANGENT TO SAID CURVE SOUTH 19 DEGREES 54 MINUTES 30 SECONDS EAST 87.68 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 160 FEET; SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 79 DEGREES 50 MINUTES 35 SECONDS AN ARC DISTANCE OF 222.96 FEET; TANGENT TO SAID CURVE SOUTH 59 DEGREES 56 MINUTES 05 SECONDS WEST 113.92 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 120 FEET; SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30 DEGREES 30 MINUTES 00 SECONDS AN ARC DISTANCE OF 63.88 FEET TANGENT TO SAID CURVE SOUTH 29 DEGREES 26 MINUTES 05 SECONDS WEST 163.25 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 120 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09 DEGREES 28 MINUTES 27 SECONDS AN ARC DISTANCE OF 19.84 FEET; THENCE RADIAL TO SAID CURVE, SOUTH 70 DEGREES 02 MINUTES 22 SECONDS EAST 13.61 FEET TO THE MOST WESTERLY CORNER OF SAID LAND DESCRIBED IN DEED TO CECILE A. TREBAOL, ET AL., THENCE NORTH 44 DEGREES 41 MINUTES 05 SECONDS EAST ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN SAID DEED 204.39 FEET; THENCE NORTH 82 DEGREES 01 MINUTES 05 SECONDS EAST 355.14 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE

OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OF OFFICIAL RECORDS.

SAID FOUR PARCELS ABOVE MENTIONED OF LAND IS SHOWN ON CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 31, 1985 AS INSTRUMENT NO. 85-1293123.

PARCEL NO. 5:

AN EASEMENT FOR ROADWAY PURPOSES AND PURPOSES OF INGRESS AND EGRESS OVER A STRIP OF LAND 60 FEET IN WIDTH LYING 30 FEET ON EACH SIDE OF AND PARALLEL WITH THE FOLLOWING DESCRIBED CENTER LINE, TO WIT:

COMMENCING AT A POINT IN THE CENTER LINE OF THE STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY AS DESCRIBED IN PARCEL 1 OF THIS DESCRIPTION, SAID POINT BEING MARKED BY A BRASS CAP MONUMENT "SOLSTICE CANON L-B"; THENCE ALONG SAID CENTER LINE SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 117.98 FEET; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 50.00 FEET TO THE TRUE POINT OF BEGINNING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND THENCE CONTINUING SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 230.00 FEET; THENCE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 358.30 FEET; THENCE SOUTHEASTERLY 157.08 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 107.77 FEET; THENCE SOUTHEASTERLY 25.31 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 19 DEGREES 54 MINUTES 30 SECONDS EAST 87.68 FEET; THENCE SOUTHERLY 181.16 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 130 FEET; THENCE TANGENT SOUTH 59 DEGREES 56 MINUTES 05 SECONDS WEST 113.92 FEET; THENCE SOUTHWESTERLY 79.85 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET; THENCE TANGENT SOUTH 29 DEGREES 26 MINUTES 05 SECONDS WEST 163.25; THENCE SOUTHWESTERLY 41.45 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET THENCE TANGENT SOUTH 13 DEGREES 36 MINUTES 05 SECONDS WEST 122.70 FEET; THENCE SOUTHWESTERLY 129.81 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 125 FEET; THENCE TANGENT SOUTH 73 DEGREES 06 MINUTES 05 SECONDS WEST 154.35 FEET; THENCE SOUTHWESTERLY 27.26 FEET ALONG THE ARC OF TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET; THENCE TANGENT SOUTH 62 DEGREES 41 MINUTES 19 SECONDS WEST 112.34 FEET; THENCE SOUTHERLY 138.32 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 16 DEGREES 33 MINUTES 55 SECONDS EAST 18.67 FEET TO A POINT IN THE NORTHERLY LINE OF THE 60 FOOT STRIP OF LAND KNOWN AS MALIBU ROAD, SAID POINT BEING SOUTH 73 DEGREES 26 MINUTES 05 SECONDS WEST 1431.32 FEET AND NORTH 16 DEGREES 33 MINUTES 55 SECONDS WEST 30.00 FEET, FROM ENGINEER'S CENTER LINE STATION 903 71.78 B.C. LINE 1, AT THE EASTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE SHOWN ON LOS ANGELES COUNTY SURVEYOR'S MAP F.M. NO. 11698, SHEET 3, AS NORTH 73 DEGREES 29 MINUTES 00 SECONDS EAST.

APNS: 4458-018-002, 018, 019

**STUDY OF LOWER COST OVERNIGHT
ACCOMMODATIONS
SERVING THE CITY OF MALIBU AND ITS VICINITY
SEPTEMBER, 2008**

**AZ WINTER MESA LLC
C/O BIG ROCK PARTNERS LLC
315 S. BEVERLY DRIVE
BEVERLY HILLS, CA 90212
ATTN: ROBERT GOLD
310-734-2353
RGOLD@BIGROCKPARTNERS.COM**

Attachment 2

City of Malibu LCP Amendment 14-0408-1
February 9, 2015 Addendum

LOWER COST OVERNIGHT ACCOMMODATIONS SERVING THE CITY OF MALIBU AND ITS VICINITY

I. Objective.

AZ Winter Mesa LLC (“AZWM”) has conducted the following study which analyzes the inventory of low-cost overnight accommodations serving the Malibu area in 2008, prior to a downturn in the economy and the existing downward pressure on both occupancy rates and occupancy levels. This study was prepared in connection with AZWM’s request for an LCP amendment which would remove any reference in the LCP to possible CV-2 uses on the Crummer Site (24200 Pacific Coast Highway, Malibu, CA). This study provides empirical evidence that the approval of the proposed LCPA would not interfere with the achievement of appropriate low cost accommodations in the Coastal Zone.

II. Introduction

The coastal area from Point Mugu to Santa Monica

The City of Malibu is uniquely shaped as it stretches approximately 27 miles along the Pacific coast and up to 5 miles inland, bordered by the Santa Monica Mountains and the Pacific Ocean. The public perception of the “Malibu” coastal area extends considerably beyond the City’s legal boundaries both east to Los Angeles and west through Ventura County. The main artery through the area is Pacific Coast Highway. The population of the City of Malibu as of the 2000 census is 12,575 people, with an average household income of \$159,922.

The entire coastal area from Point Mugu to Santa Monica, and the Santa Monica Mountains, attracts travelers visiting the City of Los Angeles, Beverly Hills, Santa Monica, and communities of Hollywood and surrounding areas.

III. Malibu - Tourist Destination

The following is a list of some of the primary tourist destinations in the Malibu area:

- Beaches, including Surfrider and Zuma Beach
- Malibu Film Festival
- Malibu Pier
- Getty Villa
- Santa Monica Mountains
- Celebrity sightings
- Adamnson House
- State Parks, such as the Santa Monica Mountains Recreation Area and State and County beaches
- Malibu Country Mart/Malibu Lumber

Malibu remains mostly a “day-trip” destination. The majority of Malibu’s non-camping visitors, would be consider day-trippers, spending their day in Malibu visiting its beaches, the Getty Villa, shopping or hiking while lodging elsewhere in a more central location in the surrounding Malibu area. Camping visitors generally stay in the Santa Monica Mountains.

The Greater Los Angeles area, “LA” tourists will want to stay in a location that is central to the other attractions, such as Disneyland, Hollywood, Santa Monica, Venice Beach, Long Beach, etc. More urban

areas such as Santa Monica and Los Angeles proper provide significantly more amenities and access to multiple destinations (e.g. the City of Malibu).

Considerations in coastal accommodation planning:

- There is an ample inventory of low cost overnight accommodations to serve visitors to Malibu, given Malibu's neighboring cities: Agoura Hills, Calabasas, Santa Monica, Venice and Los Angeles proper.
- The ratio of high-end rooms to low-cost rooms in Malibu is far less than that of Dana Point, a comparable beach locale that is considered more of a "destination" city than is Malibu.
- The commercial offerings of the City of Malibu (i.e. restaurants, retail shops, entertainment) generally cater to more affluent consumers/visitors rather than visitors seeking low-cost overnight accommodations.
- The high cost of land in Malibu is an obstacle to the construction of new low cost overnight (excluding camping) accommodations.
- The considerable success of Crystal Cove Cottages in Crystal Cove State Park demonstrate that contributions to the establishment of low cost accommodation in State parks can be a highly successful means of promoting more low cost accommodations in the coastal zone,

IV. Methodology

To assess the availability supply of low cost accommodations a study of existing accommodations was performed. The study was not confined to the City of Malibu itself, but rather to an area the normal visitor would consider in terms of accommodations when visiting Malibu and the surrounding Santa Monica Mountains area.

In addition, the survey looked at accommodations up to \$150 average daily rate (ADR) which was considered the upper end of moderate ADR for that survey year.

Methodology

- All listed hotels in the City of Malibu were considered, with the exception of timeshares and private clubs. These hotels can be found online, through third-party websites such as www.hotels.com, and www.tripadvisor.com.
- Phone survey of asking average summer rates using July 25, 2008 w as a representative sample day – a Friday in the peak of summer. For hotels that were not contacted by phone this study uses the hotels advertised "Summer Rates." Lower cost rooms were used for hotels that provide both lower priced and higher cost accommodations.
- Websites used included hotels.com, tripadvisor.com, googlemaps.com, among others. Reservation websites also used, including third-party sites, as long as there were no additional booking fees quoted in the reservation search that could impact the rate.
- Total inventory of rooms for each respective hotel/motel counted in the report, per their ADR.
- Statewide projected peak ADR in 2008 was \$132.90, per Smith Travel Research, for all types of hotels surveyed.
- The threshold used to characterize an accommodation as low or moderate cost was an ADR up to \$150 (2008).
- Survey of accommodations was initially limited to a 15-mile radius from Crummer Site. However, based on information received in a conversation with Steve Curtis, Director Real Estate and Development, Accor/Motel 6 (See Section VI herein) hotels/motels that were outside

of the 15-mile range, were also included when considered to be of the type that visitors would consider, were included, such as Santa Monica, Agoura Hills and Calabasas¹

V. Results

A. Statewide

The following table outlines the statewide ADRs for 2003 through 2007, and projected 2008, by Smith Travel Research. 2008 values projected using exponential regression based on 2003 through 2007 values.

Statewide Average Room Rates for 2003 to 2007 through projected 2008

	2003	2004	2005	2006	2007	Projected 2008
January	\$95.39	\$92.07	\$96.64	\$104.32	\$112.12	\$114.22
February	\$95.16	\$97.35	\$100.62	\$108.30	\$118.07	\$121.72
March	\$93.70	\$96.42	\$100.33	\$109.68	\$116.64	\$122.10
April	\$93.18	\$95.03	\$102.25	\$110.49	\$117.31	\$124.04
May	\$93.88	\$96.65	\$102.39	\$112.08	\$119.02	\$125.82
June	\$92.46	\$95.86	\$102.82	\$111.96	\$119.01	\$126.73
July	\$95.09	\$98.70	\$106.31	\$116.39	\$124.45	\$132.92
August	\$96.28	\$100.18	\$107.37	\$116.81	\$124.82	\$132.88
September	\$92.56	\$95.48	\$105.66	\$112.45	\$119.84	\$128.41
October	\$94.65	\$98.32	\$104.60	\$115.48	\$123.43	\$131.40
November	\$91.10	\$93.86	\$101.67	\$110.55	\$118.38	\$126.12
December	\$86.19	\$90.51	\$96.12	\$103.92	\$110.06	\$117.05
Annual Average	\$93.30	\$95.87	\$102.23	\$111.04	\$118.60	\$125.28

Source: Smith Travel Research, California Tourism, June 2003 through June 2007.

As shown above, the projected 2008 peak average falls in the month of July, where the average ADR is \$132.92. For the purposes of this study, the threshold below which accommodations are deemed "low or moderate cost" will be \$150, taking into account the asking rates of hotels in connection to their quality. An ADR of up to \$150 was chosen a cut off because ADRs in coastal areas generally are significantly higher than other locations in the State.

Database

- Hotels, motels, & campgrounds that fit the above criteria
- Ratio of rooms above and below the average July ADR
- Nature of demographic for both visitors to campgrounds and hotels/motels
- Occupancy rates
 - Occupancy rates range from 60%-100%, with Santa Monica hotels/motels usually reaching capacity during the summer.
 - Agoura Hills and Calabasas hotels/motels provide more room capacity.

¹ Because there are many attractions in the Santa Monica Mountains and the Santa Monica area that would attract visitors, it was assumed that visitors would be flexible and price-driven in choosing where to stay overnight. Because multiple destinations would likely be visited, the normal visitor may choose to stay at a hotel or motel convenient to multiple destination or on the way to or from their primary destination, if any.

B. Malibu

The above in the table below indicates that there are a significant amount of lower cost overnight accommodations-1, 449 in total-that are non-camping, non-RV accommodations within a reasonable distance of Malibu, including in the City Malibu itself. When taken together with other non-hotel accommodations, there are 1,949 rooms available in the greater Malibu area – including in Malibu – which could be characterized as low or moderate overnight accommodations. Therefore, nearly 50% of the total accommodations in Malibu and the greater Malibu area are low or moderate cost.

NOTE-When referring to rooms in campgrounds the table below is referring to number of campsite sites which are at least the functional equivalent of two hotel/motel rooms because of the number of people a campsite can accommodate.

SEE TABLE OF MALIBU ACCOMMODATIONS INVENTORY ON NEXT PAGE

Malibu Accommodations Inventory

Low-Cost Accommodations

	Name	Address	City	Phone	Rooms	Distance from Project	Average Peak ADR	ADR Source	Occupancy
Conventional Lodging									
1	Malibu Riviera Motel	28920 Pacific Coast Hwy	Malibu	310-457-9503	13	6.5	\$123	Phone - 5/30 2:56p	90%
2	Good Nite Inn - Calabasas	26557 Agoura Road	Calabasas	818-880-6000	170	9.4	\$76	Website	70-80%
3	Hilton Garden Inn	24150 Park Sorrento	Calabasas	818-591-2300	142	12.5	\$114	Website	80-85%
4	Hostelling International	1436 2nd Street	Santa Monica	310-393-9913	254	12.8	\$32	Website	94-95%
5	Renaissance Agoura Hills	30100 Agoura Hills Road	Agoura Hills	818-707-1220	280	13.1	\$129	Phone - 6/2 9:44a	80-95%
6	Seaview Motel	1760 Ocean Avenue	Santa Monica	310-393-6711	16	13.2	\$90	Phone - 5/27 3:54p	na
7	Country Inn & Suites by Carlson, Calabasas	23627 Calabasas Road	Calabasas	818-222-5300	123	13.5	\$114	Phone - 5/27 3:56p	60%
8	Santa Monica Motel	2102 Lincoln Blvd.	Santa Monica	310-392-6806	32	13.9	\$89	Phone - 5/30 4:26p	na
10	Ocean Park Inn	2452 Lincoln Blvd.	Santa Monica	310-392-3966	29	14.1	\$80	Phone - 5/30 4:18p	90%
11	Palm Motel	2020 14th Street	Santa Monica	310-452-3861	26	14.2	\$85	Website	
12	Sea Shore Motel	2637 Main Street	Santa Monica	310-392-2787	19	13.9	\$130	Phone - 5/30 4:13p	
13	Comfort Inn - Santa Monica	2815 Santa Monica Blvd.	Santa Monica	310-828-5517	108	14.6	\$149	Website	
14	Homewood Suites	28901 Canwood Street	Agoura Hills	818-865-1000	125	14.1	\$139	Phone - 5/27 3:58p	
15	Malibu Motel	22541 Pacific Coast Highway	Malibu	310-456-6169	18	2.0	\$139	Website	
16	Hampton Inn Suites Agoura Hills	30255 Agoura Road	Agoura Hills	818-597-0333	94	15.0	\$100	Website	100% (peak season)
Subtotal Conventional Lodging					1,449				
Alternative Lodging									
1	Malibu Beach RV Park	25801 Pacific Coast Highway	Malibu	310-452-6052	177	1.9	\$105	Website	
2	Malibu Creek State Park	1925 Las Virgenes Road	Calabasas	818-880-0367	62	4.6	\$25	Website	
3	Leo Carrillo State Park	35000 W. Pacific Coast Highway	Malibu	818-880-0363	135	13.9	\$25	Website	
4	Point Mugu State Park	9000 W. Pacific Coast Highway	Malibu	805-488-5223	126	19.2	\$15	Website	
Subtotal Alternative Lodging					500				
Total					1,949				

(1) Reflects May rate
*Included in survey due to location in Malibu proper

High-End Accommodations

	Name	Address	City	Phone	Rooms	Distance from Project	Average Peak ADR	ADR Source
1	Malibu Beach Inn	22878 Pacific Coast Highway	Malibu	310-456-6444	47	1.8	\$675	Website
2	Casa Malibu Inn	22752 Pacific Coast Highway	Malibu	310-456-2219	21	1.9	\$199	Phone - 5/23 2:43p
3	Casa Laronde	22000 Pacific Coast Highway	Malibu	310-456-9333	2	4.0	\$200	Website
4	Malibu Country Inn	6506 Westward Beach Road	Malibu	310-457-9622	16	6.9	\$210	Website
5	Huntley Santa Monica Hotel	1111 2nd Street	Santa Monica	310-394-5454	209	12.4	\$439	Website
6	Hotel Oceana	849 Ocean Avenue	Santa Monica	310-393-0486	70	12.6	\$460	Website
7	Ocean View Hotel	1447 Ocean Avenue	Santa Monica	800-452-4888	70	12.7	\$299	Website
8	Georgian Hotel	1415 Ocean Avenue	Santa Monica	310-395-9945	84	12.7	\$315	Website
9	Santa Monica Beach Travelodge	1525 Ocean Avenue	Santa Monica	310-451-0761	30	12.8	\$219	Website
10	Ocean Lodge Hotel	1667 Ocean Avenue	Santa Monica	310-451-4146	20	13.1	\$160	Phone - 5/27 3:49p
11	Loews Santa Monica Beach Hotel	1700 Ocean Avenue	Santa Monica	310-394-6326	340	13.1	\$399	Website
12	Le Merigot	1740 Ocean Avenue	Santa Monica	310-395-9700	175	13.1	\$375	Website
13	Holiday Inn Santa Monica at the Pier	120 Colorado Avenue	Santa Monica	877-863-4780	132	13.1	\$243	Website
14	Viceroy Hotel	1819 Ocean Avenue	Santa Monica	310-280-7500	162	13.2	\$449	Website
15	Hotel Casa Del Mar	1910 Ocean Front Walk	Santa Monica	310-581-5533	129	13.4	\$520	Website
16	Doubletree Santa Monica	1707 4th Street	Santa Monica	310-395-3332	253	13.5	\$269	Website
17	Sheraton Delina	530 Pico Boulevard	Santa Monica	310-399-9344	308	13.6	\$242	Website
18	Best Western Gateway	1920 Santa Monica Boulevard	Santa Monica	310-829-9100	123	14.0	\$199	Website
19	Su Casa at Venice Beach	431 Ocean Front Walk	Los Angeles	310-452-9700	12	14.5	\$455	Website
Total					2,203			

VI. Feasibility Analysis of Low or Moderate Cost accommodations at the Crummer Site

If the Crummer Site were used for visitor-serving, such use could conceivably include a hotel or motel. In order to assess whether such a facility is in fact feasible at the Crummer site, an analysis of the siting opportunities and constraints of private operators was undertaken.

Barriers to Low-Cost Accommodations

One of the best known brands of low cost accommodation sought by price-conscious visitors is Motel 6.

- Criteria for a Motel 6 include²:
 - Location proximate to a transient freeway which services commuters, visitors and truckers. Low-cost accommodation hotels, such as Motel 6 (Accor) attract highway travelers en-route to another destination, as well as visitors to the surrounding area.
 - Proximate to demand generators such as local restaurants, retail, tourist locales.
 - Land value extremely important in the selection of a location—Significant impact on the profitability of a low-cost accommodation hotel.
 - Motel 6 also is attracted to tourist locales.

The City of Malibu does not meet many of these requirements. For example, Highway 101 is the preferred “transient” freeway compared to PCH because of the width of lanes, velocity of traffic, and versatility. In addition, lower cost, fast food restaurants are severely lacking in Malibu. The visitor seeking the lower cost accommodations and lower cost dining options will find only a limited number of such dining options in Malibu. Visitors would have to travel to Santa Monica, where there are significantly more options.

Does Malibu qualify as a tourist destination that demands overnight stay?

Most tourists visiting Malibu do not stay overnight, unless they want to:

- Camping: Most of the visitors to Malibu seeking lower cost overnight accommodations are campers. There are sufficient available overnight campgrounds to meet the demands of this group.
- Luxury/High-end vacations: There are a significant number of available overnight accommodations in facilities that cater this segment of the market providing full-service amenities.
- Amenities: Lower cost options are limited.

Comparison to Dana Point

To place the Malibu area in an appropriate context, a southern California site was chosen for comparison that offers many of the attractions in the Malibu area. The City of Dana Point is in Orange County, California.

Dana Point

The City of Dana Point has a population of 35,100, per the 2000 census. Similar to Malibu, Dana Point is seen as a destination for its beaches and its high-end shopping. Neighboring cities, which include Laguna Beach and San Clemente, are larger and provide a more extensive inventory of accommodations.

² As per telephone conversation with Steve Curtis, Director of Real Estate and Development, Accor/Motel 6, May 30, 2008.

Orange County is a destination for visitors to Aliso/Wood Canyons Regional Park, Soka University, San Clemente, Disneyland, beaches (Huntington Beach/Newport Beach), the Block at Orange, South Coast Plaza, and sporting events.

- Database of accommodations in Dana Point
Dana Point has a higher ratio of high-end accommodations to low-end accommodations including camping accommodations compared to Malibu.
- Explanation of difference in geography, consumer profile
Similar to Malibu, land costs in Dana Point make it prohibitive for the low-cost hotels chains. Pacific Coast Highway is the main artery through the city, with commuters and transients using Interstate 5 as the long-distance artery.
- Ratio of Affordable Rooms
Of the hotels surveyed, by way of publicly available internet sites and search engines, Malibu has a total of 4,152 rooms available within a rough 15 mile radius, 47% of which are deemed "low-cost," i.e., below a \$150 ADR. Similarly, the City of Dana Point, has a total of 3,100 available rooms, 26% of which are considered low-cost. As can be seen, there is a lower ratio of low and moderate cost rooms available to visitors to the greater Malibu area when compared with Dana Point.
- Occupancy Rates
Occupancy rates range from 40-100%, with Country Plaza Inn, located approximately 7 miles from Dana Point..

SEE TABLE BELOW OF DANA POINT ACCOMMODATIONS INVENTORY

Dana Point

Low Cost Accommodations

	Name	Address	City	Phone	Rooms	Distance from City Center	Average Peak ADR	Occupancy
1	Dana Marina Inn	34111 Pacific Coast Highway	Dana Point	949-496-1300	20	1.6	\$90.00	n/a
2	Capistrano Seaside Inn	34862 Pacific Coast Highway	Dana Point	949-496-1399	28	3.2	\$129.00	40%
3	Best Western Capistrano Inn	27174 Ortega Highway	San Juan Capistrano	949-493-5661	199	4.1	\$119.00	n/a
4	Best Value Laguna Inn	28742 Camino Capistrano	San Juan Capistrano	949-347-8520	32	5.9	\$126.75	n/a
5	Country Plaza Inn	35 Via Pico Plz	San Clemente	949-498-8800	98	6.5	\$132.00	100%
6	The Little Inn by the Beach	1819 S. El Camino Real	San Clemente	949-492-1960	18	7.9	\$90.00	90%
7	Comfort Suites San Clemente	3701 S. El Camino Real	San Clemente	949-361-6600	60	9.3	\$129.99	90-95%
8	Holiday Inn Laguna Hills	25205 La Paz Rd.	Laguna Hills	949-586-5000	147	11.2	\$127.00	100%
9	Laguna Hills Lodge	23932 Paseo de Valencia	Laguna Hills	949-830-2550	122	13.7	\$129.00	100%
10	Comfort Inn Laguna Hills	23061 Avenida de la Carlota	Laguna Hills	949-859-0166	76	14.7	\$105.00	85-95%
Subtotal Conventional Lodging					800			
Alternative Lodging								
1	Crystal Cove State Park	8471 Pacific Coast Highway	Laguna Beach	949-494-3539	34	1.8	\$15.00	
2	Doheny State Beach	25300 Dana Point harbor Drive	Dana point	949-496-6172	228	1.9	\$35.00	
Subtotal Alternative Lodging					262			
Total					1062			

High-End Accommodations

	Name	Address	City	Phone	Rooms	Distance from City Center	Average Peak ADR
1	St. Regis Monarch Beach	1 Monarch Beach Resort	Dana Point	949-234-3200	400	1.0	\$595.00
2	Dana Point Harbor Inn	25325 Dana Point Harbor Drive	Dana Point	949-493-5001	43	1.7	\$149.00
3	Ritz-Carlton, Laguna Niguel	1 Ritz Carlton Dr.	Dana Point	949-240-2000	393	1.8	\$475.00
4	Marriott Laguna Cliffs	25135 Park Lantern	Dana Point	949-661-5000	376	2.2	\$299.00
5	Doubletree Doheny Beach	34402 Pacific Coast Highway	Dana Point	949-661-1100	196	2.4	\$269.00
6	Capistrano Beach Resort	34734 Pacific Coast Highway	Capistrano Beach	949-248-1316	34	3.1	\$172.00
7	Holiday Inn San Clemente	111 S. Ave De La Estrella	San Clemente	949-361-3000	72	6.1	\$159.00
8	Best Western Laguna Brisas	1600 S. Coast Highway	Laguna Beach	949-497-7272	66	6.6	\$279.20
9	Capri Laguna Beach	1441 S. Coast Highway	Laguna Beach	949-494-6533	50	6.8	\$245.00
10	Days Inn San Clemente	1301 North El Camino Real	San Clemente	949-361-0636	43	7.3	\$139.00
11	Always Inn San Clemente	177 Avenida Carillo	San Clemente	949-374-6165	3	7.5	\$219.00
12	Fairfield Inn Mission Viejo	26328 Oso Parkway	Mission Viejo	949-582-7100	147	7.8	\$149.00
13	By the Sea Inn	475 North Coast Highway	Laguna Beach	949-497-6645	36	8.2	\$359.00
14	San Clemente Cove	104 S. Alameda Lane	San Clemente	949-492-6666	33	8.2	\$329.00
15	San Clemente Inn	2600 Avenida Del Presidente	San Clemente	949-492-6103	96	8.6	\$150.00
16	Laguna Beach Motor Inn	995 N. Coast Highway	Laguna Beach	949-494-5294	22	8.8	\$159.00
17	Crescent Bay Inn	1435 N. Coast Highway	Laguna Beach	949-494-2508	15	9.0	\$155.00
18	Ayres Hotel Laguna Woods	24341 El Toro Road	Laguna Hills	949-588-0131	139	10.8	\$209.00
19	Courtyard by Marriott Laguna Hills	23175 Avenida de la Carlota	Laguna Hills	949-859-5500	136	14.8	\$149.00
Total					2,300		

(1) Peak ADR surveyed is an average of standard rooms offered

VII. Conclusion.

- When reviewing the number of low-cost accommodations, Malibu compares favorably when compared with Dana Point on its own or when looking at their respective surrounding geographic areas.
- The majority of its visitors are tourists on day trips and the geographical makeup of the city does not suggest the need for additional low or moderate cost accommodations on the Crummer Site.
- High land costs and limited number of budget travelers who want to spend the night in Malibu (outside of camping) deters low-cost accommodating hotels from establishing a presence there.
- Hikers and “day-trippers” usually stay in neighboring Santa Monica, Agoura Hills, and Los Angeles. The typical visitor to Malibu is of a transient nature, whereas cities such as Dana Point are more destinations for luxury travelers.
- Malibu benefits from the accommodations offered by nearby cities, such as Calabasas and Santa Monica, which provide overnight stays for low-budget travelers who want to make a day-trip to Malibu.
- Overall, the availability of low-cost accommodations in a 15-mile radius from the Crummer Site seems to sufficient to meet demands and exceeds similarly situated coastal areas, in that the City of Malibu provides a higher ratio of low and moderate cost rooms than that of a similarly established beach destination in the City of Dana Point. In both cities, at least one hotel reported occupancy of 60% or lower in peak season, further evidencing sufficient inventory.
- The enormous success of the Crystal Cove Cottages suggest that contributions in funding to State park accommodation programs offer a feasible and appropriate response to the desire for the creation of additional low and moderate cost overnight accommodations.
- Such an opportunity is being undertaken by the State Department of Parks and Recreation (DPR) at the Topanga Ranch Motel, and other areas of the state park are being targeted for additional establishment or expansion of low and moderate overnight accommodations as funding permits.
- The key obstacle to the DPR program is funding.³
- The Malibu LUP Section 2.35 specifically provides for the creation of lower-cost overnight accommodations through payment of an in-lieu fee into a fund to subsidize the construction of lower-cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County.
- The decline in tourism construction is expected to be protracted, with few new hotel products of any kind being built and many struggling to fill rooms in light of the economic downturn.
- Contributions to the DPR program or other meritorious programs can produce a greater supply of low and moderate cost accommodations in the long term, as land prices, lending, construction costs, and obsolescence lead to retirement of older products without corresponding replacements.

³ Pers. comm.. Ruth Coleman, Director, December 2008

Sources used:

TripAdvisor.com:
www.tripadvisor.com

Malibu Chamber of Commerce:
http://www.malibu.org/business_directory.php?catid=148

Accor:
<http://www.accor-na.com>
Steve Curtis
Director of Real Estate and Development
(9720 360-2711

Google Maps:
<http://maps.google.com>

February 5, 2010

Mr. Robert Gold
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Dear Mr. Gold:

In accordance with our agreement, we have completed our analysis of the feasibility of a potential hotel development on your site in Malibu, California. We have toured the site, reviewed your land cost and potential site preparation costs, and analyzed the potential feasibility of developing a hotel on your site. This report is subject to the General Statement of Assumptions and Limiting Conditions presented in the Addenda.

Site Overview and Background

The subject site, also known as The Crummer Trust site, is located on Pacific Coast Highway (PCH) in Malibu, adjacent to Bluffs Park, just south of Pepperdine University and across PCH from the proposed Rancho Malibu Hotel, also known as the Adamson Hotel site. The subject site encompasses 24 acres on a sloping bluff of varying topography. While the site's elevation on the bluff provides ocean views, the irregular layout and elevation of the site as well as the required safety and bluff set-backs result in a net developable area of approximately 8.9 acres. The remaining 8.9 acres does not include approximately 1.75 acres that the property owner has indicated it will donate to the City of Malibu for recreational uses.

The owner's current cost basis in the land is \$10,000,000. Preliminary estimates for site grading and improvements (excluding actual building or above ground construction) are \$13.5 million for the proposed residential use. We note that this estimate incorporates an onsite waste water treatment package plant and access for five home sites, and that the site preparation costs may be significantly higher for a hotel property with significantly greater density than the current plan of 5 homes sites.

Analysis of Hotel Feasibility

We have toured the site and reviewed its locational aspects in the context of a coastal lodging facility. In reviewing the base costs associated with the development, we start with a basis of \$10 million for land and \$13.5 million for site preparation. Based on the site size and FAR of 0.15, the maximum allowable development is 120,022 square feet of improvements. We have reviewed the subject as a full service hotel and as a limited service hotel. As a limited service hotel, the typical improvements would total approximately 500 to 600 square feet per room for the overall building, including guest rooms, circulation, back of the house space and public spaces. For full service luxury, it is industry practice to allocate 1,000 square feet of gross building area for each hotel room and ancillary spaces. Therefore, based on the allowable FAR the maximum range of hotel rooms that could be accommodated would range from 110 to 120 rooms for a luxury, full service hotel

Feasibility

Attachment 3

City of Malibu LCP Amendment 14-0408-1

February 9, 2015 Addendum

The following table presents a summary of development costs by segment. This is an excerpt from the 2009 Hotel Development Cost Survey as presented by HVS Consulting.

	Land		Building and Site Improvements		Soft Costs		FF&E		Pre-Opening and Working Capital		Total	
2008/09												
Budget/Economy Hotels	\$4,300	- \$30,400	\$30,100	- \$94,500	\$600	- \$13,000	\$4,600	- \$17,100	\$1,400	- \$7,100	\$39,300	- \$141,000
Midscale Hotels w/o F&B	4,200	- 86,000	45,000	- 168,800	2,100	- 61,200	5,700	- 26,400	900	- 25,700	59,600	- 381,800
Extended Stay Hotels	2,600	- 46,400	51,200	- 158,900	2,300	- 84,200	3,600	- 24,500	700	- 25,300	69,800	- 265,000
Midscale Hotels w/ F&B	3,900	- 64,100	45,300	- 145,900	3,400	- 63,100	6,900	- 37,400	300	- 18,900	73,200	- 296,800
Full-Service Hotels	3,900	- 111,200	60,800	- 350,300	2,300	- 118,300	8,600	- 54,600	1,900	- 85,500	96,100	- 585,600
Luxury Hotels and Resorts	13,500	- 247,500	180,200	- 1,383,900	24,800	- 229,400	34,400	- 121,900	10,400	- 80,600	411,300	- 1,466,900

Limited Service Feasibility

As a limited service property the subject's land basis would be approximately \$98,000 per key. From a development standpoint, limited service hotel land allocations typically range from \$4,300 to \$30,400 per room, with a median of \$13,200. At \$98,000 per key, the subject's land basis is already significantly higher than typical all-in development cost for a hotel of this positioning.

	Land	Building and Site Improvements	Soft Costs	FF&E	Pre-Opening and Working Capital	Total
Budget/Economy Hotels						
Average from Budgets	\$13,800	\$48,800	\$4,500	\$8,500	\$3,000	\$63,900
Median	\$13,200	\$44,400	\$2,300	\$8,500	\$2,900	\$51,700
Allocation	14%	55%	8%	8%	4%	

Furthermore, given the site's access and location, and relative distance to area amenities and demand generators, the property may not achieve comparable occupancies as similarly positioned properties in Santa Monica, Santa Barbara, and coastal Orange County. As such, we find limited service infeasible at this time and in the foreseeable future. Limited service properties are also typically constructed on smaller sites to reduce the land allocation within the development budget.

Luxury Hotel Feasibility

Utilizing the maximum allowable room count of 110 to 120 guestrooms, this presents a land and site preparation cost of \$196,000 to \$214,000 per key., full-service properties typically range from \$10,000 to \$30,000 per room, sometimes as high as \$100,000 per key, and luxury hotels and resorts range from \$30,000 to \$200,000+ per room.

	Land	Building and Site Improvements	Soft Costs	FF&E	Pre-Opening and Working Capital	Total
Luxury Hotels and Resorts						
Average from Budgets	\$96,300	\$338,900	\$136,500	\$56,800	\$20,800	\$592,600
Median	\$98,400	\$293,900	\$90,400	\$60,700	\$18,700	\$532,900
Allocation	17%	65%	11%	8%	5%	

The subject's starting basis prior to construction of the hotel facilities places it firmly in the third category and makes the luxury tier the only potentially economically feasible type of development on the property. This limits the potential positioning to luxury/resort, and as a result of this cost basis, requires the property to achieve rates commensurate with luxury resorts along the California coast line. The cost survey presents an average cost, excluding land, of \$496,500 per room for luxury hotels. The following presents a coastal resort development budget. This represents actual cost for a coastal resort developed in 2008/09.

Comparable #1: Luxury Coastal Resort	
	Amount Per Room
Land Purchase Price	\$ 78,179
Building Improvements	428,414
Site Work	97,938
Personal Property (FF&E)	69,617
Legal, Title, and Escrow Fees	13,043
Real Estate Taxes	9,477
Contingency Fees	6,247
Pre-Opening Expenses and Working Capital	37,163
Financing Costs	13,915
Interest Carry	60,440
Total Development Costs	\$ 814,433

As can be seen, the budget allocated approximately \$736,000 per room excluding land. To develop a luxury hotel or resort commensurate with other luxury hotel and resorts along the coast would range from \$500,000 to \$700,000 per room, or \$500 to \$700 per square foot. When combined with the land basis the cost per room would range from \$700,000 to \$900,000. Typically a luxury hotel of this size would need to provide an onsite restaurant, bar and catering kitchen for room service and meetings. While we have factored this into our estimate of 1,000 square feet per room of required improvements, this may increase further due to the smaller room count compared to many coastal properties. In order to achieve critical mass, these properties typically have larger room counts, as can be seen, by the following summary of six luxury coastal properties that are typically recognized as being among the highest positioned properties in California and would ultimately be competitive to the subject.

Proposed Malibu Hotel Competitive Supply	
	2010
Primary Competition	
Four Seasons Santa Barbara	207
Montage Resort and Spa	262
Bacara Resort and Spa	360
St. Regis	400
Ritz Carlton Laguna	393
Fess Parker's Doubletree	360
Competitive Market Total	1,982
Average Room Count	330
Source: PKF Consulting	

From a cashflow standpoint, we have reviewed comparable operating statements from PKF Consulting's *Trends in the Hotel Industry* survey for 2007 and 2008. This presents 2006 and 2007 operating data, reflective of the height of the market. We have presented these comparables as Comparables "A", "B", "C", "D", and "E" for confidentiality purposes.

Given the subject's access and site environs, we estimate that the properties could achieve an ADR of approximately \$400 at occupancy of 65 percent. The following table presents the historical operating performance of the six coastal hotels previously presented.

Historical Market Performance of the Competitive Supply									
Year	Annual Supply	Percent Change	Occupied Rooms	Percent Change	Market Occupancy	Average Daily Rate	Percent Change	REVPAR	Percent Change
2004	728,540	N/A	459,230	N/A	63.0%	\$330.13	N/A	\$208.10	N/A
2005	698,975	-4.1%	410,962	-10.5%	58.8%	359.19	8.8%	211.19	1.5%
2006	694,595	-0.6%	454,930	10.7%	65.5%	399.20	11.1%	261.46	23.8%
2007	723,430	4.2%	473,325	4.0%	65.4%	421.42	5.6%	275.72	5.5%
2008	723,430	0.0%	452,609	-4.4%	62.6%	413.41	-1.9%	258.65	-6.2%
CAAG	-0.2%		-0.4%			5.8%		5.6%	
9-08 ytd	542,755	N/A	356,734	N/A	65.7%	\$435.07	N/A	\$285.96	N/A
9-09 ytd	542,755	0.0%	313,354	-12.2%	57.7%	363.28	-16.5%	209.73	-26.7%

Source: PKF Consulting

Given this historical performance, we find \$400 at 65 percent to be an estimate of the top end of the range of potential operating levels. Using this and the comparable financials, we have projected the potential value per key of the subject as a luxury hotel.

Summary of Net Value		
Basis	#	Notes
Rooms	120	max allowable
Occupancy	65%	at market
ADR	\$400	at market
Other Spend	\$200	50% of rooms revenue, comps at 42%
Total Daily Spend	\$600	Rooms plus other
Occupied Rooms	28470	120 rooms @ 365 days @ 65%
Total Revenue	\$17,082,000	occupied rooms X daily spend
NOI%	25%	Comps average 29%, 25% after reserve
NOI per Key	\$35,588	
Cap Rate	7%	coastal rates range from 6% to 10%
Value per Key	\$508,393	
Cost per Key	\$700,000-\$900,000	
Spread	(\$192,000 - \$392,000)	
Total Cost Deficit	(\$23,000,000 - \$47,000,000)	

Based on our analysis, the subject site has significant cost factors and operational factors that would inhibit it from becoming an economically feasible hotel project at this time and in the foreseeable future. Our cost analysis was based on the reduced costs reflective of the downturn, while our financial comps were taken from the height of the market. The cost to value spread reflects an infeasible project at the height of the market. The following summarizes the main points of our analysis:

- **Land Basis** – The subject's land basis of \$10 million, or \$83,000 to \$91,000 per room, places it above the range of normal land costs associated with full-service hotels and firmly in the range of typical luxury hotel/resort land allocation.
- **Site Preparation** – We have reviewed a preliminary budget for site preparation. This budget was prepared for 5 home sites, and would require a significant upward

adjustment to accommodate a resort hotel with 110 to 120 guestrooms. Primary concerns include

- Sewage disposal costs – Without being able to connect to a municipal sewer, the project team has been informed that there is not sufficient space to percolate the amount of cleaned effluent generated that would be generated from a hotel of 100 rooms. If the property owner attempts to build a zero discharge system, this would significantly add to the site preparation and operational costs.
 - Significant topographical challenges – the subject would be spread over 8 to 9 acres of the 24 acre site, conforming to the site layout and features such as a ravine that bisects a portion of the site. This would make getting from rooms to the restaurant or conference facilities a challenge. There are superior sites for hotel development, including Rancho Malibu, that provide a layout more economically beneficial for hotel operation.
 - Grading costs – the subject has grading limitations of 1,000 cubic yards per acre.
 - Height restrictions – the property has an 18 foot height restriction which may be increased to 24 (Flat roof) feet and 28 feet (pitched roof) with approvals. This would allow for a maximum of two stories, and would limit the height of structures housing public spaces such as the lobby and ballroom, which typically have heights approximating or exceeding these ranges.
 - For the purpose of this study we have not been requested to provide a potential layout of a hotel on the site. However, code requirements for parking, loading, fire access, open space, and required landscaping could further limit the number of rooms that could be developed within the 8.9 acres of developable land.
- Operational Challenges
 - Spread over portions of the 24 acre site, and presenting significant topographical issues, the subject is expected to experience operational issues as a result of layout and access. The spread-out nature and inefficient massing would likely affect operating margins and thereby economic feasibility through higher staffing needs, significant utilities and maintenance, and lack of critical mass to capture group demand.
 - As a luxury resort, and given the cost basis, the subject would need to compete with and achieve comparable rates to other coastal luxury resorts such as Montage Laguna Beach, Shutter in Santa Monica and the Four Seasons Santa Barbara. We find that these competitive properties generally have superior access and site-specific traits. The subject does not have beach access and presents a location atop a 150-foot bluff. As such, the subject may face operational issues in achieving the level of performance of the comparable hotels.
 - The subject's site environs include less than ideal access and visibility from PCH and a range of improvements that may not emanate the surroundings ideal for a destination luxury resort. This includes Malibu Bluffs Park with its ball fields north of the site and the Colony Plaza Shopping Center to the south. There is also a luxury hotel project, Rancho Malibu, immediately across PCH from the site, that is much further along in the development process than this site.
 - Seasonality-We consider the Malibu hotel market as highly seasonal, with peak use during the summer months with an expectation of vacancy rates in the off-season reflective of the more remote location and lack of critical mass as compared to Santa Monica and Santa Barbara. Therefore, in order to generate

more off season vacancies, we would recommend that significant amount of meeting space be included in the project. This may reduce the number of rooms that the site could accommodate, further impacting the economic feasibility of the site as a luxury hotel. The Rancho Malibu site has a larger contiguous developable space and is slated for 146 rooms rather than 110 to 120 and may prove to be a superior site for hotel development.

The end result is a low-rise luxury property with operational issues, a cost basis reflective or exceeding that of a world class resort, and significant site issues that reduce the ability of the property to compete on a regional basis in the luxury resort market. A luxury resort is the only type of lodging that would potentially support the costs associated with development. However, given the scale of site preparation and site deficiencies, we find the subject site would likely not be feasible as a hotel at this time or in the future.

Sincerely,

PKF Consulting

A handwritten signature in blue ink, appearing to read "B. Baltin", is positioned above the printed name and title.

Bruce Baltin
Senior Vice President

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

This report is made with the following assumptions and limiting conditions:

Economic and Social Trends - The consultant assumes no responsibility for economic, physical or demographic factors which may affect or alter the opinions in this report if said economic, physical or demographic factors were not present as of the date of the letter of transmittal accompanying this report. The consultant is not obligated to predict future political, economic or social trends.

Information Furnished by Others - In preparing this report, the consultant was required to rely on information furnished by other individuals or found in previously existing records and/or documents. Unless otherwise indicated, such information is presumed to be reliable. However, no warranty, either express or implied, is given by the consultant for the accuracy of such information and the consultant assumes no responsibility for information relied upon later found to have been inaccurate. The consultant reserves the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

Hidden Conditions - The consultant assumes no responsibility for hidden or unapparent conditions of the property, subsoil, ground water or structures that render the subject property more or less valuable. No responsibility is assumed for arranging for engineering, geologic or environmental studies that may be required to discover such hidden or unapparent conditions.

Hazardous Materials - The consultant has not been provided any information regarding the presence of any material or substance on or in any portion of the subject property or improvements thereon, which material or substance possesses or may possess toxic, hazardous and/or other harmful and/or dangerous characteristics. Unless otherwise stated in the report, the consultant did not become aware of the presence of any such material or substance during the consultant's inspection of the subject property. However, the consultant is not qualified to investigate or test for the presence of such materials or substances. The presence of such materials or substances may adversely affect the value of the subject property. The value estimated in this report is predicated on the assumption that no such material or substance is present on or in the subject property or in such proximity thereto that it would cause a loss in value. The consultant assumes no responsibility for the presence of any such substance or material on or in the subject property, nor for any expertise or engineering knowledge required to discover the presence of such substance or material. Unless otherwise stated, this report assumes the subject property is in compliance with all federal, state and local environmental laws, regulations and rules.

Zoning and Land Use - Unless otherwise stated, the projections were formulated assuming the hotel to be in full compliance with all applicable zoning and land use regulations and restrictions.

Licenses and Permits - Unless otherwise stated, the property is assumed to have all required licenses, permits, certificates, consents or other legislative and/or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

Engineering Survey - No engineering survey has been made by the consultant. Except as specifically stated, data relative to size and area of the subject property was taken from sources considered reliable and no encroachment of the subject property is considered to exist.

Subsurface Rights - No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials, except as is expressly stated.

Maps, Plats and Exhibits - Maps, plats and exhibits included in this report are for illustration only to serve as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced or used apart from the report.

Legal Matters - No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate consultants.

Right of Publication - Possession of this report, or a copy of it, does not carry with it the right of publication. Without the written consent of the consultant, this report may not be used for any purpose by any person other than the party to whom it is addressed. In any event, this report may be used only with proper written qualification and only in its entirety for its stated purpose.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

(continued)

Testimony in Court - Testimony or attendance in court or at any other hearing is not required by reason of rendering this appraisal, unless such arrangements are made a reasonable time in advance of said hearing. Further, unless otherwise indicated, separate arrangements shall be made concerning compensation for the consultant's time to prepare for and attend any such hearing.

Archeological Significance - No investigation has been made by the consultant and no information has been provided to the consultant regarding potential archeological significance of the subject property or any portion thereof. This report assumes no portion of the subject property has archeological significance.

Compliance with the American Disabilities Act - The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We assumed that the property will be in direct compliance with the various detailed requirements of the ADA.

Definitions and Assumptions - The definitions and assumptions upon which our analyses, opinions and conclusions are based are set forth in appropriate sections of this report and are to be part of these general assumptions as if included here in their entirety.

Dissemination of Material - Neither all nor any part of the contents of this report shall be disseminated to the general public through advertising or sales media, public relations media, news media or other public means of communication without the prior written consent and approval of the consultant(s).

Distribution and Liability to Third Parties - The party for whom this report was prepared may distribute copies of this appraisal report only in its entirety to such third parties as may be selected by the party for whom this report was prepared; however, portions of this report shall not be given to third parties without our written consent. Liability to third parties will not be accepted.

Use in Offering Materials - This report, including all cash flow forecasts, market surveys and related data, conclusions, exhibits and supporting documentation, may not be reproduced or references made to the report or to PKF Consulting in any sale offering, prospectus, public or private placement memorandum, proxy statement or other document ("Offering Material") in connection with a merger, liquidation or other corporate transaction unless PKF Consulting has approved in writing the text of any such reference or reproduction prior to the distribution and filing thereof.

Limits to Liability - PKF Consulting cannot be held liable in any cause of action resulting in litigation for any dollar amount which exceeds the total fees collected from this individual engagement.

Legal Expenses - Any legal expenses incurred in defending or representing ourselves concerning this assignment will be the responsibility of the client.

FEB 04 2015

EX PARTE COMMUNICATION DISCLOSURE FORM

California Coastal Commission
South Central Coast District

Filed by Commissioner: Greg Cox

- 1) Name or description of project: Malibu Coast Estate/Crummer Trust Property
- 2) Date and time of receipt of communication: Feb. 3, 2015 at 3:30pm
- 3) Location of communication: Teleconference
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication: Patt Healy
- 5) Identity of person(s) on whose behalf communication was made: Patt Healy
- 6) Identity of persons(s) receiving communication: Greg Murphy, for Greg Cox
- 7) Identity of all person(s) present during the communication: Patt Healy, Greg Murphy

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Greg Murphy on my staff received communication from Patt Healy. She expressed her opposition to the proposed residential housing. Specifically, she stated that the project LCP Amendment and project would violate the visual impact policies of the LCP. She said the project could be scaled down to one-story instead of two, which would be more protective of visual access from Pacific Coast Highway and the nearby Bluffs Park.

Date

2/4/15

Signature of Commissioner

Greg Cox

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

Attachment 4

City of Malibu LCP Amendment 14-0408-1
February 9, 2015 Addendum

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Greg Cox

- 1) Name or description of project: LCP-4-MAL-14-0408-1 (Crummer)
- 2) Date and time of receipt of communication: Feb. 5, 2015 at 2:45pm
- 3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
Anne Blemker
- 5) Identity of person(s) on whose behalf communication was made:
Robert Gold, PCH Project Owner, LLC
- 6) Identity of persons(s) receiving communication:
Greg Cox
- 7) Identity of all person(s) present during the communication:
Robert Gold, Steve Kaufmann, Susan McCabe, Greg Murphy

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from representatives of the property owner in which they went through an electronic briefing booklet that was previously provided to staff. They described the proposed LCPA, its history, and the owners' efforts to work with both the City of Malibu and the Coastal Commission over the years. As described, the amendment allows for a new residential 5-lot Planned Development at the vacant Malibu Coast Estate/Crummer Trust property. An analysis by PKF concluded that visitor-serving uses are not viable at the site. As described by the representatives, benefits of the LCPA/Project include:

- \$2M in funding for State Parks to provide increased lower cost overnight accommodations at Topanga State Beach;
- Increased lower cost recreational use, including parking on land to be donated to the City;
- 6 acre conservation easement to MRCA across the southern bluff;
- Clustered, less intense residential development than originally contemplated in the LCP or approved by the Commission in 2010; and
- Consistency with community character and scale

The property owners are in agreement with the staff recommendation and request approval by the Commission.

2/6/15
Date


Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

FEB 04 2015

EX PARTE COMMUNICATION DISCLOSURE FORM

California Coastal Commission
South Central Coast District

- Filed by Commissioner: Wendy Mitchell
- 1) Name or description of project: City of Malibu LCP Am.
- 2) Date and time of receipt of communication: 9 AM - 2/4/15
- 3) Location of communication: phone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication: Anne Blumberg
- 5) Identity of person(s) on whose behalf communication was made: Property owner - Robert Gold
- 6) Identity of persons(s) receiving communication: Wendy Mitchell
- 7) Identity of all person(s) present during the communication: Susan McCabe
Anne Blumberg, Robert Gold

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Reviewed briefing book provided to
Staff.
State Parks support but is not
in Staff Report. Written in addendum.
City does not support the
modification put in 2010 to make
it only passive recreation - They prefer
active Staff Report says "Bartgin"
2/4/15
Wendy Mitchell (over)

Date

Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

hotel is feasible but PKF Report
concluded it was not feasible.

Question: Will there be opposition
from the owners of the
proposed memorial park?

A: Not sure. They have
worked on screening and
vegetation to remove potential
opposition.

FEB 04 2015 BR

California Coastal Commission
South Central Coast District

EX PARTE COMMUNICATION DISCLOSURE FORMFiled by Commissioner: Carole Groom

- 1) Name or description of project: LCP-4-MAL-14-0408-1 (Crummer)
- 2) Date and time of receipt of communication: Feb. 2, 2015 at 2:20pm
- 3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
Anne Blemker
- 5) Identity of person(s) on whose behalf communication was made:
Robert Gold, PCH Project Owner, LLC
- 6) Identity of persons(s) receiving communication:
Carole Groom
- 7) Identity of all person(s) present during the communication:
Robert Gold, Richard Ackerman, Steven Kaufmann, Susan McCabe, Anne Blemker

received

FEB 05 2015 BK

California Coastal Commission
South Central Coast District

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from representatives of the property owner in which they went through an electronic briefing booklet that was previously provided to staff (titled "Malibu Coast Estate/Crummer Trust Property Planned Development" and dated February 12, 2015). They described the proposed LCPA, its history, and the owners' efforts to work with both the City of Malibu and the Coastal Commission over the years. As described, the amendment allows for a new residential 5-lot Planned Development at the vacant Malibu Coast Estate/Crummer Trust property. An analysis by PKF concluded that visitor-serving uses are not viable at the site. As described by the representatives, benefits of the LCPA/Project include:

- \$2M in funding for State Parks to provide increased lower cost overnight accommodations at Topanga State Beach;
- Increased lower cost recreational use, including parking on land to be donated to the City;
- 6 acre conservation easement to MRCA across the southern bluff;
- Clustered, less intense residential development than originally contemplated in the LCP or approved by the Commission in 2010; and
- Consistency with community character and scale

The property owners are in agreement with the staff recommendation and request approval by the Commission.

Feb 4 2015
Date

Carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Carole Groom

- 1) Name or description of project:
Th20b. City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development)
- 2) Date and time of receipt of communication: Feb. 5, 2015 at 2:30pm
- 3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
Patt Healy
- 5) Identity of person(s) on whose behalf communication was made:
Patt Healy
- 6) Identity of person(s) receiving communication:
Carole Groom
- 7) Identity of all person(s) present during the communication:
Patt Healy

received

FEB 05 2015 BK

California Coastal Commission
South Central Coast District

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing regarding the proposed City of Malibu Local Coastal Program Amendment. The representative indicated opposition to the LCP amendment. She stated that the mitigations of the loss of visitor-serving uses may not be adequate and questioned whether \$2 million is enough to compensate for the visitor-serving areas that would be lost. The representative also questioned whether the parcel can be subdivided. In addition, she mentioned concerns about the visual impacts from public places and stated that these concerns may be greater than shown in the staff report. She stated that tourists and visitors come for the scenic views of the coast and the proposed amendment would likely cause significant visual impacts.

Feb 5 2015
Date

Carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Jana Zimmer

1) Name or description of project: Crummer Trust Malibu LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development)

2) Date and time of receipt of communication: Feb. 9, 2015 10:30-11:00a.m.

3) Location of communication: telecon

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Anne Blemker

5) Identity of person(s) on whose behalf communication was made: Robert Gold, owner

6) Identity of persons(s) receiving communication: Jana Zimmer

7) Identity of all person(s) present during the communication: Anne Blemker, Susan McCabe, Steve Kaufman, Robert Gold, property owner

We discussed that they had reviewed Mr. Gaines letter. Three issues: view blockage, prioritization of visitor serving, and legality of in lieu fee.

Mr. Gold: they had met with Peter Douglas in 2007-8, they pointed out the inconsistency between the designation and land use maps, and land use plan. City's position was that the policy was moot, they had moved the ball fields and they could have residential use. Crummer is the only piece of land in Malibu zoned PD. They had agreed on a 1/2 million dollar in lieu fee.

As they got closer to the hearing, Douglas asked for an increase from \$500,000-\$700,000. Then at the hearing the Commission requested a \$2,000,000 in lieu fee, and there was a lot of discussion on nexus/proportionality. The city was unable to accept the modification, they did not want it in LCP, they asserted the amount was inappropriate.

The owner has not objected to the fee. The staff report says that under the LCP it would be \$196,000. There is a formula if you do luxury overnight accommodations. The Commission drafted the formula in 2002. It flies if you are doing a hotel. The City still says you have to have a nexus. Here, they don't see the lost opportunity for overnight accommodations.

McCabe: the main reason the City allowed the approval to lapse is that they did not believe there was a nexus. And they also let it lapse because the CCC restricted the use on the 1.75 Acres to passive recreation.

Gold: in dealing with staff on the escrow, the staff actually thinks this is an amount that can do something. The City says it is PD, there is no conversion. Staff says there is a condition precedent that didn't happen, it is still technically CV.

The LCP called out the Crummer property in several places, including Policy 2.78. At the time the LCP was being drafted, the prior owner was negotiating a development agreement, to relocate the two ball fields off of Bluffs Park, that was owned by State parks, and the lease was to expire. The City did not want the property zoned CV 2. Zoning maps always showed it as PD- recreation and residential.

So, there was not a clear intention to limit to CV-2 uses. The reason ball fields were not moved was because of an agreement between state parks, city and Mountains conservancy.

Kaufman stated that the Mitigation Fee Act does not apply to the Coastal Commission.

McCabe added: the passive recreation use, when the City was looking for active recreation use, that was a major reason that they did not accept the modifications in 2007, particularly now that there are 83 A additional.

Regarding the height and view issues. Mr. Gold stated that the property being vacant and adjacent to bluffs park, would have scrutiny. They made a number of concessions, reducing density from 8-5 houses. Given the multiple vantage points, the City through the EIR process that was analyzed. They did a visual analysis from 14 vantage points, then from 26. They did study a one story alternative. They modified the project to respond to scenic resources. They reduced the square footage by 6000 square feet. One house was reduced to one story from two stories, moved the massing around, made changes to the landscape plan by removing vegetation, making sure there were gaps in the vegetation to maintain view corridors. Views from Gaines' client property are private views. One story can create more sprawl. They wanted more open space. The calculation is based on the size of the lots, one lot exceeds by 400 square feet. FAR is .05, 50,000 square feet of development.

Kaufman: Gaines visual simulations are misleading/inaccurate. His clients' property has a sweeping view of the Queen's necklace. There may be some view blockage, but not the way they have portrayed it.

One more letter came in from Malibu Country Estates this morning- their issues are related to visuals. That is a 150 homes subdivision up on the hill. They have expressed concerns about views from their property. The City's view protection ordinances deal with landscaping. The EIR analyzed their views, 1/2 mile away and several hundred feet higher in elevation.

Feb. 9, 2015

/s/ Jana Zimmer

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Jana Zimmer

1) Name or description of project: Crummer Trust Malibu Fred Gaines
City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development).

2) Date and time of receipt of communication: Feb. 9, 2015 10:a.m.

3) Location of communication: telecon

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Fred Gaines

5) Identity of person(s) on whose behalf communication was made: Green Acres LLC, owners of property across PCH.

6) Identity of persons(s) receiving communication: Jana Zimmer

7) Identity of all person(s) present during the communication: Clients were proposing a hotel, now proposing a memorial park. Crummer lies directly in line with blue water view of the ocean. The view blockage would be complete from their property, this is the largest remaining visitor serving use in Malibu. This also blocks view from Malibu Bluffs park- the Pearl necklace view down toward Santa Monica. They have provided photo information from the EIR for the Crummer project.

This is one single lot, allowing 5 homes, two stories, 10,000 square feet- they have granted exceptions from 18 foot height limit to 28 ft, all adding to disruption of viewshed. The City is allowed to go to 28 feet if they make findings that it is not going to public viewshed. There are in fact a lot of policies protecting scenic vistas. The EIR addressed this- his photo sims are from the EIR. But there was a cursory determination that the impacts wouldnt be less if the heights were lower. He states that if house were, lower, you could maintain at least some of the blue water views. They did not even find the impacts significant but mitigated.

They are located directly on the bluff. Landscape plan includes trees up to 40 feet. Wanted to create viewsheds through the homes, view corridors. They were unwilling to make those concessions, city of Malibu was unwilling to impose mitigations.

Providing 1.7 A for park, that is the land on top of leach field. 8% of property. In other cases CCC has had much larger dedication requirements especially when visitor serving is turning into gated, private mansions. The \$2,000,000 was done without any kind of study. Unclear why that would mitigate all of the impacts.

They will be coming with a presentation. There will be others as well who have similar issues, i.e. Patt Healy of Malibu.

Regarding the history of the property, this was designated as potentially mixed, some residential, some visitor serving. A lot had to do with the fact that the bluffs park would be

expanded, and other visitor serving at the park. A separate deal between SMM and City, then the City was not so concerned about having visitor serving on the other side. That area was still going to be visitor serving, the net result will be a reduction in visitor serving. The fee is to pay for refurbishment of motel site, still losing a site.

Instead of being next to other visitor serving, it ends up next to five gated mansions. That will create conflicts. People who live in that kind of housing they don't want visitors, usage. One of the reasons that both properties were visitor serving, was that they would work together, not in conflict.

There was a study by PKF re: feasibility. After the fact— The EIR does not review a single visitor serving alternative. There is a hotel feasible— they could do a 100 room luxury hotel and discount it. He thinks the CCC could condition it to require contribution to lower cost. The EIR did not include any alternative that would be visitor serving. Still doesn't mean you have to do five mansions, subdivision, etc. He doesn't know what financial information they utilized to come up with that.

Feb. 9, 2015

/s/Jana Zimmer



DEPARTMENT OF PARKS AND RECREATION
Angeles District
1925 Las Virgenes
Calabasas, CA. 91302

Lisa Ann L. Mangat, Acting Director

February 2, 2015

PCH Project Owner, LLC
c/o BRP, LLC
315 S. Beverly Drive, Suite 311
Beverly Hills, CA 90212
Attn: Robert Gold

In re: LCP AMENDMENT NO. LCP-4-MAL-14-0408-1

Dear Mr. Gold:

I have been informed that the above referenced LCPA for the Crummer Project located at 24120 Pacific Coast Highway, Malibu, CA (the "Crummer Site"), is scheduled to be heard by the California Coastal Commission at its hearing scheduled February 11-13, 2015.

Pursuant to our ongoing discussions, as part of the Crummer project PCH Project Owner, LLC ("Owner") has agreed to deposit the sum of \$2,000,000 ("Escrow Deposit") into an escrow account and enter into an escrow agreement with the California Coastal Commission ("CCC"). It is my understanding that the escrow agreement will provide that upon final approval of all of the entitlements for the Crummer Project, the Escrow Deposit will be release to the CCC which in turn will deliver the Escrow Deposit to the California Department of State Parks and Recreation ("State Parks") to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities at a site owned and managed by State Parks.

On September 28, 2012, the California State Park and Recreation Commission approved a General Plan and certified an EIR for Topanga State Parks (General Plan). State Parks is actively seeking funding for specific visitor-serving amenities for the Topanga State Park/Lower Topanga Zone for the initial phase of the General Plan. These facilities would include lower cost overnight accommodations, ADA accessible hiking trails, and the construction of a modern sewer/septic system. This initial phase includes the planning, construction, and installation of lower-cost overnight accommodations of up to 12 cabins and the construction of a sewer/septic system that would serve the new facilities, as well as such additional access, recreation, and visitor-serving amenities improvements (such as ADA-accessible trails) and habitat restoration as may be agreed to by the Coastal Commission and State Parks. The assignment of in-lieu fees from the Coastal Commission to State Parks could be utilized immediately to fund this initial phase. These improvements and programs are consistent with the

Attachment 5

City of Malibu LCP Amendment 14-0408-1

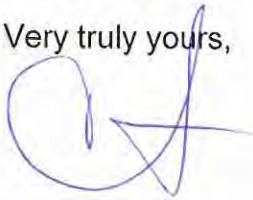
February 9, 2015 Addendum

Robert Gold
February 2, 2015
Page 2

General Plan. The new sewer/septic system would also be used for the next phase of the Lower Topanga Zone, the renovation of the Topanga Ranch Motel. Upon approval of LCPA 4-MAL-14-0408-1, State Parks is prepared to enter into a Memorandum of Understanding with the CCC to use Escrow Deposit for improvements outline above for the Topanga State Park/Lower Topanga Zone.

Thank you for your support and assistance.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'CS' or 'Craig Sap', with a large loop and a horizontal stroke.

Craig Sap,
Angeles District Superintendent

CC: Charles Lester, Executive Director
John Ainsworth, Deputy Director

FRED GAINES
SHERMAN L. STACEY
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February 4, 2015

ORIGINAL VIA FEDERAL EXPRESS

VIA FACSIMILE (415) 904-5400

Steve Kinsey, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Agenda Item No.: Th 20b

Application No.:
LCP-4-MAL-14-0408-1

Green Acres, LLC in Opposition

Re: Malibu Coast Estates/Crummer Trust Property Planned Development
LCP Amendment No. LCP-4-MAL-14-0408-1
Commission Hearing Date: Thursday, February 12, 2015
Opposition to Malibu Coast Estate/Crummer Trust Property Planned Development

Dear Chair Kinsey and Honorable Commissioners,

This law office represents Green Acres, LLC with regard to its ownership and future development of 4000 Malibu Canyon Road (the "Green Acres Site"). The Green Acres Site is the largest remaining undeveloped commercial visitor-serving property in the City of Malibu (the "City") and is situated immediately to the north of the Crummer Trust Property Planned Development (the "Project"). The Staff Report for the Project, which consists of a Local Coastal Program ("LCP") Amendment to permit the development of five gated multi-million dollar homes, concedes numerous inconsistencies with the Coastal Act's commercial visitor-serving prioritization, and scenic and visual resource protection policies among others, then leaps to the conclusion that such inconsistencies are justified because the applicant has agreed to pay \$2,000,000 for off-site mitigation. But there is no escaping the fact that the Project will have severe and long-lasting impacts on the Green Acres Site, the City of Malibu, and surrounding environment. In fact, this Project sends a precedential message statewide that exclusive, private residential development can win the Commission's approval for the right price. **For the reasons outlined below, Green Acres requests that the Coastal Commission deny the Project in its entirety**¹

¹ It should be noted that the arguments and evidence presented herein are in addition to any other arguments or evidence which the City of Malibu and/or Coastal Commission has received or may receive from our client, including the May 20, 2013 Letter from Gaines & Stacey to Ha Ly; January 3, 2014 Letter from Gaines & Stacey to Malibu Planning Commission; February 20, 2014 Letter from Gaines & Stacey to Malibu City Council; and May 16, 2014 Letter from Gaines & Stacey to Malibu Planning Commission.

A. THE PROJECT BLOCKS PROMINENT PUBLIC BLUEWATER VIEWS AND SCENIC VISTAS.

The 24 acre Project site is prominently situated on a blufftop along Pacific Coast Highway ("PCH") to the north and Malibu Road to the south, adjacent to the Civic Center and commercial core of Malibu. The Project is inconsistent with Land Use Plan Policies 6.1, 6.2, 6.4, and 6.5 and Implementation Plan Sections 6.5(A)(1) and (A)(2-4) as it is visible from many important viewing areas, including PCH, Malibu's Civic Center, Malibu Colony Beach, Surfrider Beach, Malibu Pier, Malibu Bluffs Park, Malibu Road, Malibu Canyon Road, and others. Although the Project was modified slightly during the City's approval process, visual and scenic resources from these public viewing areas, including the Green Acres Site, are greatly impacted. In fact, the Staff Report concedes that the homes proposed for Lots 1 through 4 would be "unavoidably visible" from identified public viewing areas. [Staff Report, page 35.]

Green Acres previously presented visual graphics to the City showing the unavoidable aesthetic impacts of the Project. [See "Exhibit A" attached hereto.] Substantial evidence shows that the Project will negatively impact bluewater views of the Pacific Ocean and scenic resources, including public rights of way and vista points. The proposed 28' height on a prominent blufftop, adjacent to Malibu's City center, is inconsistent with the City's General Plan, LCP, and Coastal Act, and the City failed to include mitigation measures to alleviate the significant impacts resulting from those inconsistencies. Approving the LCP Amendment would authorize development inconsistent with the protection of valuable scenic resources.

B. THE PROJECT PRIORITIZES GATED MANSIONS OVER COMMERCIAL VISITOR-SERVING LAND AND USES.

Visitor-serving commercial property and uses have long been given priority under the Coastal Act and the Malibu LCP, which states: "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." This Project, which consists of the development of five gated single-family mansions, not only is counter to that priority, but is exactly the type of project the Commission has discouraged (and denied) for decades. Specifically, the Project is inconsistent with Coastal Act Policies Section 30213, 30222, 30223, 30250(a), and 30252 and City of Malibu Land Use Plan Policies 2.33, 2.34, 2.36, 2.37, 2.78, 5.35, and 5.36. By completely altering the Planned Development language in the City's LCP, approval of the Project would result in the elimination of one of the last remaining properties in the City that was envisioned and planned for commercial visitor-serving uses.²

² The Project Environmental Impact Report ("EIR") completely fails to analyze the impacts of this dramatic shift.

Staff states that “[t]he City and property owner believe that a Commercial Visitor-Serving use is not viable at this site...” [Staff Report, page 22.] and that the Project site is “not well-suited or economically viable for such a use” [Staff Report, page 27]. No explanation for those statements is provided. The truth is that the Project site is viable for commercial visitor-serving uses, but such a project does not suit the desire of the applicant who has agreed to mitigate the loss of visitor-serving land with payment of a dubious “in lieu mitigation fee,” as discussed further below.³

C. THE \$2,000,000 “IN LIEU MITIGATION FEE” IS ILLEGAL.

Commission staff claims that the applicant’s agreement to pay a \$2,000,000 “in lieu mitigation fee” will compensate for approval of the Project. In sum, Project approval means that 24 acres of land once designated for commercial visitor-serving uses is permanently converted to property reserved for five wealthy future homeowners, gated off from the public. Staff explains that the applicant’s payment would be paid to the California Department of Parks and Recreation, through an escrow account, for use in developing lower cost visitor accommodations at the former Topanga Ranch Motel within Lower Topanga State Park, to be released upon the owner securing Project entitlements.

The subject \$2,000,000 agreement is in conflict with, and in fact, circumvents the requirements of California’s Mitigation Fee Act (“MFA”) and substantial case law that requires there to be a reasonable relationship between impacts of a project and the fee imposed, as well as a rough proportionality between project impacts and the exaction. Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994); Ehrlich v. City of Culver City, 12 Cal.4th 854 (1996); Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013). The staff Report states that the City is “not interested” in dedicating time and funds to conduct a study pursuant to the MFA in order to determine the nexus and rough proportionality requirements. The Staff Report admits the third party agreement is a “mechanism” to circumvent the MFA but, tellingly, does not offer any legal justification for doing so.

³ Substantial evidence of the economic viability of visitor serving uses at the Project site was submitted to the City of Malibu, but ignored. [See Gaines & Stacey presentation to the City of Malibu, February 24, 2014.]
G&S\1446-007

Steve Kinsey, Chair
February 4, 2015
Page 4

D. CONCLUSION.

The Commission's approval of the Project would set a dangerous precedent by sending the statewide message that exclusive, gated housing developments on prime commercial visitor- serving property can gain Coastal Commission approval for the right price.

We respectfully request that the Commission deny the Project in its entirety. Thank you for your consideration. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY LLP

By


FRED GAINES

Enclosure

cc: All Coastal Commission Members
Charles Lester, Executive Director (Via Email)
Jack Ainsworth (Via Email)

EXHIBIT “A”

Transition View of Scenic Vista – View A



Existing Blue Water View A from Rancho Malibu

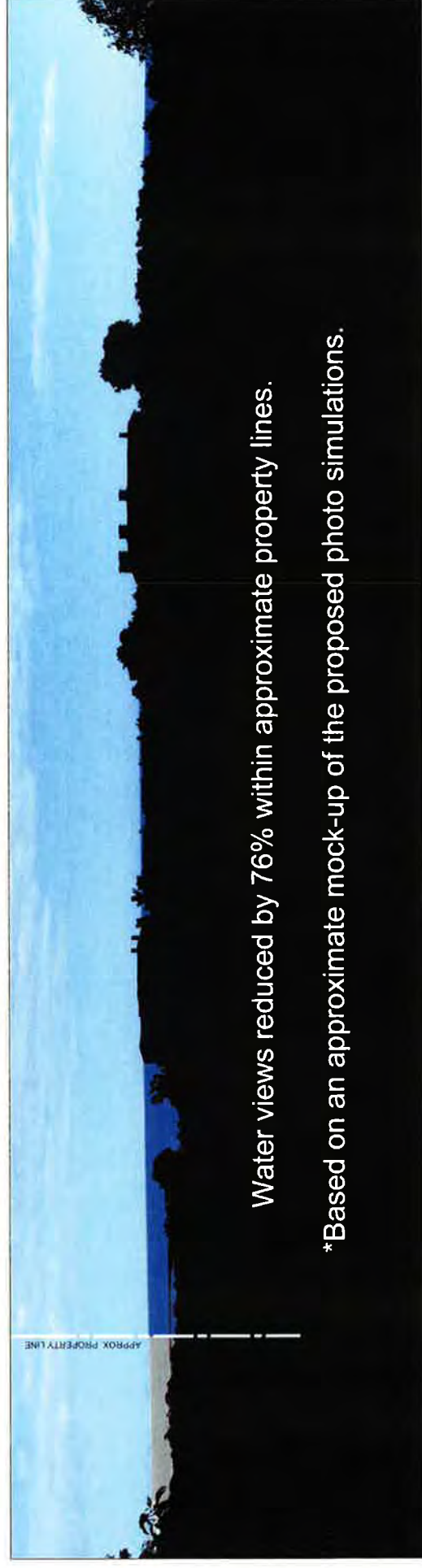


View based on Submitted Visual Simulation

Scenic Vista View Reduction



Existing Blue Water View A from Rancho Malibu



View based on Submitted Visual Simulation

ACTUAL comparison from Crummer EIR

Irrefutable Impact:

From Crummer's own EIR Figure 5.1.7.,

there are actually NO "Blue Water" views that are still visible after the Homes are constructed per this view simulation.



Existing view from Rancho Malibu (future capita placement, 2nd floor) looking southeast across Pacific Coast Highway towards project site (Lots 1, 2, 3, and 4).



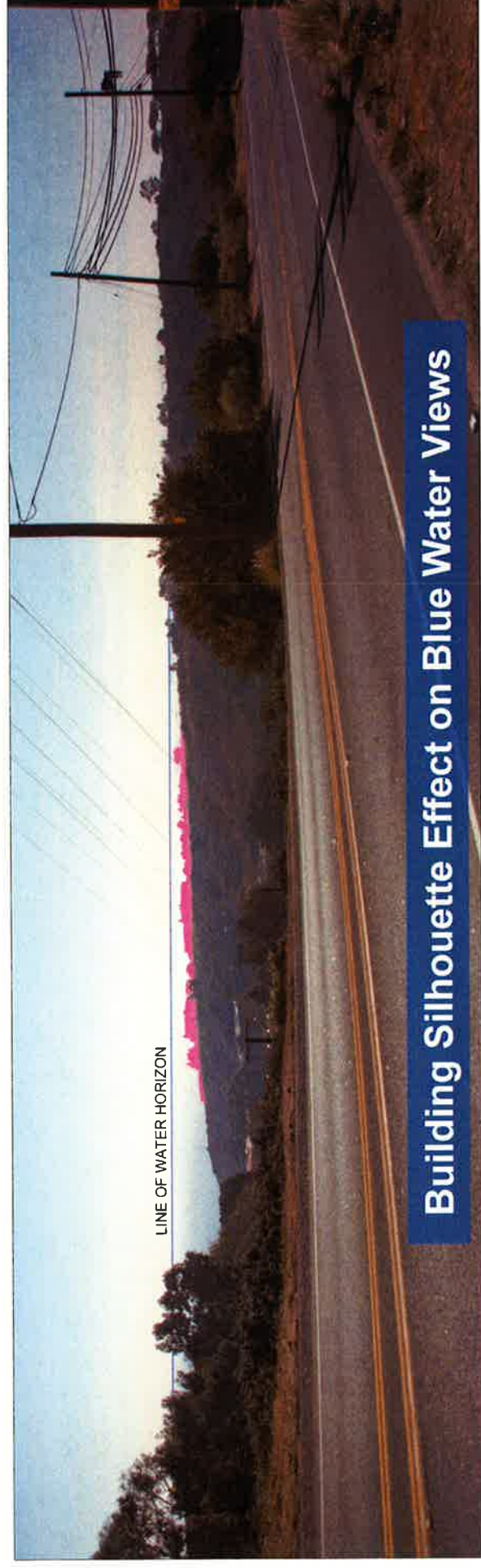
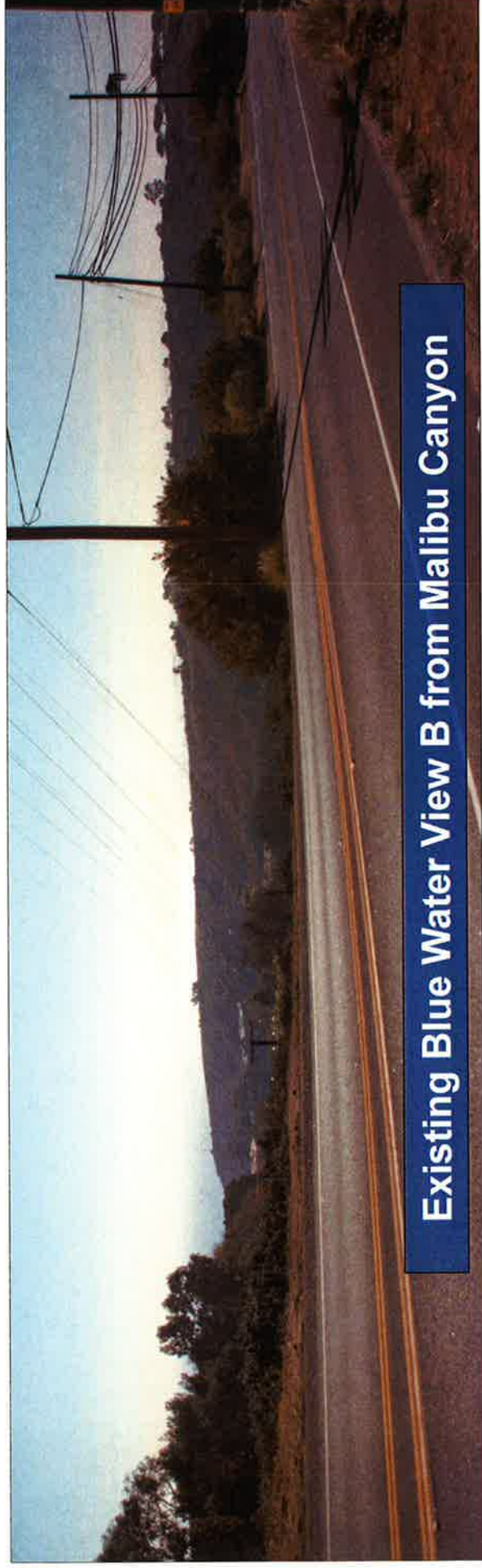
Simulated view from Rancho Malibu (future capita placement, 2nd floor) looking southeast across Pacific Coast Highway towards proposed 2-story project site (Lots 1, 2, 3, and 4).

Source: SA Johnson, 2012

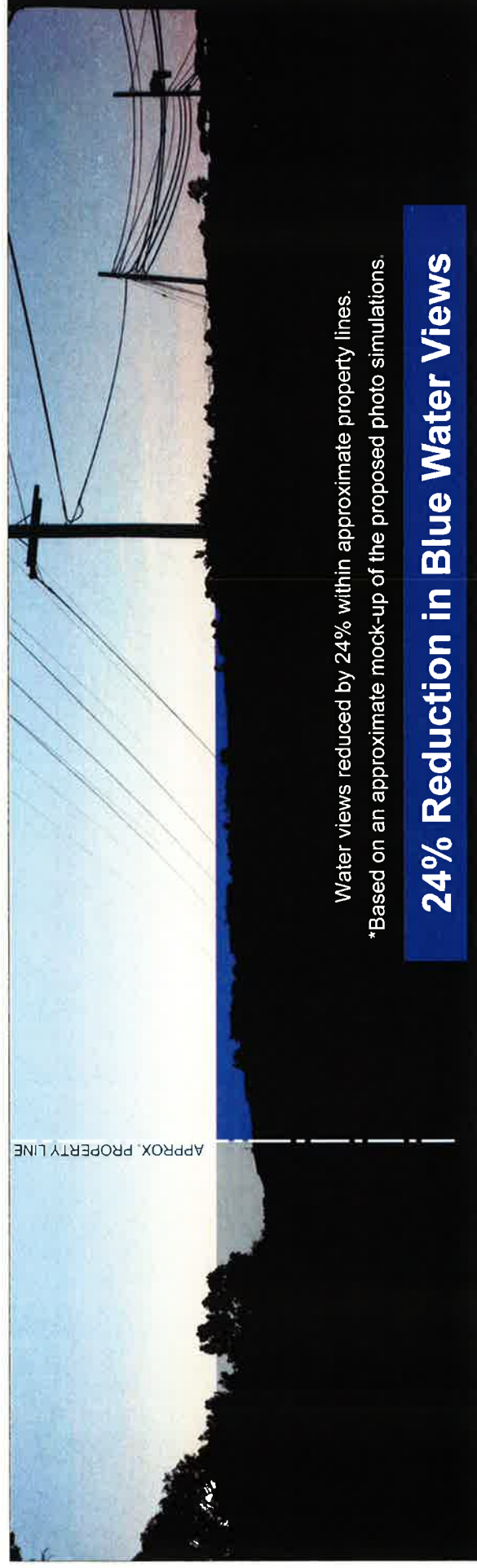
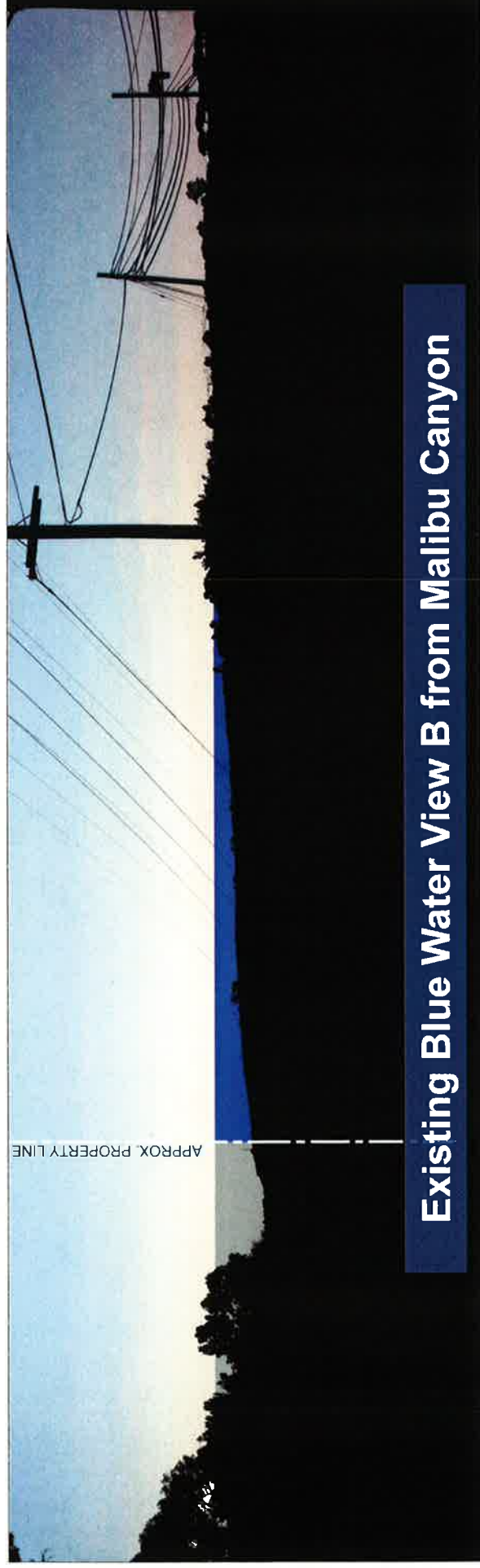
Crummer Site Subdivision Draft EIR

The Planning Center | DCE | Figure 5.1-7

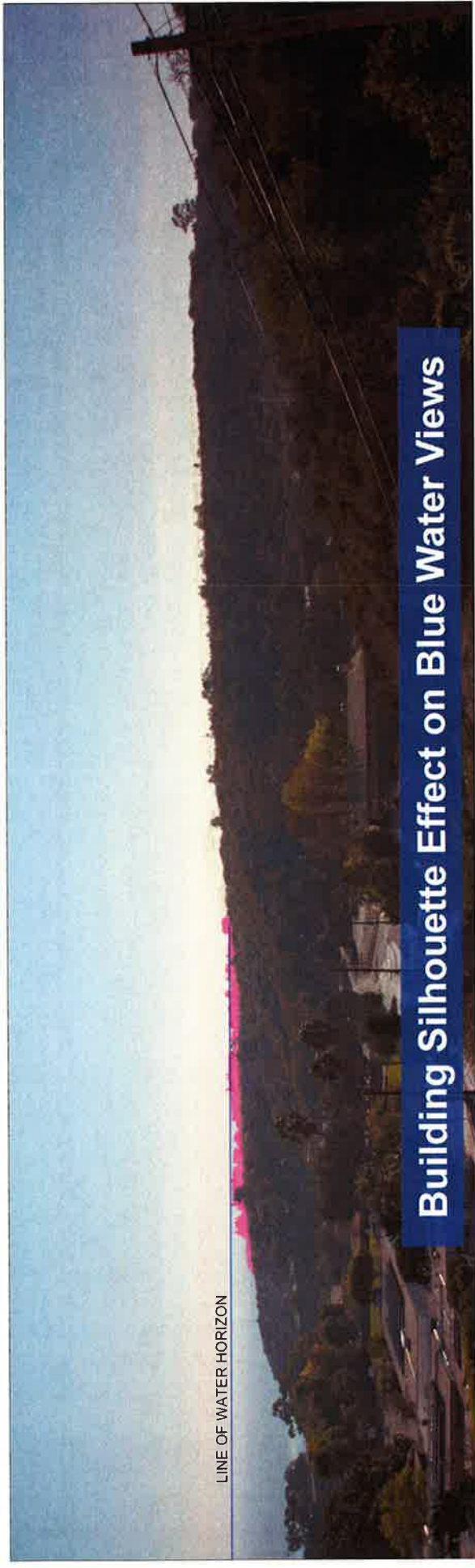
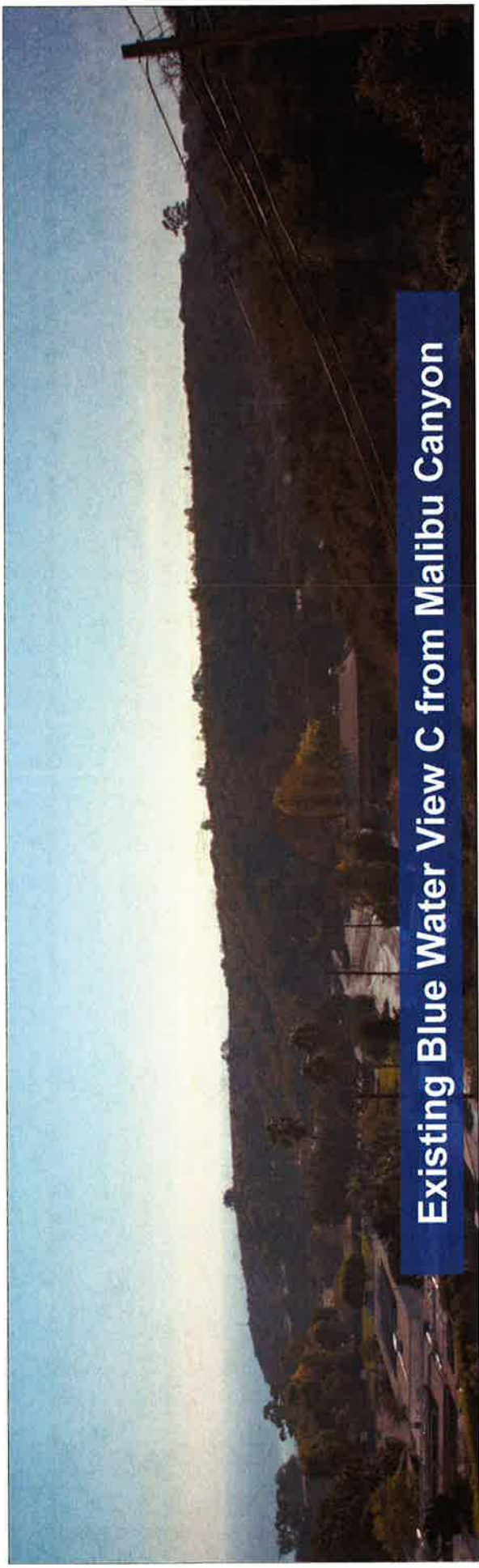
Malibu Canyon Scenic Corridor - View B



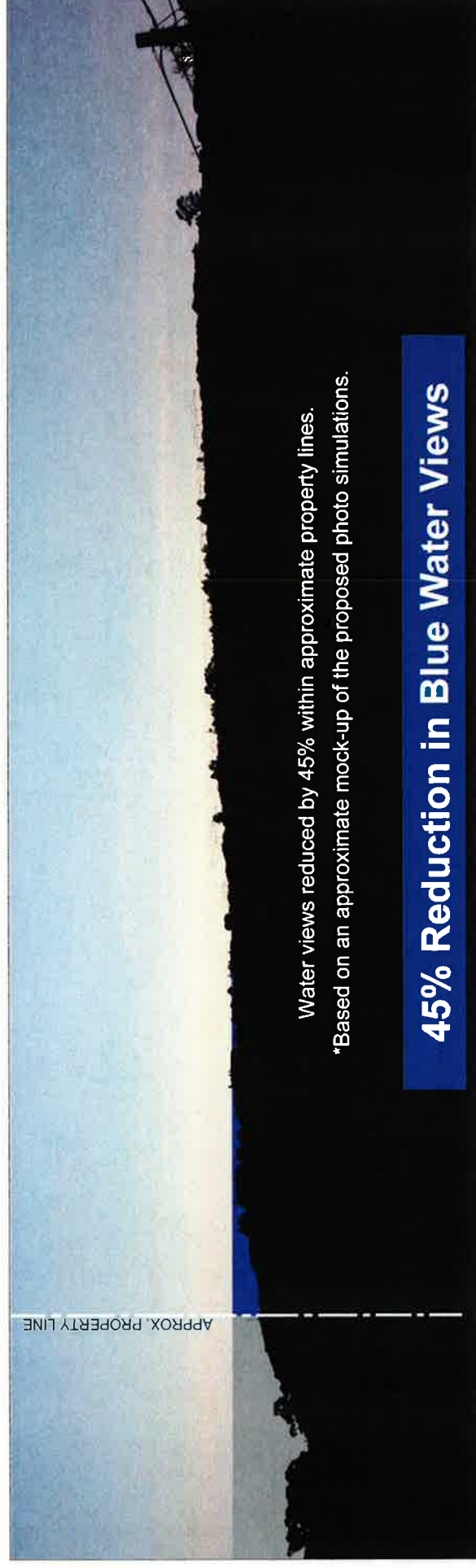
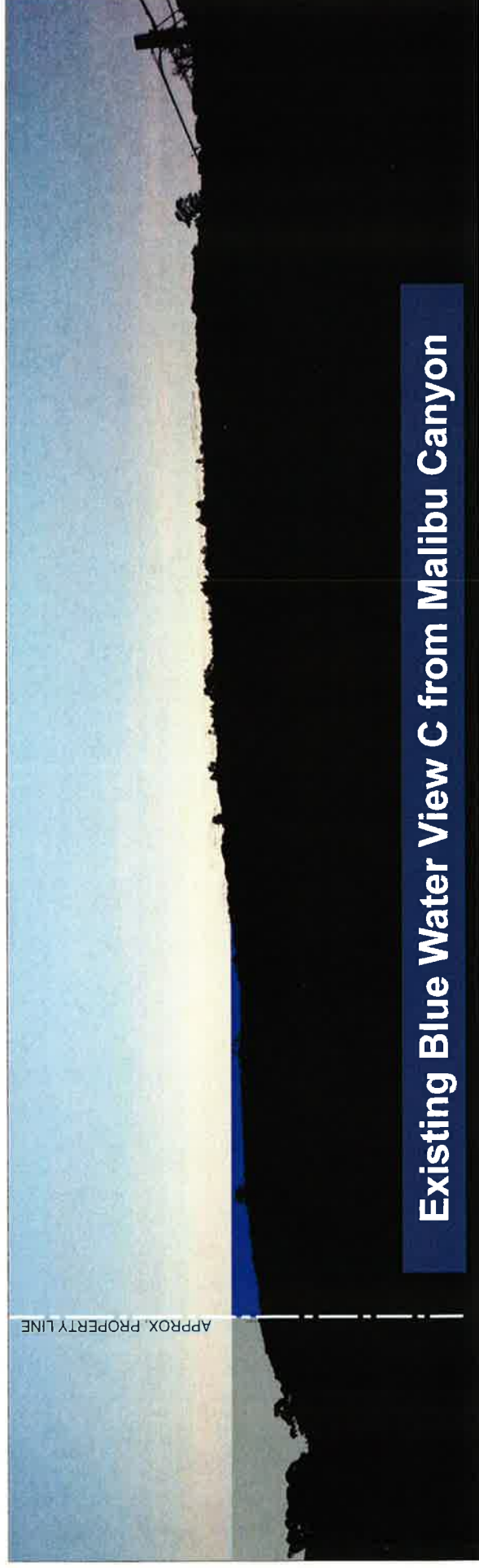
Scenic Corridor View Reduction



Malibu Canyon Scenic Corridor - View C



Scenic Corridor View Reduction



Baseball Fields Vista – View D

Is this view reduction, from EIR Fig 5.1-18, inaccurate?



View from adjacent baseball outfield looking towards project site (Lots 4 and 5).



Simulated view from adjacent baseball outfield looking towards proposed 2-story project site (Lots 4 and 5).

View Blockage Conclusions

Exactly what level of view reduction falls within the “No Significant Impact” threshold?

- **The 76% view reduction of Rancho Malibu along the Western side of the project.**
- **The 24% view “B” reduction of the Scenic Corridor along Malibu Canyon Road.**
- **The 45% view “C” reduction of the Scenic Corridor along Malibu Canyon Road.**
- **The almost totally obscured view “D” of the Bay from the Ball Fields.**









CHARLOTTE FRIEZE JONES

California Coastal Commission
South Central Coast Area
89 South California St, Suite 200
Ventura, CA 93001

Emailed to: Deanna.Christensen@coastal.ca.gov
Cc: Arthur.Pugsley@coastal.ca.gov

RE: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development) for Public Hearing and Commission Action at the February 12, 2015 Commission Meeting in Pismo Beach

February 9, 2015

Dear Commissioners:

Malibu is at a critical point.

The endless diminution of the Malibu landscape both from residential and commercial construction must halt.

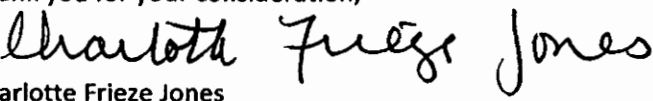
We must protect the scenic resources, maintain the wildlife habitat and ensure the continued beauty of Malibu's coastal zone.

The construction of the Malibu Coast Estates project adjacent to Bluffs Park would not only disturb the native landscape but also restrict the natural ecological processes including the replenishment of the ground water.

Should the change to residential/recreational use be approved, I strongly request:

1. The residences be obscured from PCH, the Bluffs Park and the beach areas.
2. The number of lots be further reduced to allow for additional natural landscape
3. All structures be single story
4. The proposed Conservation Easement continue up onto the top of the bluff
5. The paving materials be permeable wherever the existing soil conditions permit
6. Area donated to Bluffs Park should be left natural to provide children places to interact with wildlife

Thank you for your consideration,


Charlotte Frieze Jones

30745 PACIFIC COAST HIGHWAY #279 MALIBU CALIFORNIA 90265

Attachment 7

City of Malibu LCP Amendment 14-0408-1
February 9, 2015 Addendum

Christensen, Deanna@Coastal

From: Judi Hutchinson <judihutch@gmail.com>
Sent: Monday, February 09, 2015 9:58 AM
To: Christensen, Deanna@Coastal
Subject: the 20b Crummer LCPA OPPOSED

Dear Commissioners:

Please deny the Malibu Local Coastal Program Amendment for the Crummer Trust Property. If this LCPA is approved protected public views will be destroyed by the construction of five giant mansions that will block public views of the ocean, mountains and other scenic views views requiring protection. This project is located in a visitor serving recreation area. Specifically, it will negatively impact pubic views from Bluffs Park, Legacy Park, the Malibu Pier and scenic views from Pacific Coast Highway and Malibu Canyon Road.(both scenic highways). Landscaping is not an acceptable mitigation when there can be fewer homes or these five estate mansions can be redesigned to bring them in conformance with the LCP and Coastal Act. It will take 10 years for some the trees to mature and many of them at maturity will reach 35 feet, blocking even more of any remaining scenic views.

As proposed, these mansions as presently designed are a clear violation of the Visual Scenic Resource Protection Polices of the Malibu Land Use Plan and Coastal Act. Please deny this amendment and invite the Applicant to come back with a project that protects views.

Thank you.
Judi Hutchinson
5960 Floris Hgts.
Malibu CA 90265

February 9, 2015

Re: Crummer Blufftop Mega-Mansions/Subdivision
LCP Amendment LCP-4-MAL-14-0408-1
February 12, 2015 Hearing

Coastal Commissioners:

The proposed subdivision and mega-mansion compound proposed for adjacent to Bluffs Park in Malibu is an oddly out-of-character use for the property's location. There may be a few really rich deaf people who can afford to live in the proposed mega-mansions because I doubt they'd be happy living daily so close to all the noise generated by public uses on the adjoining parkland open to the general public; such would forever be an "incurable defect" to each of the proposed mega-mansions. While the developer may be willing to pursue the residential concept of the proposed mega-mansions, long-term residency (if that's even intended at the stratospheric price points that each compound will require) would forever be burdened with Saturday and Sunday screaming and cheering of sports activities.

I request that the LCP Amendment be denied as submitted so that the proposed development can be mitigated to protect the environment and public views by siting proposed structures further back from the perimeter slopes, AND the northern buffer from Pacific Coast Highway, and so that single-story structures can be appropriately conditioned or proposed. I have lived withing one half mile of the subject parcels for over 30 years, attended prior City hearings, and am very familiar with the site and proposed development.

Obviously, the property should have found its way into public ownership along the course of changes in ownership. Despite such lost opportunity, it is NOT acceptable or appropriate public policy to allow end-runs around the City's local building requirements for residential development to exceed 18 feet in height and obstruct views OF and TO the State-funded acquisitions would be obstructed by the proposed structures: Santa Monica mountains, the Malibu State Pier, the State Malibu Lagoon and Adamson House, Surfrider Beach, and the Pacific Ocean.

California's State Route 1 is immediately adjacent to the subject subdivision's proposed structures' and through a strict interpretation of bluff and ridge line, etc., the developer cleverly avoided the obviously necessary mitigation measure of siting the structures further-back on the flatland from the eastern slope, and northern slope (PCH) to reduce the amount of mass and bulk of the side walls of the proposed structures visible from the north-western vehicular travel of approximately 30,000 average daily trips, and millions of summertime visitors traveling the scenic coastal route from Los Angeles to Santa Barbara, Pismo Beach, or beyond. If further setback to the proposed mega-mansion structures are not conditioned at this time, the resulting development would forever be "one of those mistakes" that triggers the typical "What's with **those** big houses. How did **that** happen?"

Lastly, knowing the price points of the proposed mega-mansion compounds would preclude much of humankind from ever enjoying views from within the property lines of the subject subdivision, I cringe that the concept the entire private community could become another coordinated Drug Rehab venture for the world's ultra elite. What a fantastic way to award misbehavior at the expense of preserving access, and even views, of the general public?

R. L. Embree
23901 Civic Center Way
Malibu, California 90265

Christensen, Deanna@Coastal

From: Diane Moss <todiane4@yahoo.com>
Sent: Monday, February 09, 2015 12:05 PM
To: Christensen, Deanna@Coastal
Cc: Pugsley, Arthur@Coastal; Matthias Von Bank
Subject: RE: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1
Attachments: DM MB 15-2-9 California Coastal Commission.docx

Please see letter below and attached.

Diane Moss and Matthias Bank
35316 Malibu, CA 90265

California Coastal Commission
South Central Coast Area
89 South California St, Suite 200
Ventura, CA 93001

Emailed to: Deanna.Christensen@coastal.ca.gov
Cc: Arthur.Pugsley@coastal.ca.gov

RE: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development) for Public Hearing and Commission Action at the February 12, 2015 Commission Meeting in Pismo Beach
February 9, 2015

Dear Commissioners:

Malibu is at critical point.

The endless diminution of the Malibu landscape both from residential and commercial construction must halt.

We must protect the scenic resources, maintain the wildlife habitat and ensure the continued beauty of Malibu's coastal zone.

The construction of the Malibu Coast Estates project adjacent to Bluffs Park would not only disturb the native landscape but also restrict the natural ecological processes including the replenishment of the ground water.

Should the change to residential/recreational use be approved, I strongly request:

1. The residences be obscured from PCH, the Bluffs Park and the beach areas.
2. The number of lots be further reduced to allow for additional natural landscape
3. All structures be single story
4. The proposed Conservation Easement continue up onto the top of the bluff
5. The paving materials be permeable wherever the existing soil conditions permit
6. Area donated to Bluffs Park should be left natural to provide children places to interact with wildlife

Regards,

Diane Moss and Matthias Bank

Christensen, Deanna@Coastal

From: Dawn N. Ericson <mantapublications@earthlink.net>
Sent: Monday, February 09, 2015 9:52 AM
To: Christensen, Deanna@Coastal; healypatt@aol.com
Subject: NO! on item:th20bcrummer LCPA opposed.

Please Commissioners:

PLEASE vote NO on the Malibu Local Coastal Program Amendment for the Crummer Trust Property.

PLEASE protected public views from the construction of five giant mansions that will block public views of the ocean, mountains and other scenic views views requiring protection.

PLEASE do not negatively impact our pubic views from Bluffs Park, Legacy Park, the Malibu Pier and scenic views from Pacific Coast Highway and Malibu Canyon Road.(both scenic highways).

PLEASE understand that landscaping is not an acceptable mitigation. It will take 10 years for some the trees to mature and many of them at maturity will reach 35 feet, blocking even more of any remaining scenic views.

PLEASE deny this amendment and invite the Applicant to come back with a project that protects views. Thank you.

Dawn N. Ericson
30069 Harvester Road
Malibu, CA 90265

Christensen, Deanna@Coastal

From: MaryAnn Webster <mawebster1984@sbcglobal.net>
Sent: Monday, February 09, 2015 4:17 PM
To: Christensen, Deanna@Coastal
Subject: Item th20b Crummer Opposed

**SIERRA CLUB SANTA MONICA MOUNTAINS TASK FORCE ANGELES
CHAPTER**

Dear COASTAL COMMISSIONERS:

The Santa Monica Mountains Task Force of the Sierra Club strongly urges you to deny the Malibu Local Coastal Program Amendment re the Crummer Trust Property. Please deny this environmentally destructive amendment. If this LCPA is approved, our precious, protected public views will be destroyed by the construction of five enormous mansions that will block public views of the ocean, mountains and other views that all the citizens are entitled to have protected. This project is located in a visitor serving recreation area. The mansions will negatively impact public views from Bluffs Park, Legacy Park, the Malibu Pier and scenic views from Pacific Coast Highway and Malibu Canyon Road. The Coastal Act states that sensitive coastal viewsights are to protected to the greatest extent. This will be visual blight. Landscaping these houses from public views is not an acceptable mitigation

As proposed, these mansions, as presently designed and sited, will create a clear violation of the Scenic Resource Protection Policies of the Malibu Land Use Plan and California Coastal Act. Please deny this amendment.

Cordially,

**Mary Ann Webster, Chair, Santa Monica Mountains Task Force, Sierra Club
3534 Wilshire Bl, Los Angeles, CA**

To: Members of the Coastal Commission

From: Malibu Coalition for Slow Growth (MCSG), Preserve Malibu Coalition and Malibu Township Council

RE: Malibu LCPA Amendment LCP-4-MAL-14-0408-1

Hearing date: Thursday 2-12-15

Agenda Item TH20b

Honorable Members of the Coastal Commission,

The Malibu Coalition for Slow Growth and the Preserve Malibu Coalition respectfully ask you to please deny this LCP Amendment for the following reasons:

1. This project violates the Visual Protection Policies of the Malibu LCP and Chapter 3 policies of the Coastal Act. The proposed 5 residential estates are mansions, with accessory structures, range in size from 10,052 to 11,052 square feet. All but one residence is 2 stories in height. The project size, bulk and mass and its negative impact on public views clearly violate the Visual Protection Policies of the certified Malibu LCP, which require minimization of impacts to scenic resources through measures including siting development on the least visible portion of the site, breaking up the mass of the new structures restricting the buildings maximum size, reducing maximum height standards. Landscaping is not an acceptable substitute redesign. (LIP 6.5A.1 and LUP 6.5) *(see attached pictures and comments below)*
2. Commission's Regulations require denial of the LCP Amendment. Since certification of LCP amendment must be based in part on a finding that it meets CEQA requirements in Public Resources Code section 21080.5(d)(2)(A). This section *requires the Commission not approve or adopt the LCP '...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse affect which the activity may have on the environment' (pp 38-39 staff report).* There are feasible alternatives which illustrate more environmentally sensitive alternatives which better protect scenic and visual resources (see below).
3. This proposed project may not be in conformance with the current definition and intent of the Planned Development (PD) land use designation and LUP 2.78. If found to be in conformance, it is doubtful that any planned development was ever contemplated to be as large and intrusive as that allowed in the proposed LCPA in this highly scenic visitor serving recreational area.
4. We question whether the proposed \$2,000,000 donation is sufficient mitigation to make up for the loss of visitor serving overnight accommodations. It is estimated that once entitlements are obtained, the Crummer subdivision will be worth conservatively \$50,000,000. The \$2,000,000 mitigation donation is not earmarked for refurbishing the Topanga Motel site or for overnight accommodations anywhere along the coast. According to the Escrow Agreement it is simply a donation to state parks with no conditions attached hence there is no guarantee the money will be used for the mitigation of the loss of visitor serving overnight accommodations at the Crummer site. If the LCPA is to be approved, before such approval, there has to be a signed agreement with State Parks to put this donation toward the refurbishment of Topanga Motel site.
5. This Subdivision is prohibited under LUP 5.35 which states: The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of the surrounding parcels. *The surrounding parcels of Bluffs Park (approximately 100 acres), Pepperdine University (830 acres) and the proposed cemetery parcel (27.8 acres) are all large parcels (see below and attachment)* Even if combined with the immediate surrounding Malibu Road lots below the parcel it is unlikely that this subdivision would be

allowed since the created parcels/ lots would be smaller than the average size of the surrounding parcels/lots.

If you are unwilling to deny this LCPA for the reasons stated above we respectfully ask you to reduce the visual impact and loss of visitor serving accommodations by conditioning this LCPA as follows:

1. Require the residences and all accessory structures be one story not to exceed 18 feet in height. This can be achieved by eliminating the second story without expanding the existing first floor footprint. This would result in residential estates of more than 6,000 square feet.
2. Require all structures visible from PCH and the Malibu Pier to set back respectively from the eastern and southern bluff tops a sufficient number of feet so they are not visible from PCH heading westward and are not visible from the Malibu Pier. LIP 6.5 D
3. Require Lot 5 to be donated to the city as the recreation lot and the proposed Lot 5 structures to be placed elsewhere on site (perhaps on Lot 7 which is currently the recreational lot).
4. If the LCPA is to be approved, prior to such approval, there has to be a signed agreement with State Parks to earmark this donation toward the refurbishment of Topanga Motel site.
5. Increase the \$2,000,000 mitigation fee.

VISUAL SCENIC RESOURCES NOT PROTECTED

Views of sky, ocean, mountains and other scenic views are important scenic resources requiring protection. If the view impacts were insignificant we would not be concerned, but great concern was expressed once the story poles for this project were erected and it became evident that the development would negatively impact scenic views from Bluffs Park, Legacy Park, the Malibu Pier, Pacific Coast Highway and Malibu Canyon Road and other public locations.

Please look at the attached photographs to see how visual resources are not protected from Bluffs Park, the Malibu Pier, the Civic Center, and Pacific Coast Highway (a designated Scenic Highway). These pictures were taken prior to the story poles being destroyed by high winds. The poles were never replaced by the Applicant even though the LIP 6.3 demands "that story and stakes shall remain in place during the duration of the approval process". If the story poles were still in place we could provide additional photographs from several scenic vantage points of ocean view obstruction, including Malibu Canyon Road (a designated scenic highway) and other public locations.

Surrounding Area Description

a. Parcel Is Not in a Residential Neighborhood

The description of the project area in the staff report is highly misleading, as are the photographs in the staff report provided to the City and Coastal Staff by the Applicant. On page 18 of the staff report under the heading 'Background' one is led to believe that the proposed development is surrounded by residential development. This is not an accurate description of the site and the surrounding area.

While there is a proposed subdivision at the bottom of the bluff of 4 residences to the east, its entrance is on Malibu Road and residences on the south down below bluff top Crummer site are also along the Malibu Road, the Crummer site development is not part of this Malibu Road neighborhood. It is in an entirely different neighborhood and area.

b. Scenic Area Location

The Crummer site is not part of a residential or commercial area. This site is adjacent to Bluffs Park and the Crummer site is located in the beginning of Western Malibu, the more rural part of Malibu. The site is situated on a bluff high above the Malibu Road properties. In addition, only a small portion of this 24 acre parcel can be developed since a large portion of the 24 acres are bluff slopes and unbuildable since any development requires a setback from the top of the bluff slopes.

An accurate description of this proposed project area is as follows: This proposed subdivision is situated on a bluff top in an area /neighborhood consisting of very large parcels. Directly to the west is Bluff's Park (consisting of 10 acres active recreation and approximately 90 acres of undeveloped passive recreation ESHA.). To the northwest, across PCH is Pepperdine University (830 acres, of which 500 acres have been set aside for conservation and the campus' Alumni Park is for public use). Immediately to the north is an undeveloped 27.8-acre parcel on which a public cemetery is being proposed. In 2014, the MRCA acquired 703 acres of parkland in Puerco Canyon next to Pepperdine University. The proposed Crummer property subdivision is most definitely in a highly scenic area and public recreation area.

Pepperdine University and scenic Malibu Canyon Rd. overlook the property. As one travels west out of the Civic Center commercial area along the PCH scenic highway there is currently an unobstructed view of the bluff top and its skyline. To the east from Bluffs Park are views of the ocean, coastline and mountains. Views from all of these areas will be greatly diminished if this LCPA is approved.

c. Visitor Serving Area and Destination

Malibu attracts millions of visitors each year, many to this very area. This proposed subdivision is definitely located in a significant visitor destination area. Bluffs Park, Pepperdine and the recently acquired Puerco Canyon property are all visitor serving recreation areas.

Because of its very special location and the obliteration of important protected scenic views from public places if the proposed residences are constructed, we firmly believe that the LCPA for this parcel as doesn't warrant approval by the Coastal Commission and must be denied.

d. View Obstructions and Minimization of Impacts to Scenic Resources.

The attached photographs show some of the visual resources which will be negatively impacted by the residences at the intensity of development currently approved by the city. If the Commission wants to protect scenic resources you have to deny this LCPA. This will give the Applicant the opportunity to come back with a project that protects the vital scenic resources of the Area and conforms to the Coastal Act and the Malibu LCP. The Applicant can still have 5 mansions if the project is redesigned to lessen the intensity of development on this site.

The Staff Report admits that the lots would be visible from identified viewing areas, including Bluffs Park, Pacific Coast Highway. and from Malibu Canyon Road. We respectfully strongly disagree with the staff report conclusion that these impacts are insignificant and most certainly the cumulative impacts of these 5 residences is undeniably significant. Furthermore we disagree with the staff report conclusion that there are no feasible alternatives or mitigation measures that could reduce the environmental impacts. Under the Coastal Act and LUP impacts to scenic views, development must be restricted to minimize impacts to public views. This means one instead of two stories, smaller structures, and siting

and design changes. Under the LCP, landscaping is not an allowable substitute for these required changes.

Examples of how scenic resources and views from public places can be better protected are the following: The proposed residences on lots one and two will destroy the current unobstructed views for the public traveling west on PCH (a scenic highway) and from Legacy Park. The proposed residences on lots one, two and four will destroy the current unobstructed views from the publicly owed Civic Center, including Legacy Park. These view warrants protection and can be protected by relocating the residences further inland from the eastern and western bluff slopes and making these properties one story without expanding the first floor foot print (redesigning the lots configurations if deemed necessary).

The proposed residences on lots 2, 3 and 5 are highly visible from the Malibu Pier and impact currently unobstructed views. This view impairment can be minimized by requiring lots 2 and 5 to be further set back from the oceanside bluff and requiring lots 2, 3 and 5 be one story residences by simply removing the second story and not expanding first story the footprint. This will also preserve more of the view of the ocean and coastline from Bluffs Park.

Views of the ocean and mountains from Bluffs Park are severely impacted by the residences on this site. This impact can be minimized by eliminating the second story and not expanding the residences first story footprint.

To protect the absolutely stunning scenic view of the ocean and coastline (known as the 'Queen's Necklace' view), lot 5 should be the dedicated as an open space recreational lot and the residence planned for lot 5 sited elsewhere (perhaps on the currently proposed active recreation lot 7).

Coastal staff's recommendation for protecting the ocean view from the bluff's park pathway by setting back the lot 5 residence an additional 30 feet is well intentioned but is flawed. It allows the swimming pool and a 10-foot-high structure (potentially a pool house) in this proposed setback area. The property owner will not want the public peering in on them and their guests while entertaining, lounging and swimming in the pool area. For this reason the Applicant's city-approved landscape plan indicates landscaping to protect the residents' privacy. This landscaping therefore will completely obscure the public view of the ocean from the Bluffs Park ocean view path.

e. View Protection Policies Violated

The following Coastal Act Sections are incorporated into the LCP as policies and apparently were not taken into account as the residential standards were being designed and the city's amended definition of Planned Development written.

Coastal Act Section 30240

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of these habitat areas.

Coastal Act Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California

Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Coastal Act Section 30253

New development shall, where appropriate, protect special communities and neighborhoods which because of their unique characteristics are popular visitor destination points for recreational use.

ii. Visual Protection LCP Implementation Policies

LIP 6.5 sets forth required development standards which were clearly not met in designing this project. The most pertinent ones are as follows:

6.5.A

1. New development shall be sited and designed to minimize adverse impacts on scenic area from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible alternative where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas from scenic highways or public viewing areas through measures including but not limited to siting development on the least visible portion of the site, breaking up the mass of the new structures restricting the buildings maximum size, reducing maximum height standards, clustering development, minimalizing grading, incorporating landscape elements, siting development on the least visible portion of the site, breaking up the mass of new structures, incorporating landscape elements and where appropriate berming.

2. Where there is no feasible alternative that is not visible from scenic highways or public viewing areas, the development shall be restricted to minimize adverse impacts on views from scenic highways or public viewing areas.

3. Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening as a mitigation of visual impacts shall not substitute for project alternatives including resiting or reducing the height and bulk of each structure.

LIP 6.5.B. Development Design

1. The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height shall be 18 feet above existing or finished grade whichever is lower.

LIP D Bluff Development

1. In addition to the blufftop development setback requirement necessary to insure geologic stability new development proposed on bluff tops shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of but no less than the setback necessary to ensure that the risk from geologic hazards are minimized for the life of the structure.

iii. Visual Protection Land Use Policies

LUP 6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the

development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.

LUP 6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

LUP 6.7 The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.

iv. Subdivision Prohibited

LUP 5.35

The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of the surrounding parcels. *The surrounding parcels of Bluffs Park, Pepperdine University and the proposed cemetery parcels are all huge parcels and even if combined with the immediate surrounding Malibu Road lots directly below the parcel it is doubtful that this subdivision would be allowed since the created parcels / lots would be smaller than the average size of the surrounding parcels/lots.*

PLANNED DEVELOPMENT (PD) DESIGNATION

This parcel is designated under the LUP as Planned Development.

Planned Development is currently defined on page 99 of the LUP as "The PD designation provides for a mix of residential and recreational development on the Crummer Trust property located east of bluffs park and south of Pacific Coast Highway in the event of the permanent relocation of the existing athletic fields in accordance with policy 2.78 of the Land Use Plan.

LUP 2.78 says If an agreement is reached with State Parks to relocate the existing athletic fields at Bluffs Park out of the prime viewshed of the Park onto the 24.9 acre Crummer family Trust Parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway up to 8 residential units shall be permitted on the remainder of the Crummer Trust site. Said agreement will cause the redesignation of the subject site to Residential in the LCP. If no agreement is reached to relocate the existing athletic fields the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving).

If the Commission finds that a new definition of PD is appropriate, then the question is, was this parcel designated PD in order to allow the highest intensity of residential use possible to the detriment of scenic views or was it to designated as such to allow for residential development that minimizes negative visual impacts to scenic resources? We believe it was the later and we think you must reach this conclusion also.

When the Commission previously granted the LCPA in 2010, the Commission had no knowledge of what was to be constructed on the property and of the cumulative negative impact the development as proposed would have on scenic resources and views from public viewing areas and scenic roads. Current awareness of the negative impacts and the fact further feasible mitigation can be achieved as required by the Coastal Act and the Malibu LCP provisions should lead to the denial of this LCPA.

In addition, we ask that you deny this LCPA as required by the Public Resources Code section 21080.5(d)(2)(A). This section requires the Commission not approve or adopt the LCP '...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.'

CONCLUSION

If you approve this LCPA amendment, the Coastal Development Permits for these 5 mansions will be final. We have pointed out the negative impacts of these residences on visual resources and scenic views and have given you examples of how the Applicant can come back with a design alternative which substantially lessen the significant adverse effect which this development can have on the environment.

For this reason and for all of the other above reasons stated this LCPA should be denied.

Thank you for considering our point of view.

Aerial View Of Bluffs Park, Malibu

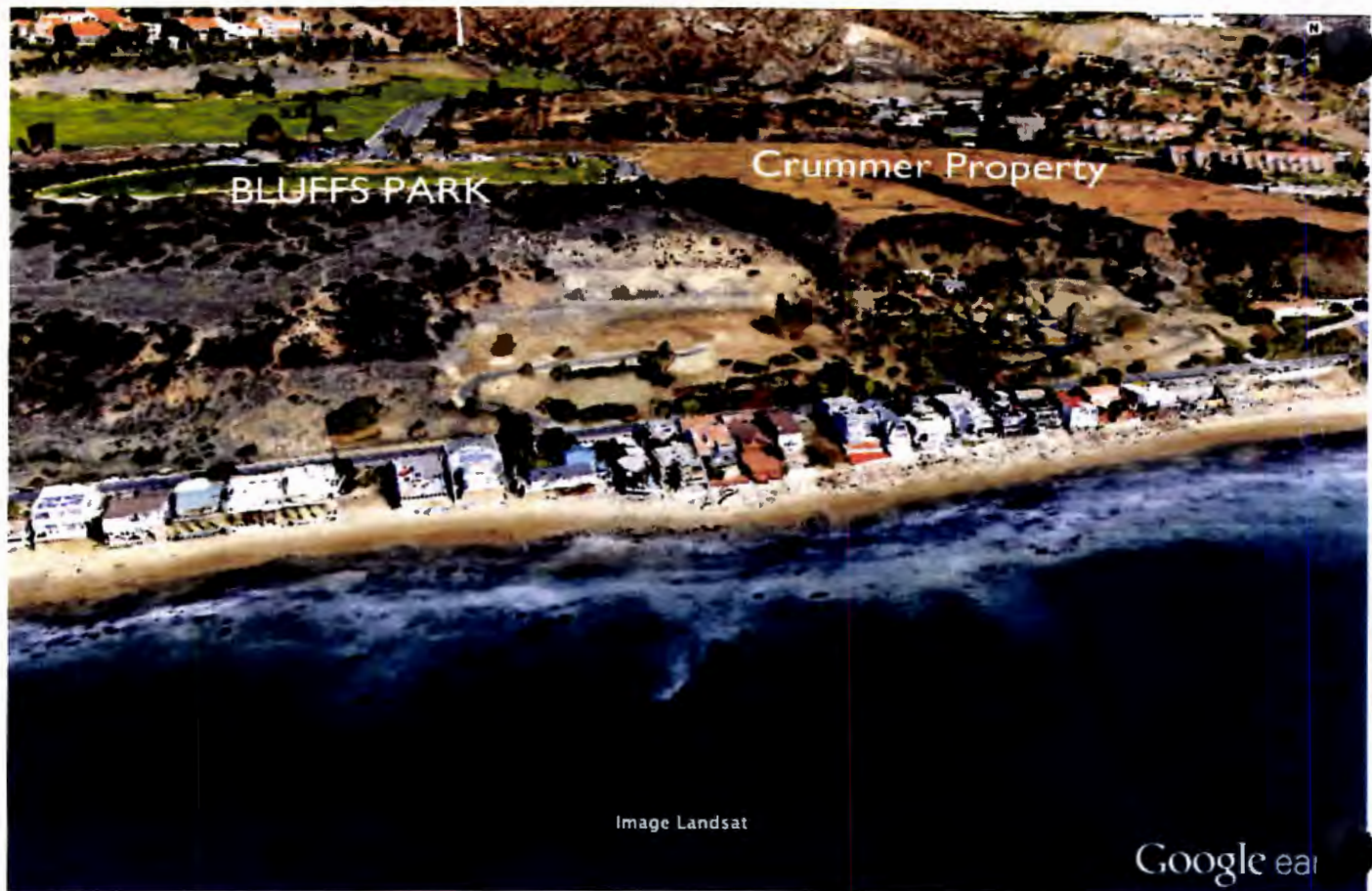


Bluffs Park and the Crummer subdivision and park will share the same single driveway entrance/exit from Pacific Coast Highway. Five proposed bluff top residential estates all exceeding 10,000 square feet (including accessory structures) will be next to the playing fields and park ESHA.

Bluffs Park is public, open for visitors, 7 days a week, 12 months a year for active and passive recreation. Park is a worldwide visitor destination area.

10 active recreation acres –used for baseball soccer, yoga, jogging, picnicking, playground ,special events such as weddings, birthday parties ,Chumash day, etc.

About 90 acres passive recreation esha acres-used fir hiking, walking, birdwatching wildflower walks etc.



This aerial view is of Bluffs Park and the Crummer parcel. The proposed estates are isolated from any other residential or commercial areas since the developable area sits high on the blufftop with the Malibu Road residences far below in a totally different neighborhood (bottom of photo).

At the top of the page moving from right to left : the Civic Center area which is situated far below this property in a different area/neighborhood. Directly to the north of Crummer, at the approximate same elevation as Crummer, is another 27.8 acre vacant bluff property where a cemetery is proposed. Next is Malibu Canyon Rd. and Pepperdine University (the green lawn area is Alumni Park which is open to the public and used extensively by visitors).

Bluffs Park (approximately 100 acres), Pepperdine University (830 acres), the vacant parcel (27.8) and the Crummer subdivision (24 acres) are all part of the same area/neighborhood. We question whether subdivision of Crummer is allowed under LUP 5.35.



View From East Side of Bluffs next to baseball fields.





View from Baseball field in Bluffs Park



Walking trail at Bluffs Park around the park and basefield fields.



Walking trail at Bluffs Park around the park and basefield fields.





View from picnic area and baseball field on Bluffs Park.







View from PCH and Legacy Park





View from Malibu Courthouse, Library and Farmers Market





View from restaurant on Malibu Pier.



View from PCH and Cross Creek Road, center of Malibu



View from Legacy Park and City Hall Road



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Th20b



DATE: January 22, 2015

TO: Commissioners and Interested Persons

FROM: Jack Ainsworth, Deputy Director
Steve Hudson, District Manager
Barbara Carey, Supervisor, Planning and Regulation
Deanna Christensen, Coastal Program Analyst

SUBJECT: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development) for Public Hearing and Commission Action at the February 12, 2015 Commission Meeting in Pismo Beach.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu is requesting an amendment to the Land Use Plan (LUP) portion of its certified Local Coastal Program (LCP) to delete LUP Policy 2.78 and to modify the requirements of the Planned Development (PD) land use designation to allow for a mix of residential and recreational use instead of commercial visitor-serving use. The amendment further proposes to modify the Planned Development (PD) zone district of the Local Implementation Plan (LIP) portion of the City's LCP to similarly allow for a mix of residential and recreational use instead of commercial visitor-serving use, including a specific set of development standards. The Planned Development designation is currently applied to one vacant 24-acre parcel adjacent to Malibu Bluffs Park, formerly known as the "Crummer Trust" parcel (APNs 4458-018-018, 019, 002), and now commonly called "Malibu Coast Estates."

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **deny** the proposed City of Malibu LCP Amendment LCP-4-MAL-14-0408-1 as submitted and **approve** the amendment subject to suggested modifications. The motions to accomplish this are found on Pages 6-8 of this staff report.

The City of Malibu is requesting an amendment to the Land Use Plan (LUP) portion of its certified LCP to delete LUP Policy 2.78 and to modify the requirements of the Planned Development (PD) land use designation to allow for a mix of residential and recreational use instead of commercial visitor-serving use. The amendment further proposes to modify the Planned Development (PD) zone district of the Local Implementation Plan (LIP) portion of its LCP to similarly allow for a mix of residential and recreational use instead of commercial visitor-serving use, and to add a specific set of development standards. The amendment request is project-driven since the Planned Development designation is currently applied to only one parcel: a 24-acre vacant parcel adjacent to Malibu Bluffs Park, formerly known as the "Crummer Trust" parcel (APNs 4458-018-018, 019, 002). The standard of review for the changes to the Land Use

Plan is whether the amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed changes to the Local Implementation Plan is whether the amendment conforms with and is adequate to carry out the provisions of the Land Use Plan (LUP) portion of the certified City of Malibu Local Coastal Program.

The major issues raised by this amendment request are the protection of scenic resources and adequate provision of visitor-serving commercial development and public recreational opportunities.

The proposed land use and zoning designation change would have an adverse effect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. Recognizing that the resultant conversion of the property from Commercial Visitor-Serving to Residential/Recreational (Planned Development) would reduce the potential for visitor-serving and affordable overnight accommodation use in this area and result in a lower priority land use under the Coastal Act, the property owner has offered to pay the in-lieu mitigation fee of \$2,000,000 to assist in funding affordable overnight accommodations in the Malibu area. In order to implement such a mitigation fee offer in the context of an LCP amendment, the specific fee amount would typically be added to the LCP as a condition of the land use change along with the provisions for payment and use of the fee. However, in this case, the City of Malibu has expressed concern about a specific visitor-serving in-lieu mitigation fee amount being specified in the LCP, which is one of the reasons why the City never accepted the Commission's suggested modifications on the prior LCP amendment related to the subject site (LCP Amendment No. MAL-MAJ-2-09-A). The City has indicated that they would have to conduct a mitigation in-lieu fee study if the fee was a part of the LCP amendment.

To address the City's concerns and provide an effective alternative mechanism for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission to provide a \$2,000,000 in-lieu fee to the California Department of Parks and Recreation, through an escrow account, for use in developing lower cost visitor accommodations at the former Topanga Ranch Motel within Lower Topanga State Park, to be released upon the owner securing of entitlements to subdivide and to develop the site with a mix of residential and recreational uses. The agreement also provides for the owner's execution of a covenant on the property, to be recorded if the escrow funds are returned to the developer in accordance with the escrow agreement, in which payment of the \$2,000,000 runs with the land and is binding on any future owners should the current owner sell the property prior to securing entitlements. As such, the agreement is structured to provide the Commission with assurance of payment of the fee, which is necessary to mitigate for the loss of a higher priority use and represents an excellent opportunity to provide lower cost visitor-serving accommodations elsewhere in the City. And using an escrow arrangement provides the property owner assurance that the required fee will only be transferred upon securing final entitlements for the planned development.

Despite the current land use designation, residential use was contemplated for the “Crummer Trust” property when Malibu’s LCP was certified, and with the adoption of the suggested modifications, which includes a provision for dedication of a portion of the subject parcel to recreational use and a provision to compensate for the loss of visitor-serving land, the proposed land use and zoning designation change would not have an adverse effect on priority visitor-serving opportunities in the area and can be made fully consistent with Chapter 3 policies.

Further, the coastal development permits for the subdivision and specific planned development at the subject site have already been conditionally approved by the City of Malibu, conditioned to not be effective until certification of the subject LCP amendment. As such, Commission staff have conducted a project-level review of the specific development proposed for the planned development and recommend adoption of suggested modifications to the proposed Planned Development standards in order to protect scenic public views from public viewing areas and to ensure internal consistency among the provisions of the LCP.

Additional Information: For further information, please contact Deanna Christensen at the South Central Coast District Office of the Coastal Commission at (805) 585-1800. The proposed amendment to the City of Malibu Local Coastal Program (LCP) is available for review at the Ventura Office of the Coastal Commission or at the City of Malibu Planning Department.

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EXHIBITS

Exhibit 1: City of Malibu Proposed LCP Amendment Text

Exhibit 2: City of Malibu Resolution 14-13 Approving Proposed Land Use Plan Amendment

Exhibit 3: City of Malibu Ordinance 379 Approving Proposed Implementation Plan Amendment

Exhibit 4: Aerial View of the Malibu Coast Estate/Crummer Trust Property

Exhibit 5: Overall Site Plan for the Planned Development

Exhibit 6: Malibu Coast Estate Planned Development Maps 1 and 2

Exhibit 7a-e: Site Plans and Elevations for Planned Development Lots 1-5

Exhibit 8: Visual Analysis Photos

Exhibit 9a-f: City of Malibu Resolutions Approving CDPs 07-144 , 07-145, 07-146, 07-147, 07-148, and 07-149

Exhibit 10a-b: Escrow Agreement and Declaration of Covenants

APPENDICES

Appendix A Substantive File Documents

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 30512(c))

The Coastal Act further provides:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30513)

The amendment proposed affects the Land Use Plan and Implementation Plan components of the certified City of Malibu LCP. The standard of review that the Commission uses in reviewing the adequacy of the Land Use Plan is whether the Land Use Plan, as proposed to be amended, is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the Implementation Plan of the certified LCP, pursuant to Section 30513 of the Coastal Act, is whether the proposed amendment is in conformance with, and adequate to carry out, the provisions of the Land Use Plan (including the proposed amendments) portion of the certified City of Malibu LCP. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified Land Use Plan.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held public hearings on October 2, 2008, June 7, 2012, January 6, 2014 and May 19, 2014. The hearings were noticed to the public consistent with Sections 13551 and 13552 of the California Code of Regulations. The City received written or oral comments regarding the proposed amendment from interested parties or members of the public. Notice of the subject amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that a Local Coastal Program Amendment will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. The City Council Resolution for this amendment states that the amendment will take effect after Commission certification. However, in this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the City must act to accept the certified suggested modifications within six months from the date of Commission action in order for the Amendment to become effective (California Code of Regulations, Title 14, Section 13544; Section 13537 by reference). Pursuant to Section 13544, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City.

II. STAFF MOTIONS, RESOLUTIONS, & RECOMMENDATIONS

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

A. DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED

MOTION I: *I move that the Commission CERTIFY Amendment LCP-4-MAL-14-0408-1 to the City of Malibu Land Use Plan, as submitted by the City of Malibu.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan as submitted and adoption of the following resolution. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY CERTIFICATION OF THE LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of Amendment LCP-4-MAL-14-0408-1 to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan amendment as submitted does not meet the requirements of and is not in conformity with

the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

B. CERTIFICATION OF THE LAND USE PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission CERTIFY Amendment LCP-4-MAL-14-0408-1 to the City of Malibu Land Use Plan, if modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY THE LAND USE PLAN WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Amendment LCP-4-MAL-14-0408-1 to the City of Malibu Land Use Plan if modified as suggested and adopts the findings set forth below on grounds that the land use plan amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan amendment if modified.

C. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED

MOTION I: *I move that the Commission reject the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-14-0408-1 as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion

passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-14-0408-1 and adopts the findings set forth below on grounds that the Implementation Plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program amendment as submitted.

D. CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission certify City of Malibu Local Implementation Plan Amendment LCP-4-MAL-14-0408-1 if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Plan Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-14-0408-1 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified Land Use Plan is shown in straight type. Language proposed by the City to be deleted is shown in ~~line out~~. Language proposed by the City to be added is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~double line out~~. Language recommended by Commission staff to be inserted is shown double underline. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

SUGGESTED MODIFICATION NO. 1

~~2.78 If an agreement is reached by the State Department of Parks and Recreation to relocate the existing athletic fields at Malibu Bluffs State Park out of the prime view shed of the park onto the 24.9-acre Crummer Family Trust parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway up to 8 residential units shall be permitted on the remainder of the (Crummer Trust) site. Said agreement shall cause the redesignation of the subject site to Residential in the LCP. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP. If no agreement is reached to relocate the existing athletic fields the permitted use on the Crummer Trust parcel shall remain CV 2 (Commercial Visitor Serving).~~

2.78 [Reserved]

SUGGESTED MODIFICATION NO. 2

Land Use Plan Chapter 5, Section C.2 (Land Use Designations):

PLANNED DEVELOPMENT (PD): The PD designation is a specially tailored land use designation with a corresponding zoning district which that establishes zoning regulations and sets specific development standards for a specific planned development. The PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs, provides for a mix of residential and recreational development on the approximately 24-acre Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway (APNs 4458-018-019, 4458-018-002, and 4458-018-018). in the event of permanent relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed of the park in accordance with Policy 2.78 of the Land Use Plan.

NOTE: The owner of the Crummer Trust Site as of the date of the Coastal Commission's action on LCP Amendment No. LCP-4-MAL-14-0408-1 ("Applicant") has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay an in-lieu fee to the California Department of Parks and

Recreation for use in developing lower cost visitor accommodations, to be released upon Applicant's securing of entitlements to subdivide and to develop the site consistent with this revised definition of the PD designation above.

IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified Implementation Plan is shown in straight type. Language proposed by the City to be deleted is shown in ~~line out~~. Language proposed by the City to be added is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~double line out~~. Language recommended by Commission staff to be inserted is shown double underline. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

SUGGESTED MODIFICATION NO. 3

Local Implementation Plan Section 3.3(Q) “Planned Development (PD) Zone”:

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development, consistent with the PD Land Use Designation in Chapter 5 (Section C.2) of the Land Use Plan, on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development consisting of five single-family residences and 1.744 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD District consists of the land designated as Assessor Parcel Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018, known as Malibu Coast Estate, and formerly known as the “Crummer Trust” parcel.

2. Permitted uses

~~The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.~~

The following uses and structures permitted in Malibu Coast Estate are as follows. Lot numbers are as conceptually identified on Malibu Coast Estate Vesting Tract Map, attached as “Malibu Coast Estate Planned Development Map 1” of this LIP.

a. Lot Nos. 1-5

- i. One single-family residence per lot
- ii. Accessory uses (one second ~~residential~~ units or guest house ~~units~~ per lot pursuant to ~~Government Code Section 65852.2~~), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director) or ~~Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.~~
- iii. Domestic animals, kept as pets
- iv. Landscaping

b. Lot No. 6

- i. Uses and structures maintained by either the owners of Lots 1-5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access roads, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

c. Lot No. 7

- i. Parks and public open space, excluding community centers
- ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and reasonably similar uses as determined by the Planning Director or ~~Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.~~ Night lighting of recreational facilities shall be prohibited, except for the minimum lighting necessary for public safety.
- iii. Onsite wastewater treatment facilities

3. Lot development criteria

~~In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development. All new lots created in Malibu Coast Estate shall comply with the following criteria:~~

a. Lots No. 1-5

- i. Minimum lot area: 113,600 square feet (2.60 acres)
 - ii. Minimum lot width: 115 feet
 - iii. Minimum lot depth: 480 feet
 - b. Lot No. 6
 - i. Minimum lot area: 125,700 square feet (2.88 acres)
 - ii. Minimum lot width: 625 feet
 - iii. Minimum lot depth: 100 feet
 - c. Lot No. 7
 - i. Minimum lot area: 75,640 square feet (1.74 acres)
 - ii. Minimum lot width: 460 feet
 - iii. Minimum lot depth: 100 feet
4. Property development and design standards
- Development in Malibu Coast Estate shall be subject to all applicable standards of the Malibu LIP, unless otherwise indicated in this LIP Section 3.3(Q). The following development standards shall replace the corresponding development standards otherwise contained in each noted LIP Section ~~3.6~~ for those lots in Malibu Coast Estate. ~~All requirements of the LCP, including LIP Section 3.5, that are not inconsistent with the criteria listed below shall remain in effect for those lots in Malibu Coast Estate.~~
- a. Lot Nos. 1-5
 - i. Development Footprint and Structure Size (Replaces corresponding standards in LIP Section 3.6(K))
 - a) The total development square footage (TDSF) on each of Lot Nos. 1-5 shall not exceed eleven thousand one hundred seventy-two (11,172) square feet per lot.
 - b) Structures Greater than Eighteen (18) Feet in Height. Notwithstanding any other provision of this chapter, the TDSF ~~total development square footage~~ for a structure greater than eighteen (18) feet in height shall not be greater than permitted for single-story construction. The second floor area plus the area of vaulted ceilings above eighteen (18) feet in height shall not exceed two-thirds of the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties. However, any second story of the structure permitted on Lot 1 shall not exceed a maximum of 2,565 square feet, and the structures permitted on Lot 2 shall not exceed 18 feet in height.

- c) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
 - d) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.
 - e) The development footprint on each lot (Lot Nos. 1-5) shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 2” of this LIP, with the exception of Lot 5. The Lot 5 residential structural setback shall be a minimum of 190 feet from the edge of the bluff as identified on “Malibu Coast Estate Planned Development Map 2” in order to ensure public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are preserved. The structural setback on Lot 5 does not apply to at grade improvements or low profile above-grade improvements not to exceed 10 feet in height.
- ii. Setbacks (Replaces corresponding standards in LIP Section 3.6(F))
 - a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less. However, the front yard setback for Lot 5 shall be at least forty-three (43) feet.
 - b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.
 - c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.
 - d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.
- iii. Structure Height (Replaces corresponding standards in LIP Section 3.6(E))
 - a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet unless height increases up to twenty-four (24) feet flat roof and twenty-eight (28) feet pitched roof are approved subject to LIP Section 13.27 (Site Plan Review), except on Lot 2, structures shall not be higher than eighteen (18) feet. Height is

measured from natural or finished grade, whichever is lower. A pitched roof is a roof with a slope of 3:12 or steeper.

- b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened. Mechanical equipment behind a mansard roof may exceed twenty-four (24) feet in height but in no case shall it exceed the height of the mansard roof.
- c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.

iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 2,000 cubic yards per lot.
- c) Net export shall be limited to 3,500 cubic yards per lot.

v. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(I) shall apply.

vi. Parking (In addition to the parking standards of LIP Section 3.14)

- a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
- b) One enclosed or unenclosed parking space for a guest unit or second unit.

vii. Colors and Lighting (In addition to the standards of LIP Section 6.5(B))

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.
- b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

~~All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4. To insure the~~

protection of scenic and visual resources in accordance with the provisions of the LCP, any future improvements to structures or significant changes to landscaping beyond that authorized by the Coastal Development Permit (CDP) for each Lot (Lots 1-5), which would ordinarily be exempt from a CDP pursuant to LIP Section 13.4.1, shall be subject to a new CDP or permit amendment.

b. Lot No. 6

i. Structure Size (Replaces standards in LIP Section 3.6(K))

The TDSF ~~total development square footage~~ of all structures shall not exceed 280 square feet.

ii. Setbacks (Replaces standards in LIP Section 3.6(F))

- a) Buildings, not including projections permitted in Section 3.5 of the Malibu LIP shall maintain a minimum setback of fifty (50) feet from all property lines.
- b) Parkland setbacks in ~~Local Coastal Program Local Implementation Plan (LIP)~~ Section 3.6(F)(6) shall not apply.

iii. Structure Height (Replaces standards in LIP Sections 3.6(E) and 3.6(K))

- a) Structure height shall not exceed 16.5 feet, as measured from natural or finished grade, whichever is lower.
- b) In no event shall the maximum number of stories above grade be greater than one.
- c) A basement, cellar or subterranean garage shall not be permitted.

iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 1,000 cubic yards.
- c) Net export shall be limited to 2,500 cubic yards.

v. Impermeable Coverage (Replaces corresponding standard in LIP Section 3.6(I))

The impermeable coverage requirement in LIP Section 3.6(I) shall not apply. Up to 44,000 square feet of impermeable coverage shall be permitted.

vi. Parking (In addition to the parking standards of LIP Section 3.14)

The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking. Parking within the property boundaries shall not be located on or obstruct fire department access.

vii. Colors and Lighting (In addition to the standards of LIP Sections 6.5(B))

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.
- b) Lighting must comply with LIP Section 6.5(G).

c. Lot No. 7

i. Site Design

Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations. The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

ii. Parking (In addition to the parking standards of LIP Section 3.14)

Adequate parking shall be provided to serve the proposed recreational uses. Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses. The Planning Director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement as long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided.

iii. Fencing

With the exception of skate park and sport court fencing and backstops,

fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with LIP Section 13.4.9 and the temporary use permit process contained within Malibu Municipal Code Chapter 17.68.

~~5. Permit Required.~~

~~All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.~~

<i>SUGGESTED MODIFICATION NO. 4</i>
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Add “Malibu Coast Estate Planned Development Map 1” and “Malibu Coast Estate Planned Development Map 2” (attached as Exhibit 6 of this staff report) as maps in Appendix 2 of the Local Implementation Plan.

V. FINDINGS FOR DENIAL OF THE CITY OF MALIBU LUP/LIP AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF MALIBU LUP/IP AMENDMENT, IF MODIFIED AS SUGGESTED

The proposed amendment affects the Land Use Plan (LUP) and Local Implementation Plan (LIP) components of the certified Malibu LCP. The standard of review that the Commission uses in reviewing the adequacy of the LUP amendment is whether the LUP amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the LIP of the certified LCP, pursuant to Sections 30513 and 30514 of the Coastal Act, is whether the proposed amendment is in conformance with, and adequate to carry out, the provisions of the LUP portion of the certified City of Malibu LCP.

The following findings support the Commission’s approval of the LCP amendment if modified as suggested. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION AND BACKGROUND

The Planned Development (PD) land use and zoning designation is currently applied to one vacant 24-acre parcel adjacent to Malibu Bluffs Park, formerly known as the “Crummer Trust” parcel (APNs 4458-018-018, 019, 002). The Planned Development designation of the certified LCP specifies that the “Crummer Trust” parcel shall be for Commercial Visitor-Serving use unless an agreement was reached with State Parks to move the Bluffs Park athletic fields to the property, at which point the site would be re-designated for a mix of residential and recreational use, with up to eight residential units permitted. However, that agreement was never reached, and by operation of former Land Use Plan Policy 2.78, the land use designation of the site became commercial visitor serving (CV-2).

The City of Malibu is requesting an amendment to the Land Use Plan (LUP) portion of its certified LCP to modify the requirements of the Planned Development land use designation to allow for a mix of residential and recreational use instead of commercial visitor-serving use. The amendment further proposes to modify the Planned Development zone district of the Local Implementation Plan (LIP) portion of its LCP to similarly allow for a mix of residential and recreational use instead of commercial visitor-serving use, and to add specific development standards for the planned development (**Exhibits 1-3**).

The City of Malibu submitted the subject LCP amendment on April 2, 2014. The amendment submittal was deemed complete and filed on June 6, 2014. At its August 2014 Commission meeting, the Commission extended the 90-day time limit to act on the LCP amendment for a period not to exceed one year.

Background

The subject “Crummer Trust” property is an approximately 24-acre vacant parcel situated on a coastal bluff between Pacific Coast Highway (PCH) to the north and Malibu Road and the Pacific Ocean to the south. Single-family residences are situated on both the landward and seaward side of Malibu Road to the south of the subject property (**Exhibit 4**). The Pacific Ocean is approximately 300 feet away to the south of the subject site. West of the subject parcel is the City-owned Malibu Bluffs Park, which includes two baseball fields, a soccer field, a playground, parking, a walking path with an overlook, and a visitor center. To the west of the City park is the Malibu Bluffs State Recreation Area, public parkland that is owned by the Santa Monica Mountains Conservancy. On an approximately five-acre parcel to the east of the subject property, the City of Malibu has approved a coastal development permit to demolish existing non-residential structures and re-develop the site with four new single-family residences.

Prior to incorporation of the City of Malibu in 1991, the subject property was primarily designated “Commercial/Office”, with a small portion of the site on the bluff designated Rural Land II (1du/5 acres), in the 1986 Los Angeles County Malibu-Santa Monica Mountains Land Use Plan (1986 LUP). The property was not specifically designated for visitor-serving use in the 1986 LUP. This designation persisted until the City incorporated in 1991, and the portion of the

certified Land Use Plan covering Malibu expired until such time as the City prepared and presented its own LCP for consideration. While the property was still in County of Los Angeles jurisdiction, there was only one proposal seriously advanced for the site – a “think tank” facility for General Motors. This proposal also was abandoned. The site has never been proposed for a hotel or resort, either when under the jurisdiction of the County of Los Angeles or of the City. The site has no direct connection to the beach.

At the time the Commission was preparing the Malibu Local Coastal Program in 2002, the City of Malibu and the California Department of Parks and Recreation (State Parks) had been negotiating a proposal for State Parks to fund the transfer of the existing, temporary athletic fields in the adjacent Bluffs Park (State parkland) onto the subject “Crummer Trust” property. The goal of this negotiation was to preserve State parkland for regional park uses and to also preserve the athletic fields for local use. As such, the Commission had certified policies in the Malibu LCP that assigned the property a place-holder zone designation of “Planned Development” and specified that the property shall be for Commercial Visitor-Serving use (although this designation was not the site’s original land use designation per the 1986 LUP, the site was determined appropriate for a higher priority use when the Malibu LCP was certified due to its size and proximity to the Civic Center area, Pepperdine University, and PCH) unless an agreement was reached with State Parks to move the Bluffs Park athletic fields to the property, at which point the site would be re-designated for a mix of residential and recreational use, with up to the eight residential units permitted.

However, after the LCP was certified by the Commission, a different agreement was reached between State Parks and the City of Malibu. State Parks transferred ownership of Bluffs Park to the Santa Monica Mountains Conservancy and the City of Malibu purchased a portion of Bluffs Park (10 acres) that included the athletic fields and the visitor center facility from the Conservancy. The “Crummer Trust” property was not a part of the transaction. Therefore, pursuant to Policy 2.78 of the certified LUP, this property was to be for Commercial Visitor-Serving use. However, the certified Land Use and Zoning Maps designate the “Crummer” site Planned Development (PD), not Commercial Visitor-Serving (CV-2). Therefore, there is an internal inconsistency in the LCP that must be resolved.

Prior LCP Amendment and Commission Action

The Commission had previously approved a related LCP amendment regarding the “Crummer” property. At the February 11, 2010 Commission hearing, the Commission approved City of Malibu LCP Amendment No. MAL-MAJ-2-09-A, with suggested modifications to allow for a mix of residential and recreational use instead of commercial visitor-serving use at the site. Although a specific project had not been approved by the City and was not proposed as part of the LCP amendment, the amendment (LCP Amendment No. MAL-MAJ-2-09-A) had conceptually approved a residential density at the site, allowing seven new lots: five lots containing five new single-family residences, one homeowners association lot which will contain a private road in the eastern portion of the site and ancillary facilities to serve the new residences, and one lot consisting of approximately 1.74 acres to be dedicated to the City of Malibu to expand the adjacent City-owned park with an additional baseball field and 35 parking stalls. In

addition, an open space conservation easement area was to be dedicated to the Mountains Recreation and Conservation Authority (MRCA) across a 7-acre area of the 24-acre parcel for the purpose of habitat protection. In order to mitigate for the loss of visitor serving land, the suggested modifications approved by the Commission had included a provision for payment of an in lieu fee. At the February 11, 2010 Commission hearing, the property owner offered to increase their proposed in-lieu mitigation fee from \$750,000 to \$2,000,000 to assist in funding affordable overnight accommodations elsewhere on the coast in the general area. At the hearing, the Commission determined that the mitigation fee of \$2,000,000 was more appropriate and proportional in this case given the large size of the parcel and substantial loss of visitor-serving opportunity. The Commission-approved suggested modifications reflected this increase in the in-lieu mitigation fee. The Commission also determined that the fee should be used locally to provide funding to California Department of Parks and Recreation for lower cost overnight visitor accommodations at the former Topanga Ranch Motel site within Lower Topanga State Park. The Commission found that the fee should be expended within two (2) years, unless this time limit is extended for good cause by the Coastal Commission. The Commission also included flexibility to allow Commission re-allocation of the funds for another low cost overnight accommodation project if the funds are not expended within the two-year time period.

At the February 2010 hearing, the Commission also determined that the proposed active recreational use contemplated for the site (baseball field or other active use) would primarily serve the local public rather than the members of the public from a regional or statewide area, and thus, would not maximize public access to the coast. Therefore, the Commission found that the approximately 1.74-acre recreational area of the site shall be limited to passive public recreational use in order to increase its public benefit. Further, the Commission found a gated residential community in this location would be inconsistent with the character of the area and would create the perception of an exclusive community. Therefore, the Commission determined that entry gates shall not be allowed along the access road to the proposed residential properties of the site. Revised findings reflecting the Commission's action on LCP Amendment No. MAL-MAJ-2-09-A were approved by the Commission at the April 16, 2010 Commission meeting.

However, the City of Malibu never took formal action to accept the Commission required suggested modifications on the LCP amendment within the 6-month timeframe from Commission action required by Section 13544 of the Commission's Administrative Regulations. Therefore, the Commission's approval of LCP Amendment No. MAL-MAJ-2-09-A expired and was never certified. The City of Malibu expressed concern about several aspects of the Commission's required suggested modifications. The City objected to the requirement that the approximately 1.74-acre recreation lot for City use was limited to passive public recreational use instead of active recreational use. The City was also concerned about a specific visitor-serving in-lieu mitigation fee amount being specified in the LCP, rather than just a general concept.

Proposed LCP Amendment and the Planned Development

The owner of the subject "Crummer" property proposes a specific planned development that involves subdividing the parcel into seven new lots, to be developed as follows: five lots containing five new single-family residences (Lot Nos. 1-5), one lot which will contain a private

road, gatehouse, and ancillary facilities to serve the new residences (Lot No. 6), and one lot consisting of approximately 1.74 acres to be dedicated to the City of Malibu to expand the adjacent City-owned park for active recreation use (Lot No. 7) (**Exhibits 5-7**). An EIR was prepared and adopted for the project by the City pursuant to CEQA. The City has also approved the individual coastal development permits for subdivision of the property and residential and accessory development on the created lots (**Exhibit 9**). However, the coastal development permits were conditioned by the City to not be effective until after certification of the subject LCP amendment. Notwithstanding the requirements of Malibu LIP Section 13.16 that a Final Local Action Notice be submitted to the Commission within seven days of City action, the Final Local Action Notices in this case have never been submitted to the Commission, and therefore, the approved CDP's related to this site are not final.

Specifically, the City approved the following:

- On January 6, 2014, the City approved CDP No. 07-144 and Vesting Tentative Tract Map No. 07-033 for subdivision of the site into 7 individual parcels, dedication of 1.74 acres to the City of Malibu for active and passive recreational uses (created Lot 7), and dedication of a conservation easement totaling approximately 6.23 acres to the Mountains Recreation and Conservation Authority. The approval also included extension of a water line to service the created lots, development of an access road, 280 sq. ft. guard house, hardscaping and landscaping, and an onsite wastewater treatment system (OWTS) package plant on created Lot 6, and the development of seepage pits on created Lot 7. The OWTS package plant would treat wastewater generated from each of the residences and the gatehouse. Clean effluent from the OWTS package plant would be discharged to seepage pits in the southernmost portion of Lot 7 along Winter Mesa Drive. The OWTS would be designed with a stubout box and purple pipe to allow for connection to a municipal wastewater treatment in the Civic Center area in the future to process wastewater produced on the project site. Pursuant to Special Condition 18 of the CDP, approval of the permit is contingent upon certification of the subject LCP amendment.
- On February 24, 2014, the City approved the subject LCP amendment to modify the requirements of the Planned Development land use designation to allow for a mix of residential and recreational use at the subject site, with a specific set of development standards, instead of commercial visitor-serving use. The City also certified the Final EIR and adopted the Mitigation Monitoring and Report Program for the project.
- On May 19, 2014, the City approved CDP No. 07-145, 07-146, 07-147, 07-148, and 07-149 for residential development on each of the created residential parcels (Lots 1-5). Pursuant to Special Condition 11 of each CDP, the approved permit is not effective until certification of the subject LCP amendment.
 - On Lot 1, the City approved 8,039 square foot, two-story, 28 feet high, single-family residence with a 1,000 square foot basement, 891 square foot garage, detached 615 square foot second unit, 507 square feet of covered loggia space that projects more than six feet; outdoor barbeque area with trellis, swimming pool,

spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,972 cu. yds. grading (1,288 cu. yds. cut, 684 cu. yds. fill), motor court, septic tank and landscaping.

- On Lot 2, the City approved a 7,951 square foot, 18 feet high single-story single-family residence with a 1,579 square foot basement and subterranean garage, 458 square foot gym, 480 square foot second unit, 733 square feet of covered loggia space that projects more than six feet; outdoor fireplace with trellis, swimming pool, and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,994 cu. yds. grading (56 cu. yds. cut, 1,938 cu. yds. fill), motor court, septic tank, and landscaping.
- On Lot 3, the City approved a 7,720 square foot, two-story, 28 feet high single-family residence with a 1,000 square foot basement, 435 square foot detached second unit, 716 square foot garage, 84 square foot cabana, 479 square feet of covered loggia space that projects more than six feet; trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,976 cu. yds. grading (716 cu. yds. cut, 1,260 cu. yds. fill), motor court, septic tank, and landscaping.
- On Lot 4, the City approved a 7,852 square foot, two-story, 28 feet high single-family residence with a 994 square foot basement, 881 square foot garage, 149 square foot cabana, 631 square feet of covered loggia space that projects more than six feet; outdoor fireplace with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,831 cu. yds. grading (79 cu. yds. cut, 1,752 cu. yds. fill), motor court, septic tank, and landscaping.
- On Lot 5, the City approved a 8,738 square foot, two-story, 28 feet high single-family residence with a 1,752 square foot basement, 885 square foot garage, 479 square foot second unit, 188 square foot cabana, 700 square feet of covered loggia space that projects more than six feet; trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,458 cu. yds. grading (453 cu. yds. cut, 1,005 cu. yds. fill), motor court, septic tank, and landscaping.

The City and property owner believe that a Commercial Visitor-Serving use is not viable at this site and that a mix of residential and recreational uses would be appropriate and consistent with the intent of a previous agreement contemplated for the site. Recognizing that the resultant conversion of the property from Commercial Visitor-Serving to Residential/Recreational (Planned Development) would reduce the potential for visitor-serving and affordable overnight accommodation use in this area and result in a lower priority land use under the Coastal Act, the property owner has offered to pay the in-lieu mitigation fee of \$2,000,000 that the Commission had previously required to assist in funding affordable overnight accommodations elsewhere in the coastal zone.

However, this proposed fee is not reflected in the proposed LCP amendment request given the City's concerns regarding a specific in-lieu mitigation fee amount being specified in the LCP. To address the City's concerns and provide an effective alternative mechanism for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay a \$2,000,000 in-lieu fee to the California Department of Parks and Recreation for use in developing lower cost visitor accommodations at lower Topanga State Park, to be released upon the owner securing of entitlements to subdivide and to develop the site with a mix of residential and recreational uses (**Exhibit 10a**). The agreement also provides for the recordation of a covenant on the property by the current owner in which payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners should the current owner sell the property prior to securing entitlements, thereby providing a high degree of assurance that the land use impacts resulting from the re-designation of the site from CV-2 to PD will be mitigated (**Exhibit 10b**). This issue is discussed in more detail in the section to follow.

B. CONSISTENCY ANALYSIS

1. Visitor-Serving Lands and New Development

The Coastal Act and the Malibu LCP places a high priority on providing for visitor-serving and recreational land uses in the coastal zone. The Coastal Act and Malibu LCP encourage the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. The following Coastal Act policies have been incorporated in their entirety into the certified City of Malibu Land Use Plan as policies.

Relevant Coastal Act Policies

Section 30213 of the Coastal Act states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses,

where feasible.

Section 30250(a) of the Coastal Act states that:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Other Applicable City of Malibu Land Use Plan Policies

- 2.33 *Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.*
- 2.34 *Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.*
- 2.36 *Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities; shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.*
- 2.37 *Priority shall be given to the development of visitor-serving commercial and/or recreational uses that complement public recreation areas or supply recreational opportunities not*

currently available in public parks or beaches. Visitor-serving commercial and/or recreational uses may be located near public park and recreation areas only if the scale and intensity of the visitor-serving commercial recreational uses is compatible with the character of the nearby parkland and all applicable provisions of the LCP.

- 2.78 If an agreement is reached by the State Department of Parks and Recreation to relocate the existing athletic fields at Malibu Bluffs State Park out of the prime view shed of the park onto the 24.9 acre Crummer Family Trust parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway up to 8 residential units shall be permitted on the remainder of the (Crummer Trust) site. Said agreement shall cause the redesignation of the subject site to Residential in the LCP. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP. If no agreement is reached to relocate the existing athletic fields the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving).*
- 5.35 The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of surrounding parcels.*
- 5.36 Land divisions shall be designed to minimize impacts to coastal resources and public access. A land division shall not be approved if it creates a parcel that would not contain an identified building site that could be developed consistent with all of the policies of the LCP.*

Chapter 5, Section C.2

PLANNED DEVELOPMENT (PD): The PD designation provides for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway in the event of permanent relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed of the park in accordance with Policy 2.78 of the Land Use Plan.

Applicable City of Malibu Implementation Plan Provisions

Chapter 3, Section Q

Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development of the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway, and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned developments in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development.

2. Permitted Uses

The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.

3. Development Criteria

In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development.

Discussion

Visitor-serving commercial development is considered a priority use under the Coastal Act and the Malibu LCP. The public access policies of the Coastal Act and Malibu LCP require that a range of affordable facilities, including overnight accommodations, be provided in new development along the coast.

Prior to incorporation of the City of Malibu in 1991, the subject property was primarily designated “Commercial/Office”, with a small portion of the site on the bluff designated Rural Land II (1du/5 acres), in the 1986 Los Angeles County Malibu-Santa Monica Mountains Land Use Plan (1986 LUP). The property was not specifically designated for visitor-serving use in the 1986 LUP. At the time the Commission was preparing the Malibu Local Coastal Program in 2002, the City of Malibu and the California Department of Parks and Recreation (State Parks) had been negotiating a proposal for State Parks to fund the transfer of the existing athletic fields in the adjacent Bluffs Park (State parkland) onto the subject “Crummer Trust” property. The goal of this negotiation was to preserve State parkland for regional park uses and to also preserve the athletic fields for local use. As such, the Commission had certified policies in the Malibu LCP that assigned the property a place-holder zone designation of “Planned Development” and specified that the property shall be designated for Commercial Visitor-Serving use unless an agreement was reached with State Parks to move athletic fields to the property, at which point the site would be re-designated for a mix of residential and recreational use, with up to eight residential units permitted.

However, after the LCP was certified by the Commission, a different agreement was reached between State Parks and the City of Malibu. Pursuant to this agreement, State Parks transferred ownership of all 93 acres of Bluffs Park to the Santa Monica Mountains Conservancy (SMMC) and the City of Malibu then purchased approximately 10 acres of Bluffs Park that included the athletic fields, parking area and the visitor center facility from the SMMC. This agreement by State Parks and the SMMC allowed the visitors center and athletic fields, to remain where they were while preserving and protecting the remainder of Bluffs Park, particularly the natural areas of the bluff as native habitat with public access. The proceeds from this transaction allowed State Parks the opportunity to acquire a portion of the Soka University property, a valuable piece of parkland in the Coastal Zone adjacent to Malibu Creek State Park totaling approximately 388 acres that has been sought as a high priority by the park agencies since the 1970’s.

The “Crummer Trust” property was not a part of that transaction. Therefore, pursuant to Policy 2.78 of the certified LUP, this property was to be for Commercial Visitor-Serving use. However, the Land Use and Zoning Maps designate the site Planned Development (PD), which allows for a residential and recreational mix of land uses with up to eight (8) residential units. Again, this

created an internal inconsistency in the LCP between Policy 2.78 and the Land Use Map, Zoning Map, and LIP. However, the intent of the Commission, as articulated in Policy 2.78, was clear that if the transaction regarding the athletic fields did not occur the site was to be designated as Commercial Visitor-Serving (CV-2) and the Land Use and Zoning maps should have been amended to reflect that. In any event, this inconsistency in the LCP must be resolved.

The City and property owner believe that a Commercial Visitor-Serving use is not viable at this site and that a mix of residential and recreational uses would be appropriate and consistent with the intent of a previous agreement contemplated for the site pursuant to LUP Policy 2.78. Recognizing that the resultant conversion of the land at this property from commercial visitor-serving to residential/recreational would reduce visitor-serving commercial opportunities, the property owner, in consultation with Commission staff, has offered to pay an in-lieu mitigation fee of \$2,000,000 to assist in funding affordable overnight accommodations at lower Topanga State Park. Particularly, California Department of Parks and Recreation (CDPR) has expressed interest in rehabilitating the former Topanga Ranch Motel and construction of cabins within Lower Topanga State Park as a lower cost accommodation, but is in need of funding. Therefore, Commission staff, in consultation with CDPR, has identified the rehabilitation of Topanga Ranch Motel and new cabins as a public project in the area that is in need of funding to implement affordable visitor-serving accommodations.

The property owner has submitted a study to Commission staff that inventories and analyzes lower cost overnight accommodations serving the City of Malibu and its vicinity. The study asserts that commercial offerings in Malibu generally cater to more affluent visitors/consumers rather than visitors seeking low cost overnight accommodations, due in part to the high cost of land in Malibu, which is a major obstacle in constructing new low-cost overnight accommodations. The subject property, in particular, is considered prime real estate given its bluff-top location adjacent to Pacific Coast Highway and overlooking the ocean. Adjacent land to the west is a City park and State public parkland. Adjacent land to the east and south is residential, at a maximum density of four dwelling units per acre. Adjacent land to the north and northeast is considered Malibu's Civic Center area and is zoned for Commercial and Commercial Visitor-Serving uses. Based on the foregoing considerations, the study concludes that the proposed conversion of the subject property is appropriate and would not represent a significant loss of visitor-serving opportunity because the site is not well-suited or economically viable for such a use. However, the study does demonstrate that a high-end, "boutique" hotel-type of visitor serving use appears economically viable on the site.

The study also asserts that there is ample inventory of low-cost overnight accommodations in the greater Malibu vicinity, particularly in the nearby cities of Agoura Hills, Calabasas, Santa Monica, Venice, and Los Angeles. In addition, the study notes that State Parks and the Santa Monica Mountains Conservancy are developing plans to bring more low-cost overnight accommodation opportunities to the coastal areas of Malibu and the Santa Monica Mountains. Under the City of Malibu's LCP, certified by the Commission in 2002, there are approximately twelve (12) parcels, totaling approximately 80 acres, zoned Commercial Visitor-Serving (excluding the subject property that is zoned "Planned Development"). Several of these parcels contain existing hotels, motels, or B & B's. There are currently six (6) existing overnight

accommodation facilities in the City of Malibu, with a total of 117 rooms. Moreover, given the development configuration being considered by the property owner and the City of Malibu for the subject site (although not a part of the proposed amendment request), the contemplated mix of residential and recreational uses is consistent with the character of the area and is consistent with the adjacent land uses. The Commission thus finds that if properly mitigated, the proposed conversion can be found consistent with the Coastal Act. In addition, the conversion would not adversely impact coastal access along the coast or coastal resources, and would allow the clustering of development within or near an existing developed area able to accommodate it, consistent with Section 30250 of the Coastal Act.

Commercial visitor-serving uses allowed in the CV-2 zone include hotels/motels and a wide variety of retail uses, general services uses, office and health care related uses, dining drinking and entertainment uses and a variety of public, quasi-public or non-profit uses. Camping is specifically prohibited use on CV-2 zoned property. Although the site is located in a visible, well-traveled location near State-owned park lands and could potentially support some form of commercial and/or recreational development there are a number of constraints that would limit the range and amount of visitor-serving uses that could be accommodated on the site. Given the bluff top location of the “Crummer” site adjacent to Pacific Coast Highway, an LCP designated scenic highway, any development on the site would have to consist of very low-profile type structures, limited to one or possibly two stories. In addition, with required bluff top setbacks per the LCP, the area of the property available for development is significantly reduced (approximately 8.9 acres). The landowner has indicated that given the constraints of the property the only type of overnight accommodation that would be economically feasible would be a very high-end luxury boutique-type hotel of approximately 100 units.

In the event a property owner proposes to build new overnight luxury accommodations, LUP Policy 2.35 and LIP Section 12.10 allows for the payment of an in lieu fee of \$10,419 applied to 15% of the total new luxury accommodations built on a property as a mechanism to ensure compliance with the objectives of Sections 30213 and 30222 of the Coastal Act and Policies 2.33, 2.34, 2.36 and 2.37 of the Malibu LCP. This amount is to be adjusted for inflation beginning in the year 2000. Given the development constraints on the Crummer Trust property, the property owner anticipates a hotel of approximately 100 rooms at most could be established, with associated facilities. Assuming these would be luxury accommodations, 15% of the rooms would be assessed the fee which adjusted for inflation would be \$196,336.50, significantly less than the \$2,000,000 fee proposed by the property owner. Commission staff has identified a potential public project in the area that is in need of funding to implement affordable visitor-serving accommodations - the rehabilitation of the former Topanga Ranch Motel and new cabins within Lower Topanga State Park, contemplated by State Parks for development. The use of these funds in this manner is consistent with LUP Policies 2.33, 2.34, 2.36, and 2.37 to create or protect visitor serving and recreational uses.

Other visitor-serving commercial development such as visitor-serving retail uses would also be constrained on the “Crummer” site. Again, given the limited development area due to setback requirements, height requirements, and potential parking and traffic circulation conflicts with the adjacent athletic field uses, it is not likely a visitor-serving commercial retail use would be

feasible in this location. The athletic fields generate a significant amount of traffic and parking demand during peak use periods which would present significant conflicts with any visitor-serving commercial retail use. It is not likely an economically feasible commercial visitor serving retail use, other than a luxury hotel, would be feasible in this location. Since 1993 no retail visitor serving commercial development proposals have been proposed on the subject site. It should also be noted that the nearby Civic Center area is clearly in a more appropriate location for visitor serving commercial retail and restaurant type uses.

However, re-designation of the site for residential development would result in the potential loss of visitor serving commercial uses, even if that use may be limited to a luxury hotel use. As such, the proposed amendment request will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a lower priority use within the Coastal Zone.

The loss of visitor-serving commercial recreational opportunities is in contradiction to the public access and recreation policies of the Coastal Act. Specifically, the request is inconsistent with LUP Policies 2.34, 2.36, and 2.37, and Coastal Act Section 30213 that is incorporated as a policy into the Malibu LCP, which require lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided. The proposed amendment will also have an adverse effect on the provision of priority visitor-serving commercial recreational facilities pursuant to LUP Policy 2.33 and Section 30222 of the Coastal Act, as incorporated as a policy into the Malibu LCP. Therefore, the amendment must be denied, as submitted.

In order for the proposed land use conversion from Commercial Visitor-Serving to Residential/Recreational to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property and preclude future visitor-serving uses, resulting in a low priority use within the Coastal Zone.

Ideally, the loss of area designated for commercial visitor-serving uses should be offset by re-designating some other equivalent or superior area within the City that is designated with a low priority land use, to a visitor-serving use. The City did not identify any other equivalent area that would be designated for visitor serving use. As an alternative, the property owner has offered to pay an in-lieu mitigation fee of \$2,000,000 to assist in funding affordable overnight accommodations at lower Topanga State Park. The Commission has accepted in-lieu fees tied to the development of lower cost accommodations at public parks as a feasible mitigation measure for the loss of a higher priority use. The proposed fee, in part, was calculated based upon the Crown Pointe Estates Project, an LCP Amendment in Ventura County that the Commission had considered and approved at the April 2008 Commission hearing. In Ventura County LCP Amendment No. MAJ-1-07 (Crown Pointe Estates) and related Coastal Development Permit Appeal No. A-4-VNT-07-009, the Commission approved the conversion of 2.9 acres of vacant land designated for commercial use to residential use (four new residential lots). However, as a condition of approval of the amendment and permit to ensure consistency with the Coastal Act's visitor serving commercial requirements, the Commission required payment of a mitigation fee by the project proponent, in the amount of \$557,084, for the construction of eleven new cabins at

Leo Carrillo State Beach Park in order to provide low-cost, visitor-serving, overnight accommodations. In consultation with State Parks, the Commission found that this mitigation fee would be adequate to fund the construction of eleven new overnight cabins at the State park.

Given that the subject “Crummer Trust” parcel is substantially larger than the Crown Pointe Estates parcel, and therefore represents a greater loss of visitor-serving opportunity, the Commission finds that a mitigation fee of \$2,000,000 is proportional and appropriate in this case. However, the property owner did not propose the mitigation fee as part of this project-driven LCP amendment or the coastal development permit applications to the City, and so this proposed fee is not reflected in the proposed LCP amendment request. Further, the City has expressed concern about a specific visitor-serving in-lieu mitigation fee amount being specified in the LCP, which is one of the reasons why the City never accepted the Commission’s suggested modifications on the prior LCP amendment related to the subject site (LCP Amendment No. MAL-MAJ-2-09-A). The City has indicated that it would have to conduct a mitigation in-lieu fee nexus study if the fee was a part of the LCP amendment. The Mitigation Fee Act (MFA), contained in California Government Code Sections 66000 et seq., guides the adoption and collection of development impact fees by local agencies. The MFA requires local agencies adopting impact fees to show that there is a reasonable relationship (“nexus”) between the type of impacts, the use of fee revenue, and the development projects upon which the fee is imposed. The MFA also requires local agencies to show that the amount of the fee is roughly proportional to the impact of development projects and the estimated reasonable cost of plan activities that would be required to mitigate those impacts. In this case, the City is not interested in dedicating time and funds to conduct such a study.

To address the City’s concerns and provide an effective alternative method for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay a \$2,000,000 in-lieu fee to the California Department of Parks and Recreation for use in developing lower cost visitor accommodations, to be released upon the owner securing of entitlements to subdivide and to develop the site with a mix of residential and recreational uses (**Exhibit 10a**). The agreement also provides for the owner’s execution of a covenant on the property, to be recorded if the escrow funds are returned to the developer in accordance with the escrow agreement, in which payment of the \$2,000,000 is an obligation that runs with the land and is binding on any future owners should the current owner sell the property prior to securing entitlements or otherwise exercise its rights under the escrow agreement to terminate the agreement under certain conditions (**Exhibit 10b**). As such, the agreement is structured to provide the Commission with assurance of payment of the fee, which is necessary to mitigate for the loss of a higher priority use. Using an escrow arrangement provides the property owner assurance that the required fee will only be transferred upon securing final entitlements for the planned development. In order to ensure that the proposed amendment will not result in the loss of visitor-serving and recreational opportunities in the Coastal Zone, the Commission is requiring a suggested modification to implement the property owner’s mitigation fee offer and the terms described above. Thus, **Suggested Modification No. 1** would delete Land Use Plan Policy 2.78 and replace it with a provision in Chapter 5 of the

Land Use Plan regarding the PD Land Use Designation (**Suggested Modification No. 2**) that notes the agreement between the Coastal Commission and the property owner regarding payment of the fee (while respecting the City's desire to not include a specific fee amount in the LCP) as a condition of the land use change from commercial visitor-serving to a mix of residential and recreational use in order to mitigate for the loss of visitor-serving land. The purpose of the fee would be to fund new lower cost overnight visitor accommodations at the former Topanga Ranch Motel within Lower Topanga State Park by CDPR.

Furthermore, the Commission found through the certification of Land Use Plan Policy 2.78 that a residential use was appropriate for the "Crummer" site provided the athletic fields were transferred to the site from the adjacent State Park. The proposed amendment, as modified, would authorize up to a maximum of five (5) residential units and require the applicant to dedicate a 1.74-acre park to the City of Malibu. The park dedication coupled with the recommended suggested modification to compensate for lower cost overnight accommodations would provide substantially more visitor serving opportunities than required under the existing LUP Policy 2.78 which authorized up to eight residential units on the property with the transfer of the athletic fields. The subject parcel is located contiguous with an existing developed area with adequate public services. Single-family residential development on the subject parcel would allow the clustering of development within or near an existing development area able to accommodate it, consistent with Section 30250 of the Coastal Act, which is incorporated as a policy into the Malibu LCP. In addition, subdivision of the subject parcel as a result of the LCP amendment would not create additional parcels significantly smaller than the average size of surrounding parcels, or that would significantly impact traffic or public access in the area, or that would require a shoreline protection structure to protect development at any time during the full 100 year life of the development. Incorporation of a public recreational use element at the site would enhance public access to the coast, consistent with Sections 30223 and 30252 of the Coastal Act, which are incorporated policies in the Malibu LCP.

2. Planned Development Standards and the Protection of Scenic Resources

The subject parcel is the only parcel in the City currently with the Planned Development (PD) land use and zoning designation. The terms of the PD Zone are clear in providing that a "planned development" for a specific project would require the approval of an LCP amendment that would specify the permitted type, density, and intensity of development. In this case, the City proposes to add a set of development standards to the Local Implementation Plan (LIP) portion of its certified LCP, including the permitted type, density, and intensity of development that may be permitted on the site. The standards address permitted uses on each of the seven created lots, with minimum lot dimensions, structure size and total development square footage, setbacks, structure height, grading, impermeable coverage, parking, structure color and lighting, and fencing. Many of the proposed standards reflect the requirements that are otherwise currently contained in the certified LIP, however, some proposed standards are different from those of the certified LIP to reflect the specific planned development proposal at the site.

As discussed previously, the City has already approved the coastal development permits for the planned development, which are conditioned to not be effective until certification of the subject

LCP amendment. Therefore, Commission staff has had the opportunity to analyze the specifics of the approved development in relation to the development standards proposed in the LCP amendment. Although the individual coastal development permits that were approved by the City are not a part of this LCP amendment, the Commission must analyze whether the specific development standards proposed in the LIP for the planned development zone designation are adequate to ensure the development is consistent with the policies and provisions of the LCP related to the protection of coastal resources.

As discussed previously, the Commission finds that the proposed density of residential development on the property, combined with dedication of a portion of the property to the City of Malibu for recreational use, is consistent with both the character of the area and with the adjacent development and land uses. The proposed clustering of residential development and dedication of a portion of the parcel to the City for recreational use would result in the residential parcels being smaller in size than if the whole parcel acreage were devoted to residential use. Such smaller parcels would result in a reduced allowable total development square footage (TDSF) pursuant to Section 3.6(K) of the LIP.

Section 3.6(K) of the LIP limits the allowable square footage for residential properties based on the size of the parcel. As part of the proposed development standards for the residential lots (Lots 1-5) of the planned development, the City has proposed a larger TDSF for each lot than would otherwise be allowed by strict application of Section 3.6(K) of the LIP. The proposed standard would allow a maximum of 11,172 sq. ft. for each residential lot, which is the maximum that is contained in the LIP Section 3.6(K) for lots equal to or greater than 5 acres in size. Lots 1-5 are proposed to range in size from 2.61 acres (Lot 3) to 5.95 acres (Lot 5). The specific development approved by the City on Lots 1-5 actually comply with the existing standard of LIP Section 3.6(K), with the exception of Lot 3, which was approved to be approximately 400 square feet greater than the existing LCP standard. However, the TDSF standard proposed in the subject LCP amendment request would allow an increase in TDSF up to a maximum of 11,172. Since the approved development would also need to comply with all other resource protection provisions of the LCP, such as the protection of scenic resources and bluff setbacks, the proposed increase in the maximum TDSF standard would not result in any adverse impacts to coastal resources. Further, the Commission finds that it is appropriate to allow for a slightly larger maximum TDSF on the residential lots in recognition of the approved residential density on this 24-acre site and the public recreational benefit of the project (1.74-acre park dedication).

Section 8.3(B) of the LIP limits grading on a residential lot to a 1,000 cu. yd. total, unless otherwise permitted by a variance. As part of the proposed development standards for the residential lots (Lots 1-5) of the planned development, the City proposes to allow an increase in the amount of grading that may be allowed on each lot without the need for a variance (up to 2,000 cu. yds.). The proposed standards would also allow grading for ingress and egress to be considered exempt grading and would establish a limit on the amount of export that may be permitted for exempt or non-exempt grading. However, while these proposed deviations from the existing standard of the LCP would increase maximum allowable grading thresholds, any proposed development would also have to comply with all other policies and provisions of the

LCP that require minimizing the visual and resource impacts of grading and landform alteration. Therefore, the proposed standards would not result in any adverse impacts to coastal resources when applied in conjunction with all other policies of the LCP.

Since many of the proposed development standards for the PD zone reflect the requirements that are otherwise currently contained in the LCP, but do not reflect all of them, it is important to provide clarification regarding the applicability of standards in order to ensure internal consistency and adequacy in carrying out the policies of the Land Use Plan. Therefore, **Suggested Modification 3** to proposed LIP Section 3.3(Q)(4) is required to clarify which LCP standard a proposed PD development standard is intended to replace or supplement, as applicable. All other applicable standards in the certified LCP would apply, such as those related to hazards and geologic stability, bluff setbacks, land divisions, water quality, and scenic resources.

The LCP contains policies that require that new development be sited and designed to minimize adverse impacts on scenic areas from scenic roads or public viewing areas to the maximum extent feasible. Coastal Act Section 30251, which is incorporated into the Malibu LUP, requires that “permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.” In addition, the following LCP policies and provisions are applicable in this case:

Land Use Plan Policy 6.1

The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.

Land Use Plan Policy 6.2

Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.

Land Use Plan Policy 6.4

Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.

Land Use Plan Policy 6.5 and Implementation Plan Section 6.5(A)(1)

New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is

no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.

Implementation Plan Section 6.5(A)(2-4)

2. Where there is no feasible alternative that is not visible from scenic highways or public viewing areas, the development area shall be restricted to minimize adverse impacts on views from scenic highways or public viewing areas.

3. Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

4. New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.

The subject 24-acre site is a prominent blufftop property that is situated adjacent to Pacific Coast Highway (PCH) to the north and Malibu Road to the south. The project site is visible from a number of public viewing areas, such as portions of Pacific Coast Highway, Malibu's Civic Center area to the east (downcoast), Malibu Colony Beach, Surfrider Beach and the Malibu Pier to the east (downcoast), Malibu Bluffs Park immediately to the west (upcoast), a small portion of the Conservancy's Bluffs Park to the west (upcoast), a portion of Malibu Road to the southwest, portions of Malibu Canyon Road to the north (inland), and several locations at much higher elevations to the north (inland). However, several of these public viewing areas are a substantial distance away from the site.

Given the visibility of the site from multiple vantages in the vicinity, the City thoroughly analyzed potential impacts to visual resources from the planned development as part of the CDP and CEQA review (EIR) process for the project and approved a specific development configuration and landscaping plan intended to minimize impacts to visual resources to the maximum extent feasible. In response to identified visual impacts during processing of the subject permit applications for residential development of the site, the property owner (in coordination with the City), made several revisions to the siting, square footage, and height of the residences and site landscaping in order to reduce visibility. Story poles were placed for two different alternative residential configurations and views from both public and private viewing areas were assessed. Visual simulations were also prepared for multiple residential configuration alternatives.

Since development on Lots 1 and 2 of the planned development on the eastern portion of the property would be visible from several public viewing areas to the east (downcoast), on Lot 1 the City approved a reduction in the square footage of the structure's second floor at up to 28 ft. high

from 3,344 sq. ft. to 2,565 sq. ft. and a modification to the structure's siting configuration, and on Lot 2 the City approved a reduction in the structure's height (not to exceed 18 feet in height) and a reduction in the square footage of the structure from 11,068 sq. ft. to 9,434 sq. ft. Given the prominence of the subject blufftop site and the substantial distance from public viewing areas to the east (downcoast) and north (Malibu Canyon Road), any structures on Lots 1 and 2 would be unavoidably visible from the identified public viewing areas. However, the approved structures would not interfere with any ocean, coastline, or significant mountain views from those public viewing areas. However, in order to ensure that the PD development standards proposed in the LIP portion of the subject LCP amendment reflect the approved height limitation for Lot 2 and the second floor mass limitation for Lot 1 in order to adequately carry out the scenic resource protection provisions of the certified LCP, the Commission finds that **Suggested Modification 3** to proposed LIP subsection 3.3(Q)(4)(a) is necessary.

Since development on Lots 3 and 4 of the planned development in the central portion of the property would be visible from portions of Pacific Coast Highway and Malibu Canyon Road to the north (inland), the City approved modifications to the structures on Lots 3 and 4. Particularly, the City approved a reduction in the square footage of the structures on Lots 3 and 4, and a reduction in the square footage of the second floor on Lot 4. The maximum height of both structures would be 28 feet. Any structures on Lots 3 and 4 would be unavoidably visible from the identified public viewing areas given the topography of the area. However, the portions of Malibu Canyon Road that the site would be visible from is a substantial distance away and much higher in elevation, so views of the ocean from that viewing area would not be significantly impacted by the development. Similarly, views from Pacific Coast Highway are limited. At the northwest corner of the property, the property is at the same grade as PCH. However, the grade of PCH drops significantly below the grade of the project site (up to about 60 feet) when traveling southbound toward Malibu's Civic Center along the site's northern property line. Therefore, the development would not significantly impact any ocean, coastline, or mountains views from Pacific Coast Highway given the unique topography.

Any further reductions in the height or bulk of the structures would not serve to avoid or significantly reduce visibility. Further, the City has approved detailed landscaping plans that serve to substantially screen public views of the structures using primarily native plant species.

The structures on Lots 1-4 would also be unavoidably visible from the Malibu Bluffs Park to the immediate west (upcoast) of the site. However, the development on Lots 1-4 would not interfere with any ocean, coastline, or significant mountain views from the public viewing areas within Bluffs Park. Further, given the intervening topography and elevation differences between the Conservancy's Bluffs Park further to the west (upcoast) and the project site, the structures will not interfere with any significant public views of the coast or mountains from the vantage points within the Conservancy's Bluffs Park.

Development on Lot 5 of the planned development in the southwest portion of the property is visible from public viewing areas within Malibu Bluffs Park, particularly downcoast views from portions of the public walking path along the bluff edge and the scenic view overlook area at the park. Although the City approved modifications to the structure on Lot 5 to reduce visibility of

the structure from Bluffs Park and Malibu Bluffs Park, Commission staff analysis of the approved residential structure on Lot 5 indicates that the southern extent of the residential structure obscures scenic views of the downcoast coastline/shoreline from the public walking path at the park. There is a small tree next to the scenic view overlook area at the park that limits downcoast views from the overlook, however, the tree may likely change or may not always be there. In order to avoid any obstruction of scenic views of the coastline/shoreline from these viewing areas at Malibu Bluffs Park, Commission staff determined (based on an analysis of the story pole photographs) that the residential structure on Lot 5 should be shifted landward (away from the bluff edge) an additional 30 feet from the location approved by the City. To ensure that the PD development standards proposed in the LIP portion of the subject LCP amendment reflect this additional setback for the residential structure on Lot 5 in order to adequately carry out the scenic resource protection provisions of the certified LCP, the Commission finds that **Suggested Modification 3** to proposed LIP subsection 3.3(Q)(4)(a) is necessary. Suggested Modification 3 specifies that the development footprint on each lot (Lot Nos. 1-5) shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 2” (**Exhibit 6** of this staff report), with the exception of Lot 5 where the residential structural setback shall be a minimum of 190 feet from the edge of the bluff (this reflects a 30 foot setback from the approved location) in order to ensure public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are preserved. The structural setback on Lot 5 shall not apply to at grade improvements or low profile above-grade improvements not to exceed 10 feet in height.

In recognition that future development normally associated with a single-family residence, that might otherwise be exempt, has the potential to impact scenic and visual resources of the area, it is important that any future improvements (other than repair and maintenance) on Lots 1-5 shall be reviewed by the City for consistency with the resource protection policies of the LCP through a new coastal development permit or permit amendment. This is also a requirement of the certified LCP (LIP Section 6.6). To clarify this requirement in the PD development standards proposed in the LIP portion of the subject LCP amendment, the Commission finds that **Suggested Modification 3** to proposed LIP subsection 3.3(Q)(4)(a)(viii) is necessary.

Other relatively minor clarifications and corrections to the PD development standards are required, pursuant to **Suggested Modification 3**, in order to ensure consistency among provisions of the LCP in order to minimize impacts to scenic resources, protect existing public parking, and omit references to City municipal code sections that are not a part of the LCP. Further, **Suggested Modification 4** is necessary to depict the approved planned development configuration in the LIP by adding “Malibu Coast Estate Planned Development Map 1” and “Malibu Coast Estate Planned Development Map 2” (attached as **Exhibit 6** of this staff report) as maps in Appendix 2 of the Local Implementation Plan.

3. Public Access and Recreation

The certified LCP contains many policies to ensure the protection and provision of public access in new development along with the consideration of public safety needs, private property rights, and the protection of natural resources, where applicable. Several policies provide specifically for the requirement of an offer to dedicate a lateral or vertical public access easement as a special

condition in new development projects where a nexus is demonstrated between the proposed development and its impact on public access. The LCP policies also provide the physical standards for locating public access easements (LUP Policies 2.66 – 2.68). Other policies provide for the opening, construction and maintenance of new accessways or the ongoing operation of existing accessways as well as for the acceptance, operation and maintenance of offers to dedicate beach or trail access easements (LUP Policies 2.40 – 2.41, 2.69 – 2.71, 2.83 – 2.85). Additional policies provide for the consideration of public safety, minimizing impacts on private property and adjacent private uses such as residential dwellings, and for the protection and enhancement of sensitive natural resources in providing and regulating public access (LUP Policies 2.73 – 2.75).

LUP Policy 2.25 requires that new development provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation. LUP Policy 2.26 requires that adequate parking should be provided to serve coastal access and recreation uses to the extent feasible. Existing parking areas serving recreational uses shall not be displaced unless a comparable replacement area is provided. And LUP Policy 2.27 states that the implementation of restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, physical barriers, imposition of maximum parking time periods, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.

The subject site is private property with no existing public access. However, the site is adjacent to City-owned Malibu Bluffs Park and the Conservancy-owned Bluffs Park where there is both active and passive public recreational opportunities such as trails, walking path, scenic overlook, two ball fields, soccer/multipurpose field, playground, benches and picnic tables, public parking lot, and the Michael Landon Community Center. As discussed previously, the planned development includes dedication of Lot 7 (an approximately 1.74 acre lot adjacent to Malibu Bluffs Park as shown in Exhibit 5) to the City of Malibu to expand the adjacent City-owned park for active and passive recreation use. The applicant would also provide the City with \$1,000,000 in funding in order to develop the site with a public recreational use (Condition 28 of City CDP No. 07-144). No specific development has been approved by the City on Lot 7 yet. The proposed PD standards specify that the following uses would be permitted on Lot 7: parks and public open space (excluding community centers), active and passive public recreational facilities such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport fencing, parking lots, and similar uses. Onsite wastewater treatment facilities are also specified as a permitted use to allow for the siting of the seepage pits for the package septic system proposed as part of the planned development. The Commission finds these are appropriate uses that would be a natural extension of Malibu Bluffs Park and serve to enhance public recreational opportunities, consistent with the public access and recreation policies of the LCP.

The PD standards also address parking for Lot 7 and indicate that the amount of parking required at the site would be determined based on a parking study, and that off-site parking may be used to

satisfy the on-site parking requirements that are determined to be appropriate for the use. However, in order to ensure that existing public parking and access to existing recreational uses are not adversely impacted by any additional recreational uses that may be allowed on Lot 7, **Suggested Modification 3** is required to clarify that adequate parking shall be provided to serve the proposed recreational uses and off-site parking may be provided counted towards satisfying the on-site parking requirement as long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided. As suggested to be modified, the parking standards for Lot 7 will ensure consistency with and be adequate to carry out the public access policies of the LUP.

LUP Policy 2.28 states that gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted within private street easements where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands where there is substantial evidence that prescriptive rights exist. In this case, the City approved a 280 sq. ft. guard house and an access gate on the proposed private street that leads to the proposed residences of the planned development. However, given the configuration of the planned development in relation to Malibu Bluffs Park and the proposed recreational lot (Lot 7), the gated access will not deter public access or adversely impact public access. The gate is also necessary given the close proximity to the park and to prevent conflicts between future residents and park users.

4. Conclusion

For the reasons stated above, the Commission finds that, if modified by the City as suggested, the proposed LUP portion of the LCP amendment is consistent with the applicable policies of the Coastal Act. The Commission further finds that only if modified as suggested, will the LCP amendment conform with and be adequate to carry out the applicable policies of the certified Land Use Plan.

C. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

California Public Resources Code (PRC) Section 21080.9 – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, because the Natural Resources Agency found the Commission’s LCP review and approval program to be functionally equivalent to the EIR process, *see* 14 C.C.R. § 15251(f), PRC Section 21080.5 relieves the Commission of the responsibility to prepare an EIR for its review of and action on LCP provisions. Nevertheless, some elements of CEQA continue to apply to this review process.

Specifically, pursuant to CEQA and the Commission’s regulations (*see* 14 C.C.R. §§ 13540(f), 13542(a), and 13555(b)), the Commission's certification of this LCP amendment must be based in part on a finding that it meets the CEQA requirements listed in PRC section 21080.5(d)(2)(A).

That section requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Land Use Plan amendment has been found not to be in conformance with Chapter 3 policies of the Coastal Act. To resolve the concerns identified, suggested modifications have been made to the proposed amendment. With incorporation of the suggested modifications, the Land Use Plan amendment is in conformity with the Coastal Act. The Implementation Plan amendment has been found not to be in conformance with and inadequate to carry out the Land Use Plan as amended. With incorporation of the suggested modifications, the Implementation Plan amendment is in conformity with the Land Use Plan as amended. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment. If modified as suggested, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report, if the LCP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LCP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Malibu Resolution No. 14-13 approving LCP Land Use Plan Amendment 12-001; City of Malibu Ordinance No. 379 approving LCP Implementation Plan Amendment 12-001; City of Malibu Resolution No. 14-02 approving CDP No. 07-144 (Crummer Site Subdivision); City of Malibu Resolution No. 14-03 approving CDP No. 07-145 (Lot 1 Development); City of Malibu Resolution No. 14-04 approving CDP No. 07-146 (Lot 2 Development); City of Malibu Resolution No. 14-05 approving CDP No. 07-147 (Lot 3 Development); City of Malibu Resolution No. 14-06 approving CDP No. 07-148 (Lot 4 Development); City of Malibu Resolution No. 14-07 approving CDP No. 07-149 (Lot 5 Development); Final Environmental Impact Report for the Crummer Site Subdivision Project, by The Planning Center DC&E, dated December 2013; City of Malibu LCP Amendment MAL-MAJ-2-09-A; “Study of Lower Cost Overnight Accommodations Serving the City of Malibu and its Vicinity,” by AZ Winter Mesa LLC, dated September 2008; County of Ventura LCP Amendment No. 1-07 and Appeal No. A-4-VNT-07-009 (Crown Point Estates); certified City of Malibu Local Coastal Program.

APR 02 2014

California
Coastal Commission

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

March 19, 2014

LCPA No. 12-001

The existing language in the certified LCP is shown in straight type. The language proposed by the City of Malibu in this amendment to be inserted is shown underlined. The language proposed by the City of Malibu to be removed in this amendment is shown as ~~struck out~~.

Amend LUP Chapter 2 (Public Access and Recreation), Section C (Land Use Plan Policies) to delete LUP No. 2.78 as follows:

2.78 ~~If an agreement is reached by the State Department of Parks and Recreation to relocate the existing athletic fields at Malibu Bluffs State Park out of the prime view shed of the park onto the 24.9 acre Crummer Family Trust parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway up to 8 residential units shall be permitted on the remainder of the (Crummer Trust) site. Said agreement shall cause the redesignation of the subject site to Residential in the LCP. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP. If no agreement is reached to relocate the existing athletic fields the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving).~~

2.78 [RESERVED]

- Amend LUP Chapter 5 (New Development) Section C (Land Use Plan Policies) No. 2 (Land Use Designations) as follows:

PLANNED DEVELOPMENT (PD): The PD designation is a specially tailored zoning district which establishes zoning regulations and sets specific development standards for a planned development. The PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs ~~provides for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway. in the event of permanent relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed of the park in accordance with Policy 2.78 of the Land Use Plan.~~

- Amend LIP Chapter 3 (Zoning Designations) to include permitted uses, lot development criteria and development standards for the Planned Development Zoning District.

Exhibit 1
LCP-4-MAL-14-0408-1
City of Malibu Proposed LCP Amendment Text

Amendments to LIP Section 3.3(Q) "Planned Development (PD) Zone" are hereby to read as follows:

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development ~~on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development consisting of five single-family residences and 1.71 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD consists of the land designated as Assessor Parcels Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018 known as Malibu Coast Estate.~~

2. Permitted uses

The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.

The following uses and structure permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on Malibu Coast Estate Vesting Tract Map.

a. Lot Nos. 1-5

- i. One single-family residence per lot
- ii. Accessory uses (second residential units or guest units pursuant to Government Code Section 65852.2), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studio, home offices, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
- iii. Domestic animals, kept as pets
- iv. Landscaping

b. Lot No. 6

- i. Uses and structures maintained by either the owners of Lots 1-5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access roads, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

c. Lot No. 7

- i. Parks and public open space, excluding community centers
- ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
- iii. Onsite wastewater treatment facilities

3. Lot development criteria

In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development. All new lots created in Malibu Coast Estate shall comply with the following criteria:

a. Lots No. 1-5

- i. Minimum lot area: 113,600 square feet (2.60 acres)
- ii. Minimum lot width: 115 feet
- iii. Minimum lot depth: 480 feet

b. Lot No. 6

- i. Minimum lot area: 125,700 square feet (2.88 acres)
- ii. Minimum lot width: 625 feet
- iii. Minimum lot depth: 100 feet

c. Lot No. 7

- i. Minimum lot area: 75,640 square feet (1.74 acres)
- ii. Minimum lot width: 460 feet
- iii. Minimum lot depth: 100 feet

4. Property development and design standards

The following development standards shall replace the corresponding development standards otherwise contained in LIP Sections 3.6 for those lots in Malibu Coast Estate. All requirements of the LCP, including LIP Section 3.5, that are not inconsistent with the criteria listed below shall remain in effect for those lots in Malibu Coast Estate.

a. Lot Nos. 1-5

i. Structure Size

- a) The total development square footage on each of Lot Nos. 1-5 shall not exceed eleven thousand one hundred seventy-two (11,172) square feet per lot.
- b) Structures Greater than Eighteen (18) Feet in Height. Notwithstanding any other provision of this chapter, the total development square footage for a structure greater than eighteen (18) feet in height shall not be greater than permitted for single-story construction. The second floor area plus the area of vaulted ceilings above eighteen (18) feet in height shall not exceed two-thirds of the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.
- c) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
- d) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.

ii. Setbacks

- a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less.
- b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a

single side yard setback be less than ten (10) percent of the width of the lot.

- c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth
- d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply

iii. Structure Height

- a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet unless height increases up to twenty-four (24) feet flat roof and twenty-eight (28) feet pitched roof are approved subject to LIP Section 13.27 (Site Plan Review), except on Lot 2, structures shall not be higher than eighteen (18) feet. Height is measured from natural or finished grade, whichever is lower. A pitched roof is a roof with a slope of 3:12 or steeper.
- b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened. Mechanical equipment behind a mansard roof may exceed twenty-four (24) feet in height but in no case shall it exceed the height of the mansard roof.
- c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.

iv. Grading

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 2,000 cubic yards per lot
- c) Net export shall be limited to 3,500 cubic yards per lot

v. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(I) shall apply.

vi. Parking

- a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
- b) One enclosed or unenclosed parking space for a guest unit or second unit.

vii. Colors and Lighting

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.

b. Lot No. 6

i. Structure Size

The total development square footage of all structures shall not exceed 280 square feet.

ii. Setbacks

- a) Buildings, not including projections permitted in Section 3.5 of the Malibu LIP shall maintain a minimum setback of fifty (50) feet from all property lines.
- b) Parkland setbacks in Local Coastal Program Local Implementation Plan (LIP) Section 3.6(F)(6) shall not apply.

iii. Structure Height

- a) Structure height shall not exceed 16.5 feet, as measured from natural or finished grade, whichever is lower.
- b) In no event shall the maximum number of stories above grade be greater than one.
- c) A basement, cellar or subterranean garage shall not be permitted.

iv. Grading

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 1,000 cubic yards.
- c) Net export shall be limited to 2,500 cubic yards.

v. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(I) shall not apply. Up to 44,000 square feet of impermeable coverage shall be permitted.

vi. Parking

The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking. Parking within the property boundaries shall not be located on or obstruct fire department access.

vii. Colors and Lighting

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b) Lighting must comply with LIP Section 6.5(G).

c. Lot No. 7

i. Site Design

Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations. The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

ii. Parking

Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses. The Planning Director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement.

iii. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with the temporary use permit process contained within Malibu Municipal Code Chapter 17.68.

5. Permit Required.

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.

APR 02 2014

RESOLUTION NO. 14-13

California
Coastal Commission

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 12-001, AMENDING LOCAL COASTAL PROGRAM, LAND USE PLAN TO DELETE LAND USE PLAN POLICY 2.78, AMEND LAND USE PLAN CHAPTER 5 (LAND USE DESIGNATIONS) LOCATED AT 24120 PACIFIC COAST HIGHWAY (ASSESSOR PARCEL NUMBERS 4458-018-019, 4458-018-018 AND 4458-018-002), ALSO KNOWN AS THE CRUMMER SITE SUBDIVISION PROJECT, IN THE PLANNED DEVELOPMENT LAND USE DESIGNATION (PCH PROJECT OWNER, LLC.)

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

Section 1. Recitals.

A. On December 6, 2007, Robert Gold, on behalf of PCH Project Owner LLC, submitted Coastal Development Permit (CDP) No. 07-144, Vesting Tentative Tract Map (VTTM) No. 07-033, Local Coastal Program Amendment (LCPA) No. 12-001, Zoning Text Amendment (ZTA) 12-001 to the Planning Department for review. The applications were routed for review to the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department and the Los Angeles County Fire Department (LACFD) for Local Coastal Program (LCP) and Malibu Municipal Code (M.M.C.) conformance review.

B. On June 2, 2008, a Notice of Coastal Development Permit was posted on the subject property.

C. On July 28, 2008, the City Council approved a contract with The Planning Center to initiate work on the preparation of an Environmental Impact Report (EIR) for the proposed project.

D. On September 30, 2008, the City published a Notice of Preparation (NOP) and Initial Study for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The initial study determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.

E. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.

F. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed staff that the project could resume.

G. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

Exhibit 2

LCP-4-MAL-14-0408-1

City of Malibu Resolution 14-13 Approving
Proposed Land Use Plan Amendment

H. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30-day circulation period ran from May 10, 2012 through June 11, 2012.

I. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

J. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds. The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

K. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearinghouse # 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

L. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit was posted on the subject property.

M. On April 23, 2013, the Environmental Review Board / Subdivision Review Committee reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

N. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR. The Final EIR responds to the comments received on the Draft EIR and proposes text revisions to the Draft EIR.

O. On November 7, 2013, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site and to interested parties, regional, state and federal agencies.

P. On December 13, 2013, the Final EIR was made available.

Q. On December 20, 2013, an errata to the Final EIR was made available. Response to Comments on the Draft EIR was circulated to all of those who submitted comments as well as to interested parties.

R. On January 6, 2014, a second errata to the Final EIR was made available.

S. On January 6, 2014, the Planning Commission held a duly noticed public hearing on the LCPA No. 12-001 and ZTA No. 12-001, reviewed and considered the Final EIR, agenda report, reviewed and considered written reports, public testimony, and other information in the record. The

Planning Commission adopted Planning Commission Resolution Nos. 14-01 and 14-02 but took no action on CDP Nos. 07-145 through 07-149 (Lots 1-5), requiring the applicant return to the Planning Commission once complete plans have been submitted for CDP Nos. 07-145 through 07-149 (Lots 1 - 5) and re-story pole the structures proposed in CDP Nos. 07-145 and 07-146 (Lots 1-2).

T. On January 30, 2014, 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 1,000 foot radius of the subject property and to interested parties, regional, state and federal agencies.

U. On February 24, 2014, the City Council 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.

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect. LIP Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendments to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCP amendment and because they are entirely dependent on, related to, and duplicative of the exempt activity, they are subject to the same CEQA exemption. Without waiving the CEQA exemption referenced above, the City prepared an EIR for the project which analyzed the LCPA and ZTA together with the proposed subdivision and new development, including the construction of five new single-family residences and associated development.

Section 3. Local Coastal Program Amendments.

LCPA No. 12-001 includes amendments to the Local Coastal Program Land Use Plan. Related amendments to Title 17 (Zoning) of the M.M.C. and Local Coastal Program Local Implementation Plan are included in Ordinance No. 379. The City Council hereby amends the Land Use Plan as follows:

- A. Chapter 2 (Public Access and Recreation), Section C (Land Use Plan Policies) is hereby amended to read as follows:

2.78 RESERVE

- B. Chapter 5 (New Development) Section C (Land Use Plan Policies) No. 2 (Land Use Designations) is hereby amended to read as follows:

PLANNED DEVELOPMENT (PD): The PD designation is a specially tailored zoning district which establishes zoning regulations and sets specific development standards for a planned development. The PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway.

Section 3. Local Coastal Program Amendments Findings.

A. Based on evidence in the whole record, the City Council hereby finds that the proposed amendments meet the requirements of, and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act. Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas. The proposed amendments eliminate an outdated LUP Policy that reflects the Coastal Commission's knowledge of discussions between the City, Department of State Parks and the property owner regarding the transfer of two existing baseball fields from State-owned property to the subject property when the Malibu LCP was being drafted in 2002. In 2006, after the City assumed ownership of the property containing the two ball fields, LUP Policy 2.78 became obsolete because the ball fields were no longer on State property and an agreement was no longer necessary; as a result, LUP Policy 2.78 is now obsolete. There are no impacts on public access to the beach, marine resources, scenic views, or environmentally sensitive habitat areas as a result of these changes.

B. The proposed amendments do not involve a zone change; the existing PD zoning designation remains. The proposed text amendment overall is consistent with the LCP and Chapter 3 of the Coastal Act.

Section 5. Approval.

Based on the evidence in the record, the City Council hereby adopts LCPA No. 12-001.

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA 12-001 to the CCC for certification, in conformance with the submittal requirements specified in California Code of Regulation, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et. seq.

Section 7. Severability.

If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard

to whether any other section, subsection, sentence, clause, portion, or phrase of this Ordinance would be subsequently declared invalid or unconstitutional.

Section 8. Effectiveness.

The LCP amendment approved in this resolution shall become effective only upon certification by the CCC of this amendment to the LCP.

Section 9. Certification.

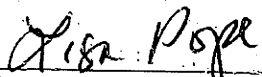
The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 24th day of February 2014.



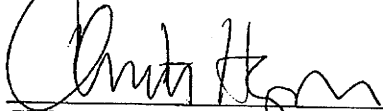
JOAN HOUSE, Mayor

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.

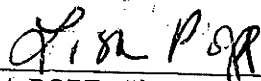
I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-13 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 24th day of February 2014 by the following vote:

AYES: 5 Councilmembers: La Monte, Rosenthal, Sibert, Peak, House

NOES: 0

ABSTAIN: 0

ABSENT: 0



LISA POPE, City Clerk
(seal)

APR 02 2014

California
Coastal Commission

ORDINANCE NO. 379

AN ORDINANCE OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 12-001 AND ZONING TEXT AMENDMENT NO. 12-001, AMENDING THE LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN TO INCORPORATE DEVELOPMENT STANDARDS FOR PLANNED DEVELOPMENT ZONING DISTRICT AND AMENDING THE MALIBU MUNICIPAL CODE TO ADD A COROLLARY ZONING TEXT AMENDMENT, FOR THE MALIBU COAST ESTATE SUBDIVISION, LOCATED AT 24120 PACIFIC COAST HIGHWAY (4458-018-019, 4458-018-018 AND 4458-018-002), ALSO KNOWN AS THE CRUMMER SITE SUBDIVISION PROJECT, IN THE PLANNED DEVELOPMENT ZONING DESIGNATION (PCH PROJECT OWNER, LLC.)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

- A. On December 6, 2007, Robert Gold, on behalf of PCH Project Owner LLC submitted Coastal Development Permit (CDP) No. 07-144, Vesting Tentative Tract Map (VTTM) No. 07-033, Local Coastal Program Amendment (LCPA) No. 12-001, Zoning Text Amendment (ZTA) No. 12-001 to the Planning Department for review. The applications were routed for review to the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department and the Los Angeles County Fire Department (LACFD) for Local Coastal Program (LCP) and Malibu Municipal Code (M.M.C.) conformance review.
- B. On June 2, 2008, a Notice of Coastal Development Permit was posted on the subject property.
- C. On July 28, 2008, the City Council approved a contract with The Planning Center to initiate work on the preparation of an Environmental Impact Report (EIR) for the proposed project.
- D. On September 30, 2008, the City published a Notice of Preparation (NOP) and Initial Study for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The initial study determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.
- E. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.
- F. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed staff that the project could resume.

Exhibit 3

LCP-4-MAL-14-0408-1

City of Malibu Ordinance 379 Approving
Proposed Implementation Plan Amendment

G. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

H. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30-day circulation period ran from May 10, 2012 through June 11, 2012.

I. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

J. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds. The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

K. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearinghouse No. 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

L. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit was posted on the subject property.

M. On April 23, 2013, the Environmental Review Board / Subdivision Review Committee reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

N. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR. The Final EIR responds to the comments received on the Draft EIR and proposes text revisions to the Draft EIR.

O. On November 7, 2013, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site and to interested parties, regional, state and federal agencies.

P. On December 13, 2013, the Final EIR was made available.

Q. On December 20, 2013, an errata to the Final EIR was made available. Response to Comments on the Draft EIR was circulated to all of those who submitted comments as well as to interested parties.

R. On January 6, 2014, a second errata to the Final EIR was made available.

S. On January 6, 2014, the Planning Commission held a duly noticed public hearing on the LCPA No. 12-001 and ZTA No. 12-001, reviewed and considered the Final EIR, agenda report, reviewed and considered written reports, public testimony, and other information in the record. The Planning Commission adopted Planning Commission Resolution Nos. 14-01 and 14-02 but took no action on CDP Nos. 07-145 through 07-149 (Lots 1-5), requiring the applicant return to the Planning Commission once complete plans have been submitted for CDP Nos. 07-145 through 07-149 (Lots 1-5) and re-story pole the structures proposed in CDP Nos. 07-145 and 07-146 (Lots 1-2).

T. On January 30, 2014, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property and to interested parties, regional, state and federal agencies.

U. On February 24, 2014, the City Council 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.

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect. Local Coastal Program Local Implementation Plan (LIP) Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendments to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCP amendment and because they are entirely dependent on, related to, and duplicative of the exempt activity, they are subject to the same CEQA exemption. Without waiving the CEQA exemption referenced above, the City prepared an EIR for the project which analyzed the LCPA and ZTA together with the proposed subdivision and new development, including the construction of five new single-family residences and associated development.

Section 3. Local Coastal Program Amendments.

LCPA No. 12-001 includes amendments to the Local Coastal Program Land Implementation Plan. Related amendments to the Local Coastal Program Local Use Plan are included in Resolution No. 14-13. The City Council hereby amends the Local Implementation Plan as follows.

A. LIP Section 3.3.Q Planned Development (PD) Zone s hereby amended to read as follows:

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development consisting of five single-family residences and 1.71 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD consists of the land designated as Assessor Parcels Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018 known as Malibu Coast Estate.

2. Permitted uses

The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.

The following uses and structure permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on Malibu Coast Estate Vesting Tract Map.

a. Lot Nos. 1-5

- i. One single-family residence per lot
- ii. Accessory uses (second residential units or guest units pursuant to Government Code Section 65852.2), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studio, home offices, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
- iii. Domestic animals, kept as pets
- iv. Landscaping

b. Lot No. 6

- i. Uses and structures maintained by either the owners of Lots 1-5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access roads, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

c. Lot No. 7

- i. Parks and public open space, excluding community centers
- ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.

- iii. Onsite wastewater treatment facilities
- 3. Lot development criteria

In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development. All new lots created in Malibu Coast Estate shall comply with the following criteria:

- a. Lots No. 1-5
 - i. Minimum lot area: 113,600 square feet (2.60 acres)
 - ii. Minimum lot width: 115 feet
 - iii. Minimum lot depth: 480 feet
- b. Lot No. 6
 - i. Minimum lot area: 125,700 square feet (2.88 acres)
 - ii. Minimum lot width: 625 feet
 - iii. Minimum lot depth: 100 feet
- c. Lot No. 7
 - i. Minimum lot area: 75,640 square feet (1.74 acres)
 - ii. Minimum lot width: 460 feet
 - iii. Minimum lot depth: 100 feet

4. Property development and design standards

The following development standards shall replace the corresponding development standards otherwise contained in LIP Sections 3.6 for those lots in Malibu Coast Estate. All requirements of the LCP, including LIP Section 3.5, that are not inconsistent with the criteria listed below shall remain in effect for those lots in Malibu Coast Estate.

- a. Lot Nos. 1-5
 - i. Structure Size
 - a) The total development square footage on each of Lot Nos. 1-5 shall not exceed eleven thousand one hundred seventy-two (11,172) square feet per lot.
 - b) Structures Greater than Eighteen (18) Feet in Height. Notwithstanding any other provision of this chapter, the total development square footage for a structure greater than eighteen (18) feet in height shall not be greater than permitted for single-story construction. The second floor area plus the area of vaulted ceilings above eighteen (18) feet in height shall not exceed two-

thirds of the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.

- c) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
- d) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.

ii. Setbacks

- a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less.
- b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.
- c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth
- d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply

iii. Structure Height

- a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet unless height increases up to twenty-four (24) feet flat roof and twenty-eight (28) feet pitched roof are approved subject to LIP Section 13.27 (Site Plan Review), except on Lot 2, structures shall not be higher than eighteen (18) feet. Height is measured from natural or finished grade, whichever is lower. A pitched roof is a roof with a slope of 3:12 or steeper.
- b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened. Mechanical equipment behind a mansard roof may exceed twenty-four (24) feet in height but in no case shall it exceed the height of the mansard roof.
- c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.

iv. Grading

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 2,000 cubic yards per lot
- c) Net export shall be limited to 3,500 cubic yards per lot

v. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(I) shall apply.

vi. Parking

- a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
- b) One enclosed or unenclosed parking space for a guest unit or second unit.

vii. Colors and Lighting

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.

b. Lot No. 6

i. Structure Size

The total development square footage of all structures shall not exceed 280 square feet.

ii. Setbacks

- a) Buildings, not including projections permitted in Section 3.5 of the Malibu LIP shall maintain a minimum setback of fifty (50) feet from all property lines.
- b) Parkland setbacks in Local Coastal Program Local Implementation Plan (LIP) Section 3.6(F)(6) shall not apply.

iii. Structure Height

- a) Structure height shall not exceed 16.5 feet, as measured from natural or finished grade, whichever is lower.
- b) In no event shall the maximum number of stories above grade be greater than one.
- c) A basement, cellar or subterranean garage shall not be permitted.

iv. Grading

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 1,000 cubic yards.
- c) Net export shall be limited to 2,500 cubic yards.

v. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(l) shall not apply. Up to 44,000 square feet of impermeable coverage shall be permitted.

vi. Parking

The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking. Parking within the property boundaries shall not be located on or obstruct fire department access.

vii. Colors and Lighting

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b) Lighting must comply with LIP Section 6.5(G).

c. Lot No. 7

i. Site Design

Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations.

The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

ii. Parking

Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses. The Planning Director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement.

iii. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with the temporary use permit process contained within Malibu Municipal Code Chapter 17.68.

5. Permit Required.

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.

Section 4. Local Coastal Program Amendment Findings.

A. Based on evidence in the whole record, the City Council hereby finds that the proposed amendments meet the requirements of, and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act. Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas. Pursuant to LIP Section 3.3(Q)(1) requires an amendment to the LCP for any planned development on a parcel zoned PD in order to specify the type, density, and intensity of development to be allowed. The proposed LCPA includes amendments to LIP Section 3.3 to incorporate permitted uses, density and development standards for the Planned Development Zoning District; therefore, the amendments to the LCP meet the requirements of, and are in conformance with the goals, objectives and purposes of the LCP. There are no impacts on public access to the beach, marine resources, scenic views, or environmentally sensitive habitat areas as a result of these changes.

B. The proposed LCPA does not involve a zone change; the existing PD zoning designation remains. The proposed text amendment overall is consistent with the LCP and Chapter 3 of the Coastal Act.

Section 5. Malibu Municipal Code Amendments.

ZTA No. 12-001 includes amendments to Title (Zoning) of the Malibu Municipal Code as follows. The City Council hereby amends Title 17 as follows:

A. Section 17.20.010 is hereby amended to read as follows:

The PD district is intended to provide for a mix of residential and recreational development consisting of five single-family residences and 1.74 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD consists of the land designated as Assessor Parcels (APNs) 4458-018-019, 4458-018-002, and 4458-018-018 known as Malibu Coast Estate.

B. Chapter 17.39 is hereby added to the Malibu Municipal Code to read as follows:

Chapter 17.39

Malibu Coast Estate Planned Development (PD) District

17.39.010 Purpose.

The PD District is intended to provide a mix of residential and recreational development consisting of five single-family residences and 1.74 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD consists of the land designated as Assessor Parcel (APNs) 4458-018-019, 4458-018-002, and 4458-018-018 known as Malibu Coast Estate.

17.39.020 Permitted uses.

Lot numbers are as identified on Malibu Coast Estate Vesting Tract Map. The following uses and structures are permitted:

A. Lot Nos. 1-5

1. One single-family residence per lot.
2. Accessory uses (second residential units or guest units pursuant to Government Code Section 65852.2), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studio, home offices, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
3. Domestic animals, kept as pets.
4. Landscaping.

B. Lot No. 6

Uses and structures maintained by either the owners of Lots 1-5 or the Homeowners' Association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access roads, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

C. Lot No. 7

1. Parks and public open space, excluding community centers,
2. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
3. Onsite wastewater treatment facilities.

17.39.030 Lot development criteria.

All new lots created in Malibu Coast Estate shall comply with the following criteria:

A. Lots No. 1-5

1. Minimum lot area: 113,600 square feet (2.60 acres)
2. Minimum lot width: 115 feet
3. Minimum lot depth: 480 feet

B. Lot No. 6

1. Minimum lot area: 125,700 square feet (2.88 acres)
2. Minimum lot width: 625 feet
3. Minimum lot depth: 100 feet

C. Lot No. 7

1. Minimum lot area: 75,640 square feet (1.74 acres)
2. Minimum lot width: 460 feet
3. Minimum lot depth: 100 feet

17.39.040 Property development and design standards.

The following development standards shall replace the corresponding development and design standards (Section 17.40.040 and Section 17.40.080) for Malibu Coast Estate. All requirements of the zoning ordinance, including but not limited to Section 17.40.030 that are not inconsistent with the criteria listed below shall remain in effect for those parcels in Malibu Coast Estate.

A. Lot Nos. 1-5

1. Structure Size

- a. The total development square footage on each of Lot Nos. 1-5 shall not exceed eleven thousand one hundred seventy-two (11,172) square feet per lot.
- b. Structures Greater Than Eighteen (18) Feet in Height. Notwithstanding any other provision of this chapter, the total development square footage for a structure greater than eighteen (18) feet in height shall not be greater than permitted for single-story construction. The second floor area plus the area of vaulted ceilings above eighteen (18) feet in height shall not exceed two-thirds of the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.
- c. Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
- d. Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.

2. Setbacks

- a. Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less.
- b. Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.
- c. Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.
- d. Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.

3. Structure Height

- a. Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet unless height increases up to twenty-four (24) feet flat roof and twenty-eight (28) feet pitched roof are approved subject to LIP Section 13.27 (Site Plan Review), except on Lot 2, structures shall not be

higher than eighteen (18) feet. Height is measured from natural or finished grade, whichever is lower. A pitched roof is a roof with a slope of 3:12 or steeper.

- b. Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened. Mechanical equipment behind a mansard roof may exceed twenty-four (24) feet in height but in no case shall it exceed the height of the mansard roof.
- c. In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.

4. Grading

- a. Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b. Non-exempt grading shall be limited to 2,000 cubic yards per lot.
- c. Net export shall be limited to 3,500 cubic yards per lot.

5. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(l) shall apply.

6. Parking

- a. Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
- b. One enclosed or unenclosed parking space for a guest unit or second unit.

7. Colors and Lighting

- a. Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b. Lighting must comply with LIP Section 6.5(G).

8. Permit Required

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.

B. Lot No. 6

1. Structure Size

The total development square footage of all structures shall not exceed 280 square feet.

2. Setbacks

- a. Buildings, not including projections permitted in Section 3.5 of the Malibu LIP shall maintain a minimum setback of fifty (50) feet from all property lines.
- b. Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.

3. Structure Height

- a. Structure height shall not exceed 16.5 feet, as measured from natural or finished grade, whichever is lower.
- b. In no event shall the maximum number of stories above grade be greater than one.
- c. A basement, cellar or subterranean garage shall not be permitted.

4. Grading

- a. Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b. Non-exempt grading shall be limited to 1,000 cubic yards.
- c. Net export shall be limited to 2,500 cubic yards.

5. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(l) shall not apply. Up to 44,000 square feet of impermeable coverage shall be permitted.

6. Parking

- a. The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking.
- b. Parking within the property boundaries shall not be located on or obstruct fire department access.

7. Colors and Lighting

- a. Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b. Lighting must comply with LIP Section 6.5(G).

C. Lot No. 7

1. Site Design

Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations. The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

2. Parking

Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses. The Planning Director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement.

3. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

4. Temporary Uses

Temporary uses shall be in accordance with the temporary use permit process contained within Malibu Municipal Code Chapter 17.68.

17.39.050 Permit Required.

All development within Malibu Coast Estate requires a coastal development permit unless exempt in Malibu LIP Section 13.4.

Section 6. Zoning Text Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds the proposed amendment is consistent with the general plan and approves ZTA No. 12-001. The proposed amendment does not involve a zone change; the existing General Plan zoning designation remains (PD). The proposed text amendment overall is consistent with the Malibu General Plan.

Section 7. Approval.

Subject to the contingency set forth in Section 10, the City Council hereby adopts LCPA No. 12-002 and ZTA No. 12-001 amending the LCP and M.M.C.

Section 8. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA 12-001 to the CCC for certification, in conformance with the submittal requirements specified in California Code of Regulation, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et. seq.

Section 9. Severability.

If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of this Ordinance would be subsequently declared invalid or unconstitutional.

Section 10. Effectiveness.

The LCPA and ZTA approved in this ordinance shall become effective only upon certification by the CCC of this amendment to the LCP.

Section 11. Certification.

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

PASSED, APPROVED AND ADOPTED this 10th day of March 2014.

JOAN HOUSE, 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 Malibu Municipal Code and Code of Civil Procedure.

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 379 was passed and adopted at the regular City Council meeting of March 10, 2014, by the following vote:

AYES:	5	Councilmembers:	La Monte, Rosenthal, Sibert, Peak, House
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		

LISA POPE, City Clerk
(seal)

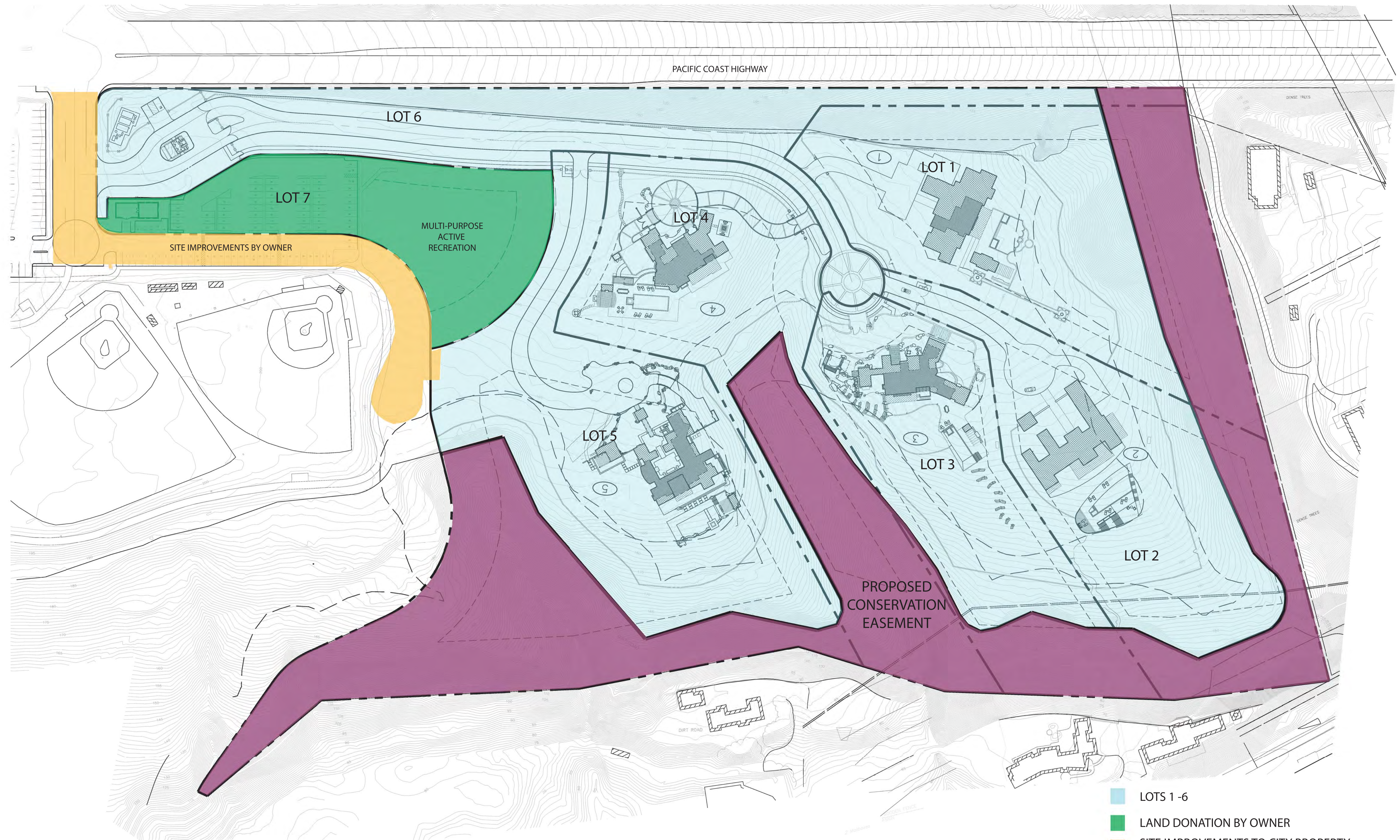
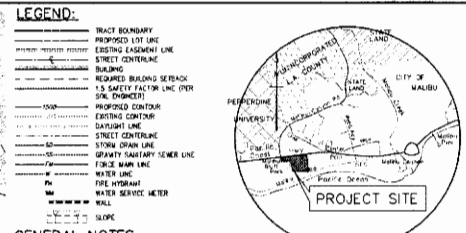
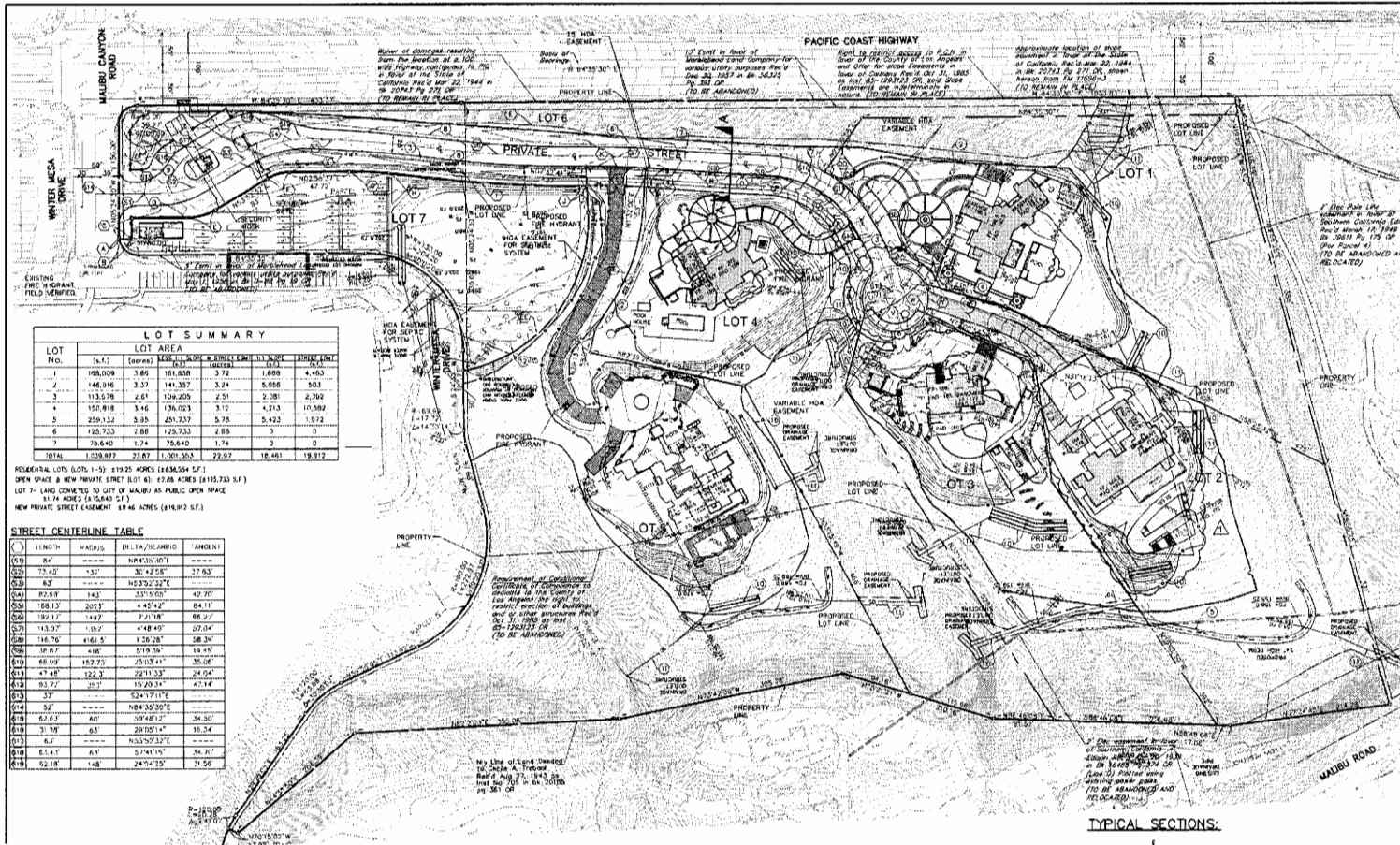


Exhibit 5 Overall Site Plan for the Planned Development



- GENERAL NOTES:**
- RECORD OWNER: POH PROJECT OWNER, LLC, 2700 BPP MANAGEMENT, LLC, 315 S. BEVERLY DRIVE, SUITE 211, BEVERLY HILLS, CA 90241, CONTACT: ROBERT GOLD, TEL: (310) 734-1353
 - SUBDIVIDER: POH PROJECT OWNER, LLC, 2700 BPP MANAGEMENT, LLC, 315 S. BEVERLY DRIVE, SUITE 211, BEVERLY HILLS, CA 90241, CONTACT: ROBERT GOLD, TEL: (310) 734-1353
 - ENGINEER: PSOMAS, 555 SOUTH FLOWER STREET, SUITE 4000, LOS ANGELES, CA 90071, CONTACT: ANDREW HICKERSON, TEL: (213) 223-1517
 - PROJECT ADDRESS: EXISTING: 24200 PACIFIC COAST HIGHWAY, MALIBU, CA 90265
PROPOSED: 24158 PACIFIC COAST HIGHWAY, MALIBU, CA 90265
24132 PACIFIC COAST HIGHWAY, MALIBU, CA 90265
24134 PACIFIC COAST HIGHWAY, MALIBU, CA 90265
24150 PACIFIC COAST HIGHWAY, MALIBU, CA 90265
24174 PACIFIC COAST HIGHWAY, MALIBU, CA 90265
 - NET DEVELOPMENT AREA: 110.37 ACRES (80,181 S.F.)
 - EXISTING ZONING: PD (PLANNED DEVELOPMENT)
 - PROPOSED ZONING: PD (PLANNED DEVELOPMENT)
 - TOTAL NUMBER OF LOTS: 7 LOTS
 - PROPOSED LOTS: 5 SINGLE FAMILY HOME LOTS, 1 PRIVATE STREET AND OPEN SPACE LOT, 1 LOT CONVEYED TO CITY OF MALIBU AS PUBLIC OPEN SPACE.
 - APN: 4450-018-000, 4450-018-010 & 4450-018-019
 - THE SUBJECT PROPERTY LIES WITHIN FLOOD ZONE "1", AREA OF UNUSUAL FLOODING, AS SHOWN ON FLOOD INSURANCE RATE MAP NO. 085433 OFB-C, DATED 11/17/74.
 - PLEASE SEE TREE RECYCLES ADDENDUM FOR MORE DETAILED INFORMATION ON EXISTING TREES AND PLANT COMMUNITIES.
 - PARKING SPACES WILL BE PROVIDED AS REQUIRED BY CODE.
 - LOT SIZES AND CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL BUILDINGS WILL BE LOCATED WITHIN THE PARK AREA AND WILL ADHERE TO SETBACK AND DEVELOPMENT REQUIREMENTS PER CODE. ACCESS DRIVEWAY LOCATIONS WILL ALSO BE ILLUSTRATIVE.
 - EASEMENT NOTE: PUBLIC EASEMENTS NOTED AS TO BE ABANDONED WILL BE RESERVED BY FINAL MAP. PRIVATE EASEMENTS NOTED AS TO BE ABANDONED WILL BE DISCLOSED BY SEPARATE INSTRUMENT.
 - HOMESOWNERS ASSOCIATION EASEMENTS TO BE CREATED FOR PRIVATE STREET, SEPTIC SYSTEM, AND ORNAMENTAL TREES LOT.

PLAN NOTES:

- WASTE WATER TREATMENT AND RECYCLING PLANT
- WASTEWATER SEPTIC TANK
- 8" FIRE WATER LINE
- 10"-12" DOMESTIC AND IRRIGATION WATER LINES
- CONSTRUCT 2' HIGH BERM FOR BLUET PROTECTION
- SANITARY SEWER MAINLINE
- SANITARY SEWER FORCE MAIN
- SANITARY SEWER PIPE
- STUD OUT SPRING MAIN FOR CONNECTION TO FUTURE PUBLIC SEWER, IF CONSTRUCTED
- UNDERPASSING STORM WATER DETENTION TANKS
- KITCHEN DRAIN PIPES
- SEWAGE PITS

FIRE DEPARTMENT NOTES:

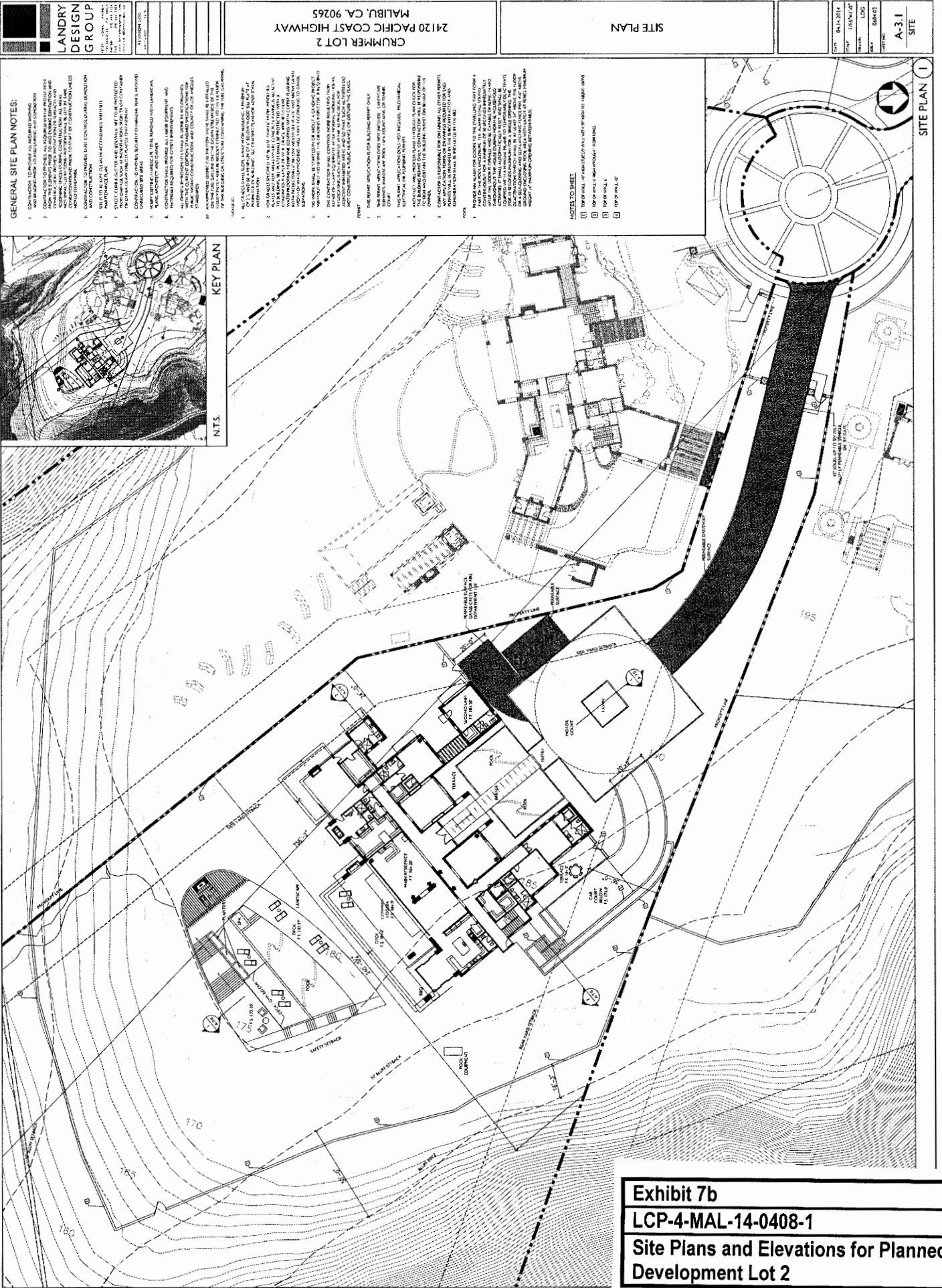
- ALL PROPOSED BUILDINGS WILL HAVE FIRE WATER SPRINKLERS.
- ALL PROPOSED BUILDINGS WILL BE TYPE V CONSTRUCTION.
- SECURITY GATES WILL BE ELECTRICALLY UNLOCKED IN THE EVENT BOX FOR FIRE DEPARTMENT TO OPEN AT THE SAME TIME AS THE MAIN GATE.

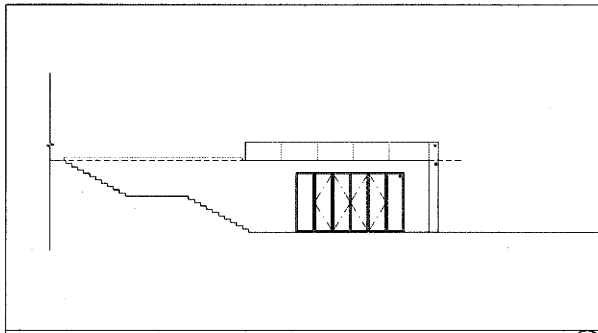
LOT LINE CURVE TABLE

STATION	LENGTH	BEARING	STATION	STATION
1	3.00	25	2	1.63
2	1.7	114.18	3	1.63
3	1.7	114.18	4	1.63
4	1.7	114.18	5	1.63
5	1.7	114.18	6	1.63
6	1.7	114.18	7	1.63
7	1.7	114.18	8	1.63
8	1.7	114.18	9	1.63
9	1.7	114.18	10	1.63
10	1.7	114.18	11	1.63
11	1.7	114.18	12	1.63
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66	1.7	114.18	67	1.63
67	1.7	114.18	68	1.63
68	1.7	114.18	69	1.63
69	1.7	114.18	70	1.63
70	1.7	114.18	71	1.63
71	1.7	114.18	72	

Exhibit 7a
LCP-4-MAL-14-0408-1
Site Plans and Elevations for Planned Development Lot 1

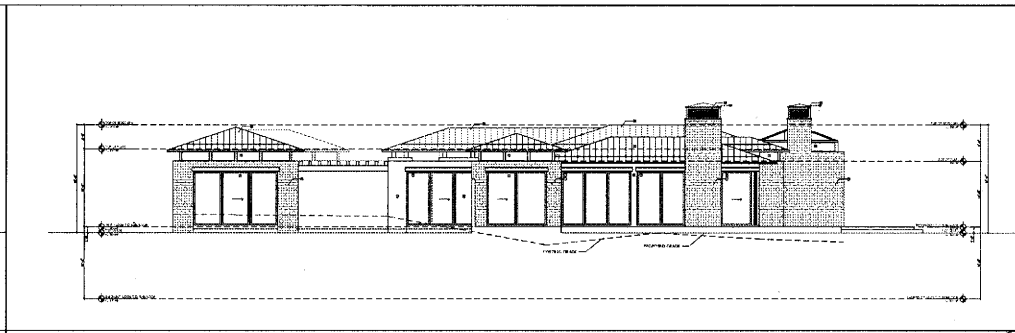
Exhibit 7a
LCP-4-MAL-14-0408-1
Site Plans and Elevations for Planned Development Lot 1





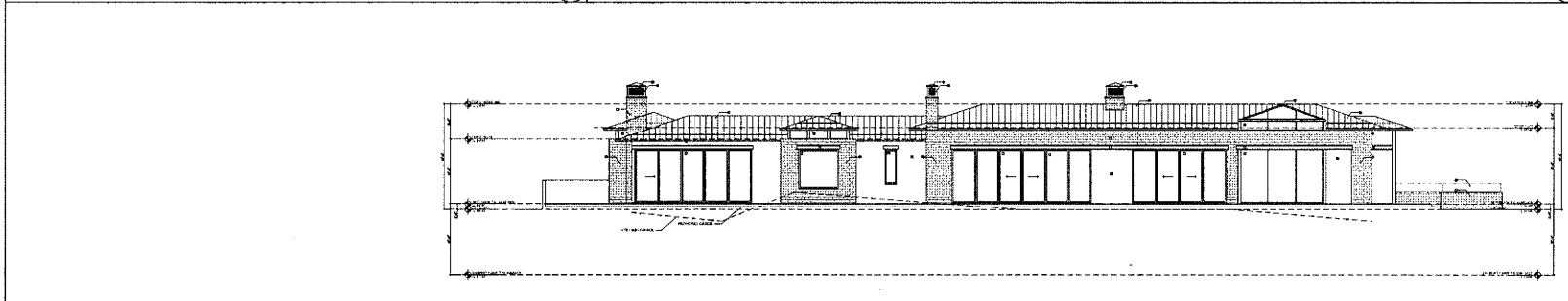
SCALE: 1/8" = 1'-0"

GYM ELEVATION 5



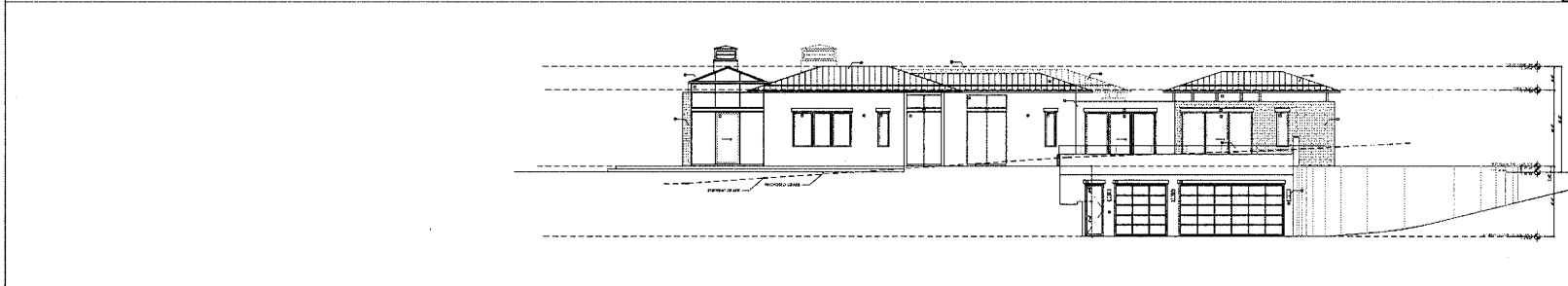
SCALE: 1/8" = 1'-0"

EAST(SIDE) ELEVATION 4



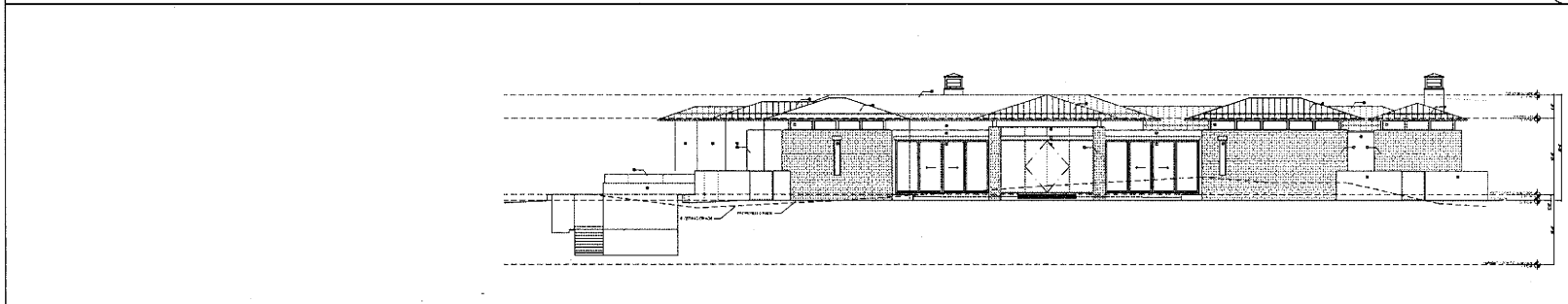
SCALE: 1/8" = 1'-0"

SOUTH (REAR) ELEVATION 3



SCALE: 1/8" = 1'-0"

EAST (SIDE) ELEVATION 2



SCALE: 1/8" = 1'-0"

NORTH (FRONT) ELEVATION 1

NOTES TO SHEET

1. SMOOTH STUCCO WITH COLLOCATING FINISH
2. LIME STONE
3. STAIN GRADE WOOD
4. STEEL CHANNELS
5. WROUGHT IRON
6. CORNER
7. ALUMINUM DOOR - HORIZONTAL
8. GLASS RAILING
9. PRIORITY GLASS
10. METAL ROOFING
11. CLAY TILE
12. CLAY TILE DOUBLE WITH
13. INFORMATION TRY
14. EXTERIOR LIGHTING
15. EXTERIOR ELECTRICAL OUTLET
16. WARP SCHED
17. HOTS AIR
18. U.L. APPROVED SPRAY ARRESTOR
19. VENT
20. HOTS

GENERAL ELEVATION NOTES:

1. CONSTRUCTION TO BE IN ACCORDANCE TO CITY OF ALBUQUERQUE BUILDING DEPARTMENT AND CITY OF ALBUQUERQUE DEPARTMENT OF PUBLIC WORKS.
2. CONSTRUCTION TO BE IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE DEPARTMENT OF PUBLIC WORKS.
3. CONSTRUCTION TO BE IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE DEPARTMENT OF PUBLIC WORKS.
4. U.L. APPROVED SPRAY ARRESTOR IN METAL SHEDS AT TOP OF ALL VENTILATION CHIMNEYS AND IN ACCORDANCE WITH CITY OF ALBUQUERQUE DEPARTMENT OF PUBLIC WORKS.



REVISION LOG

CRUMMER LOT 2
24120 PACIFIC COAST HIGHWAY
MALIBU, CA. 90265

ELEVATIONS

DATE	04/14/2014
SCALE	1/8"=1'-0"
CONTRACT	LDG
PROJECT	0604-02

A-6.0
ELEV

D-19	05.08.2016
PC-17	
SMS-17	
OS -	06.04.14
V-CCT-MO	
A-3.1	
SITE	

- [illegible]

- [illegible]

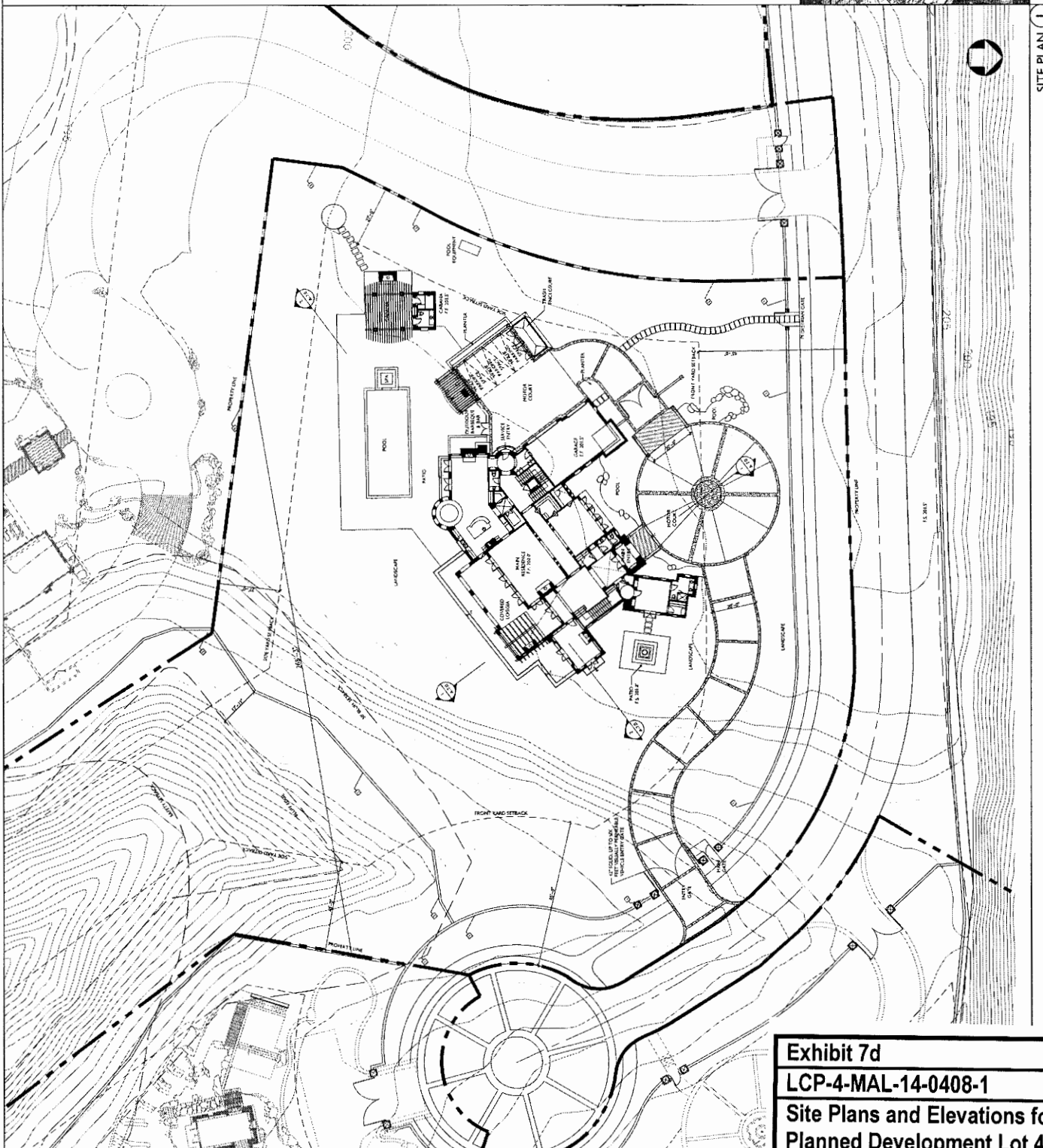
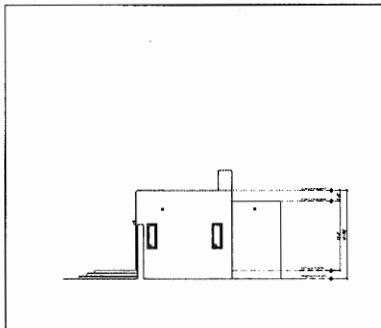
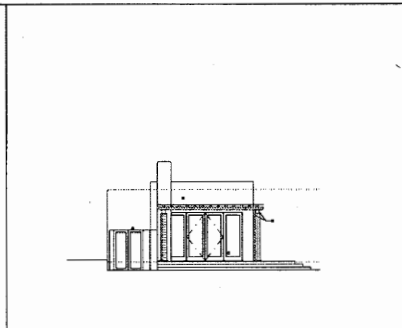


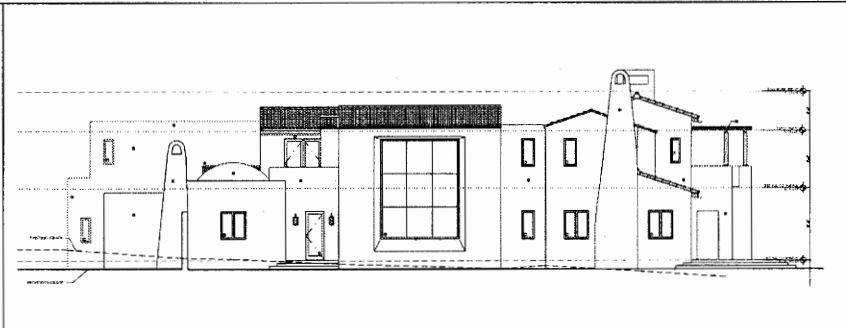
Exhibit 7d
LCP-4-MAL-14-0408-1
Site Plans and Elevations for Planned Development Lot 4



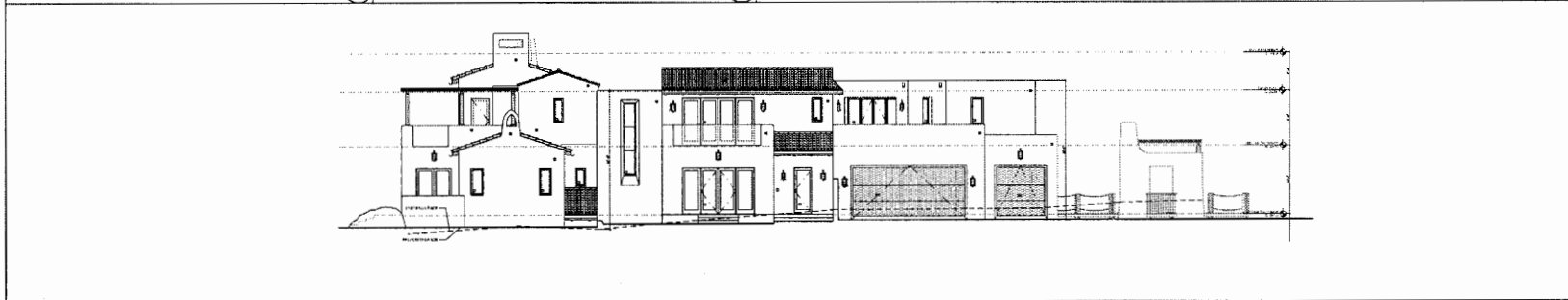
SCALE: 1/8"=1'-0" GUEST HOUSE EAST ELEVATION 6



SCALE: 1/8"=1'-0" GUEST HOUSE WEST ELEVATION 5



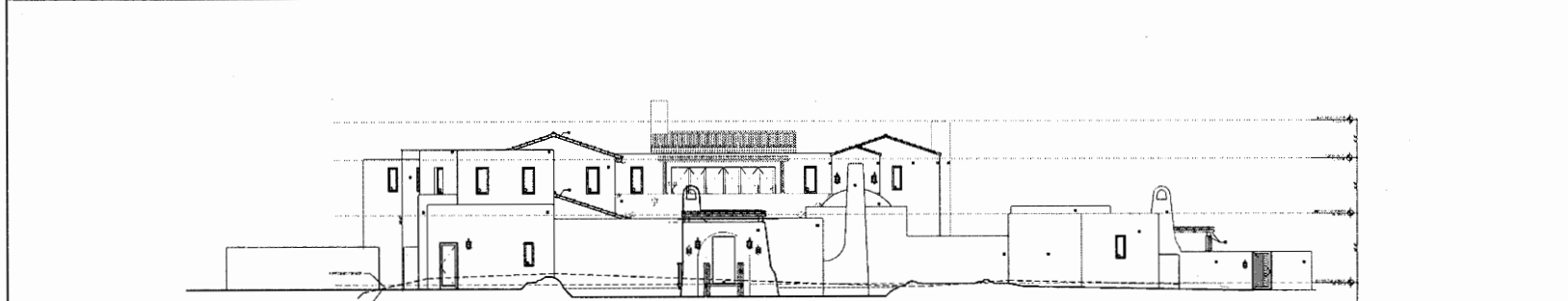
SCALE: 1/8"=1'-0" WEST ELEVATION 4



SCALE: 1/8"=1'-0" EAST ELEVATION 3



SCALE: 1/8"=1'-0" REAR (SOUTH) ELEVATION 2



SCALE: 1/8"=1'-0" FRONT (NORTH) ELEVATION 1

- NOTES TO SHEET**
- 1 UNFINISHED
 - 2 STONE HEADER
 - 3 STAINLESS STEEL
 - 4 PRECAST CONCRETE
 - 5 WROUGHT IRON
 - 6 CROWN
 - 7 WOOD DOOR - HANDBRAKE
 - 8 WROUGHT IRON DOOR - HANDBRAKE
 - 9 TYPED GLASS
 - 10 WOOD FRAMING
 - 11 CLAY TAIL
 - 12 WOOD TRAIL
 - 13 DECORATIVE TAIL
 - 14 LANTERN LIGHTING
 - 15 EXTERIOR ELECTRICAL OUTLET
 - 16 WEEP SCHEED
 - 17 TIE-IN
 - 18 UNFINISHED WOOD HANDRAKE
 - 19 VENT
 - 20 MISC.

- GENERAL NOTES:
1. GENERAL USE: TO BE USED FOR ALL PROJECTS.
 2. CONTRACTOR TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM ALL AFFECTING AGENCIES.
 3. CONTRACTOR TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM ALL AFFECTING AGENCIES.
 4. ALL APPROVED DRAWINGS AND SPECIFICATIONS ARE TO BE USED FOR ALL PROJECTS.

LANDRY DESIGN GROUP

24174 PACIFIC COAST HIGHWAY
MALIBU, CA 90265

CRUMMER LOT 5

OVERALL ELEVATIONS

DATE: 05.01.2014
SCALE: 1/8"=1'-0"
DRAWN: LDG
CHKD: DBC/05
A-6.0
ELEV.

Photo from Malibu Colony Beach



Exhibit 8
Visual Analysis Photos

Photo from Legacy Park in Malibu's Civic Center Area



Exhibit 8
Visual Analysis Photos

Photo from Northbound PCH near Malibu's Civic Center Area



Exhibit 8
Visual Analysis Photos

Photo from Malibu Canyon Road



Exhibit 8
Visual Analysis Photos

Photo from Malibu Bluffs Park Walking Path and Scenic Overlook

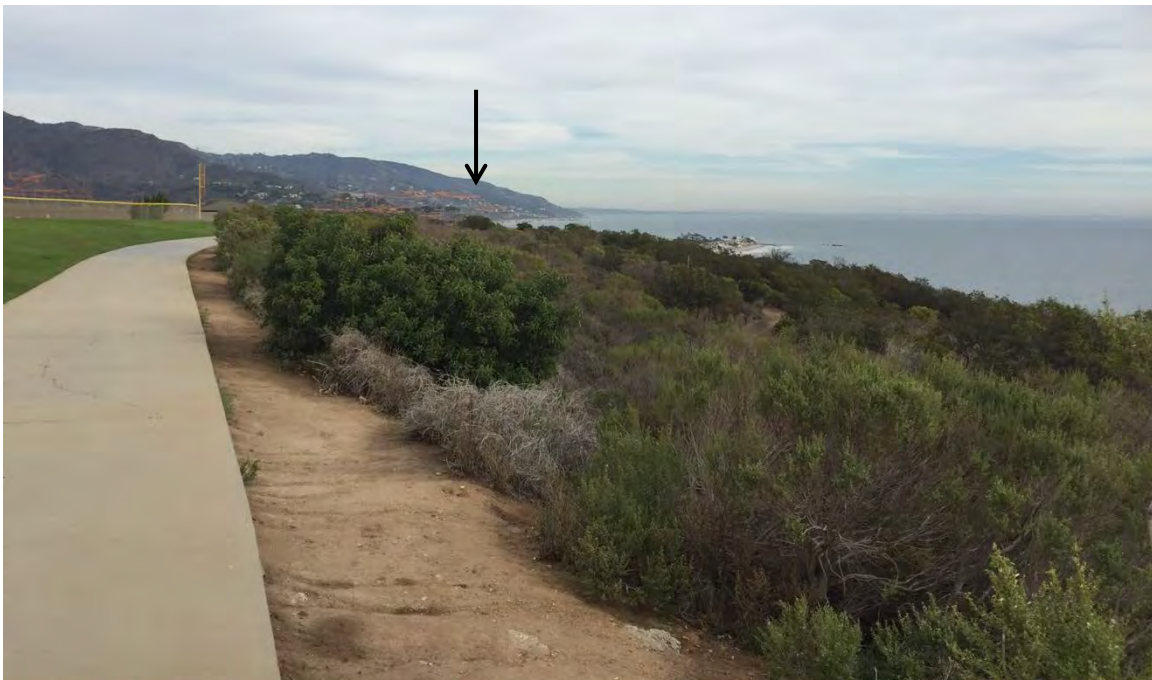


Exhibit 8
Visual Analysis Photos

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-02**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, ADOPTING THE FINDINGS OF FACT REQUIRED BY CALIFORNIA ENVIRONMENTAL QUALITY ACT, RECOMMENDING THE CITY COUNCIL CERTIFY ENVIRONMENTAL IMPACT REPORT NO. 09-001, ADOPT A MITIGATION MONITORING AND REPORT PROGRAM, APPROVE COASTAL DEVELOPMENT PERMIT 07-144 AND VESTING TENTATIVE TRACT MAP NO. 07-033 FOR THE CRUMMER SITE SUBDIVISION PROJECT, CONSISTING OF A SUBDIVISION OF AN APPROXIMATELY 24 ACRE PARCEL INTO SEVEN INDIVIDUAL PARCELS; DEDICATION OF 1.74 ACRES TO THE CITY OF MALIBU FOR ACTIVE AND PASSIVE RECREATIONAL USES AND A VOLUNTARY DEDICATION OF A CONSERVATION EASEMENT TOTALING APPROXIMATELY 6.23 ACRES TO THE MOUNTAINS RECREATIONAL AND CONSERVATION AUTHORITY, LOCATED AT 24120 PACIFIC COAST HIGHWAY, IN THE PLANNED DEVELOPMENT ZONING DESIGNATION (PCH PROJECT OWNER LLC)

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

Section 1. Recitals.

A. On December 6, 2007, Robert Gold on behalf of PCH Project Owner LLC submitted Coastal Development Permit (CDP) No. 07-144, Vesting Tentative Tract Map (VTTM) No. 07-033, Local Coastal Program Amendment (LCPA) No. 12-001, Zoning Text Amendment (ZTA) 12-001 to the Planning Department for review. The applications were routed for review to the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department and the Los Angeles County Fire Department (LACFD) for Local Coastal Program (LCP) and Malibu Municipal Code (M.M.C.) conformance review.

B. On June 2, 2008, a Notice of Coastal Development Permit was posted on the subject property.

C. On July 28, 2008, the City Council approved a contract with The Planning Center to initiate work on the preparation of an Environmental Impact Report (EIR) for the proposed project.

D. On September 30 2008, the City published a Notice of Preparation (NOP) and Initial Study (IS) for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The IS determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.

E. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.

Exhibit 9

F. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed staff that the project could resume.

G. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

H. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30 day circulation period ran from May 10, 2012 through June 11, 2012.

I. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

J. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds. The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

K. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR (DEIR) to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearing House # 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

L. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit was posted on the subject property.

M. On April 23, 2013, the Environmental Review Board (ERB) / Subdivision Review Committee (SRC) reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

N. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR (FEIR). The FEIR responds to the comments received on the DEIR and proposes text revisions to the DEIR.

O. On November 7, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site.

P. On December 13, 2013, the FEIR was made available on this date.

Q. On December 20, 2013, an errata to the FEIR was made available. Response to Comments on the DEIR was circulated to all of those who submitted comments as well as to interested parties.

R. On January 6, 2014, the Planning Commission held a duly noticed public hearing on the LCPA No. 12-001 and ZTA No. 12-001, reviewed and considered the Final EIR, agenda report,

reviewed and considered written reports, public testimony, and other information in the record. The Planning Commission adopted Planning Commission Resolution Nos. 14-01 and 14-02 but took no action on Resolutions No. 14-03 through 14-07, requiring the applicant to return to the Planning Commission once complete plans have been submitted for CDP Nos. 07-145 through 07-149 (Lots 1 – 5) and re-story pole the structures proposed in CDP Nos. 07-145 and 07-146 (Lots 1-2).

Section 2. Recommendation of Certification of the Environmental Impact Report.

A. The Final EIR has been presented to the Planning Commission. All procedures have been duly followed as required by law. The Planning Commission has reviewed and considered the information contained in the Final EIR and the record as a whole in conjunction with its deliberations, in accordance with the California Environmental Quality Act (CEQA) Guidelines and Procedures of the State of California and the City of Malibu. The Final EIR reflects the City's independent judgment an analysis.

B. CEQA requires decision makers to adopt a mitigation monitoring and reporting program (MMRP) for those mitigation measures identified in the Final EIR that would mitigate or avoid each significant effect identified in the EIR, and to incorporate the MMRP including all mitigation measures as conditions of project approval. The Final EIR includes an analysis of the extent to which the proposed project's direct and indirect impacts will commit nonrenewable resources to uses that future generations will probably be unable to reverse.

C. CEQA requires that the responses to comments in the Final EIR demonstrate good faith and a well-reasoned analysis and may not be conclusive. In response to several comments received, portions of the DEIR have been revised. Although new material has been added to the DEIR through preparation of the FEIR, this new material provides clarification to points and information already included in the DEIR and is not considered to be significant new information or a substantial change to the DEIR that would necessitate recirculation.

D. The CEQA Guidelines note that "[t]he EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project" and "CEQA does not require technical perfection in an EIR, but rather adequacy, completeness and a good-faith effort at full disclosure." (14 Cal. Code of Regs. § 15003(c) and (i).)

E. The Final EIR includes an additional clarifying narrative and clarifying exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and exhibits in the Final EIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required.

F. There are no significant, unavoidable adverse environmental impacts caused by the project. As detailed in the Final EIR, the development of the Reduced Project Alternative would not result in potentially significant adverse impacts in the following environmental subject areas: Aesthetics, Greenhouse Gas Emissions, Land Use, Noise, Recreation, Agricultural Resources, Mineral Resources, Population and Housing, Public Services and Utilities and Service Systems. The

EIR provides substantial evidence that the remaining environmental subject areas (Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials and Hydrology and Water Quality and Transportation and Traffic) are less than significant with the implementation of certain, specified mitigation measures.

G. In compliance with Public Resources Code Section 12081 and CEQA Guidelines Section 15093, the Planning Commission has determined that no Statement of Overriding Considerations is required as there are no significant, unmitigable environmental impacts that result from the proposed project.

H. The Planning Commission recommends the City Council certify EIR No. 09-001.

Section 3. Adoption of CEQA Findings of Fact.

The Planning Commission does hereby find that the Final EIR for the Crummer Site Subdivision and associated entitlements identifies and discloses project specific impacts and cumulative project impacts. The Planning Commission has reviewed and considered the information contained in the EIR and in the Findings of Fact attached hereto as "Exhibit A." The Planning Commissioner determines that the Findings of Fact contain a complete and accurate reporting of the environmental impacts and mitigation measures associated with the Crummer Site Subdivision. The Planning Commission further finds that the Findings of Fact have been completed in compliance with CEQA and the CEQA Guidelines. The Planning Commission hereby approves and adopts the Findings of Fact attached hereto as "Exhibit A."

Section 4. Alternatives Analyses.

Based upon the testimony and other evidence received, and upon studies and investigation made on its behalf, the Planning Commission further finds that the Final EIR analyzes a reasonable range of project alternatives. The alternatives are included as Appendix E of the Final EIR and discussed in Section 7, Finding A3.

Section 5. CEQA Findings.

Based upon the testimony and other evidence received, and upon studies and investigation made on its behalf, the Planning Commission finds:

A. The Final EIR for this project is adequate, complete, and has been prepared in accordance with CEQA.

B. The Planning Commission has reviewed and considered the Final EIR in reaching its conclusion.

C. In accordance with CEQA Guidelines Sections 15091 and 15093, the EIR includes a description of each potentially significant impact and rationale for finding that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as detailed in Section 3 of this Resolution. Alternatives to the Project that may eliminate or reduce significant environmental impacts are described in the findings attached hereto and incorporated herein by reference.

D. Public Resources Code Section 21081.6 requires the City to prepare and adopt a MMRP for any project for which mitigation measures have been imposed to assure compliance with the adopted mitigation measures. The MMRP is attached hereto as "Exhibit B". In accordance with Public Resources Code Section 21081 and CEQA Guidelines Section 15091, changes and alterations have been required and incorporated into the Crummer Site Subdivision and related entitlements which avoid or substantially lessen the significant environmental effect because feasible mitigation measures included in the MMRP are made conditions of approval for this project.

E. The Final EIR reflects the City's independent judgment and analysis.

Section 6. Recommendation of Adoption of Mitigation Monitoring and Reporting Program.

The Planning Commission hereby recommends the City Council adopt the MMRP, attached hereto as "Exhibit B" and made a part hereof.

Section 7. Recommendation of Approval of Vesting Tentative Tract Map - Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to LCP Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the Planning Commission recommends the adoption of the findings in the staff report, the findings of fact below, and approval of Coastal Development Permit No. 07-044 and Vesting Tentative Tract Map No. 07-033 (County Reference: VTTM No. 070038) for the subdivision of the subject property, consisting of the subdivision of a ~24 acre property into seven individual parcels, extension of ~3,200 linear feet water line, 16.5 foot tall, 280 square foot guard house, private access road, fencing, walls, hardscape, lighting, landscaping, onsite wastewater treatment plant, grading for the creation of building pads and common areas, seepage pits on Lot 7, dedication of Lot 7, a 1.74 acre parcel to the City of Malibu for public active and passive recreational uses; and dedication of ~ 6.23 acres conservation easement to the Mountains Recreation and Conservation Authority.

The proposed project has been reviewed by the City Public Works Department, City Geologist, City Environmental Health Administrator, City Biologist and the LACFD. The proposed project is consistent with the LCP's zoning, grading and water quality requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals and policies. Additionally, the VTTM has been reviewed for conformance with M.M.C. Title 16, Subdivisions. The required findings are made as follows.

A. General Coastal Development Permit (LIP Chapter 13)

Pursuant to LIP Section 13.9, the following four findings need to be made for all coastal development permits.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed project site is in the Planned Development (PD) zone. Currently, there are no minimum lot sizes and maximum density standards for the PD zone in the LCP or M.M.C. Local Coastal Program Amendment (LCPA) No. 12-001 and Zoning Text Amendment (ZTA) No. 12-001 establishes minimum lot sizes and density for the PD zone. The approval of the proposed VTTM is contingent on the approval of LCPA No. 12-001 / ZTA No. 12-001; therefore, as conditioned, the proposed VTTM conforms to the certified LCP in that it will meet the required lot size and density standards for new parcels. The zoning designation will not change as a result of the proposed VTTM; the zoning on all seven parcels will remain PD.

Finding A2. If the project is located between the first public road and the sea, that the project [conforms to] the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is not located between the first public road and the sea. The proposed VTTM includes a dedication of 1.74 acres (Lot 7) to the City of Malibu for active and passive public recreational uses, in addition to a voluntary additional public benefit of one million dollars to the City to develop the necessary recreational infrastructure once the City has finalized the design of the recreational area. Therefore, the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

Finding A3. The project is the least environmentally damaging alternative.

According to the CEQA Guidelines Section 15064(d), "In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." If the proposed VTTM is approved, active recreation areas such as a ball field or a skate park, passive recreation areas, and an expanded parking lot are all foreseeable future uses on Lot 7. Although the proposed project entitlement does not include any development related to the recreational uses on Lot 7, recreational uses such as a ball field or skatepark is a reasonably foreseeable use on Lot 7 and therefore, included in the FEIR as the FEIR must evaluate the cumulative impacts of the proposed project and development of Lot 7, to the extent feasible.

One of the purposes of the EIR is to identify reasonable alternatives to the project. Due to comments received during the 45-days public comment period, a Reduced Project Alternative was analyzed in the FEIR. The Reduced Project Alternative consists of a reduction of the square footage of each residence to comply with the maximum permitted under LIP Section 3.6(K), resulting in an overall 11 percent reduction in total development square footage (TDSF) and reduction of height on Lot 2 to 18 feet or lower. The Reduced Project Alternative also includes a revised landscaping plan that does not include planting certain new trees.

While CEQA requires that an EIR identify an environmentally superior alternative, it should be noted that the originally proposed project would not result in any significant environmental impacts after implementation of all applicable mitigation measures, standard conditions of approval, and best management practices. Per CEQA, decision-makers may select either the proposed project or any of the alternatives evaluated in the FEIR. The Planning Commission has determined that the Reduced Project Alternative would result in less visual impacts to surrounding neighborhoods while meeting

the project objectives; therefore, the Planning Commission has selected the Reduced Project Alternative and the originally proposed project has not been selected.

As described in more detail in Chapter 7 of the FEIR, the following six alternatives, plus the originally proposed project, were considered:

a. Other Development Areas Alternative

The project site and the adjacent Towing Site immediately east of the project site are owned by the same entity. The AZ Winter Mesa Towing Site EIR was prepared and certified for the Towing Site and four single-family residences were approved by the City of Malibu Planning Commission on August 4, 2009. The Towing Site is therefore not available as a development area for the proposed project. The project applicant does not own any other sites within the City that are considered feasible alternatives to the proposed project. Since the project applicant cannot reasonably acquire, control, or otherwise access any other sites, and since the analysis of other sites would be speculative without site-specific data, no other sites were considered.

b. No Development / Existing Use Alternative

This alternative assumes that the existing 24-acre site would remain unchanged. The project site would not be subdivided, no new housing or recreational facilities would be constructed, and no improvements would be made. The site would remain vacant in its current form. The No Project, No Development Alternative would avoid or reduce impacts associated with air quality, biological resources, cultural resources, geology and soils, fire hazards, hydrology and water quality, and traffic and transportation. However, this alternative has been rejected because it would not attain any of the primary objectives of the proposed project. While it would preserve the rural character of site and bluewater views, it is not reasonable to assume that the project applicant would never develop this site, a valuable economic resource, and that it will remain in its current physical condition. Consequently, this alternative was rejected from further analysis.

c. Two-Story Homes with Skate Park Only Alternative

The Two-Story Homes with Skate Park Only Alternative assumes that the project would be developed with five two-story homes and that Lot 7 would be improved with a skate park and new 94-stall parking lot, not a baseball field. The Two-Story Homes with Skate Park Only Alternative assumes that the construction schedule, grading volumes, and development footprints are the same as the proposed project. This alternative would generate 78 average daily trip (ADT), 4 AM and 15 PM weekday peak hour trips and 110 ADT and 25 Saturday peak hour. Weekday and Saturday ADT would be reduced by 54 percent and 89 percent, respectively. Weekday PM peak hour trips would be reduced by 77 percent. Saturday midday peak hour trips would be reduced by 74 percent. The skate park would generate a parking demand of 10 vehicles, which is based on an assumption that up to 20 people would be using the skate park at any given time and that the average vehicle occupancy would be two-person per car.

The Two-Story Homes with Skate Park Only Alternative would reduce parking demand impacts and operational noise impacts. This alternative would be environmentally similar to the proposed project in the area of operational air quality, biological resources, cultural resources, greenhouse gas

emissions, fire hazards, hydrology and water quality, land use, construction noise, and recreation.

d. One-Story Homes with Recreational Facilities Alternative

The One-Story Homes with Recreational Facilities Alternative assumes that the project site is developed with five single-family, single-story homes and a skate park or baseball field. This alternative would reduce the maximum building height of the residential structures from 28 feet to 18 feet. The building square footages would remain approximately the same for each unit, as would the lot sizes. The two-story structures represent a more compact building zone, which would result in less building mass and allow for more landscaping and open area on each of the five lots. As a result, there would be a reduction of space between the homes when compared to the proposed project. The single-story alternative would almost double the building footprints for each of the five homes. This alternative would require 24,511 cubic yards of soil export; 11,658 cubic yards of soil import. A conservative approach was taken and grading volume calculations were based upon 5 one-story homes because one-story homes would have larger building foot prints and require slightly more grading than two-story homes. Air Quality, Noise and construction traffic impacts were modeled upon the largest overall grading volumes.

Although not significant, this alternative would reduce aesthetic impacts and it would be environmentally similar to the proposed project in the area of operational air quality, biological resources, cultural resources, greenhouse gas emissions, fire hazards, hydrology and water quality, land use, operational noise, recreation, and traffic. This alternative would slightly increase impacts in a variety of environmental categories, including construction air quality, geotechnical properties, and construction noise. However, these impacts would remain less than significant. The increased fuel modification zones have the potential to cause a new significant impact.

e. No Project, Foreseeable Development Alternative

Pursuant to CEQA Guidelines Section 15126.6(e)(2), this alternative is required and should describe what would reasonably be expected to occur in the foreseeable future if the proposed project were not approved, based on current land use plans and consistent with available infrastructure and community services. This alternative assumes the project site will be developed pursuant to the Malibu General Plan and Malibu LCP, which designates the project site Planned Development (PD). The LCP PD zoning designation "is intended to provide for a mix of residential and recreational development of the Crummer Trust property [proposed project site] located east of Malibu Bluffs State Park and south of Pacific Coast Highway.... Any planned development in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development." (LIP, § 3.3(Q).)

This alternative assumes that the project site would be fully developed based on a site plan previously considered under a proposed development agreement by the City and by the California Coastal Commission at the time of the Malibu LCP was being drafted. Therefore, it is a reasonable foreseeable alternative that a subsequent developer may apply for similar development which includes eight homes and recreational facilities. This alternative would consist of eight single-family homes, each on a minimum two-acre lot. The western portion of the project site would be developed with a basketball court, a baseball field, and a 100-space parking lot for the recreational facilities. The site, under this alternative, would be graded to minimize impact to current landform on the relatively

flat portions of the site; therefore, earthen material would be imported to fill the canyons. It is assumed that approximately 65,000 cubic yards of cut, 100,000 cubic yards of fill, and 35,000 cubic yards of import would be required.

This alternative would increase all impacts compared to the proposed project, with the exception of land use and recreational impacts, which remain equal. This alternative would not lessen any of the environmental effects of the proposed project, and it could potentially lead to new significant traffic impacts. During the operational phase, this alternative is forecast to generate 89 more daily trips than the proposed project on a weekday and 151 more daily trips on a weekend. As a result, air pollutant emissions and traffic generated by this alternative would be greater, compared to the proposed project. It would not reduce impacts to noise, and would in fact increase operational noise impacts associated with peak weekend noise levels. This alternative would not lessen any of the environmental effects of the proposed project.

f. Originally Proposed Project

The originally proposed project consists of five, two-story single-family residences and the dedication of Lot 7 for either a skate park or baseball field. As discussed in DEIR Chapter 5.1, Aesthetics, the proposed project would not obstruct existing public scenic views or otherwise substantially impact scenic views or resources. However, although not considered a significant impact, the proposed residential buildings would appear very prominent when viewed from the low-lying portions of the City to the east. In addition, when viewed from higher-elevation residential areas of Malibu Country Estates to north of the site, the proposed project would alter the horizon of the bluff, and would create buildings visible from these vantage points where no buildings currently exist. The FEIR provides substantial evidence that the proposed project will result in no significant impact to Aesthetics, Greenhouse Gas Emissions, Land Use, Noise, Recreation, Agricultural Resources, Mineral Resources, Population and Housing, Public Services and Utilities and Service Systems. With regard to the remaining environmental subject areas (Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials and Hydrology and Water Quality and Transportation and Traffic), any impacts posed by the proposed project are less than significant with the implementation of mitigation measures.

While CEQA requires that an EIR identify an environmentally superior alternative, it should be noted that the proposed project would not result in any significant environmental impacts after implementation of all applicable mitigation measures, standard conditions of approval, and best management practices. Per CEQA, decision-makers may select either the proposed project or any of the alternatives evaluated in the FEIR. The Planning Commission has determined that the Reduced Project Alternative would result in less visual impacts to surrounding neighborhoods while meeting the project objectives; therefore, the proposed project has not been selected.

g. Reduced Project Alternative

This alternative was requested during the public review period for the DEIR. The Reduced Project Alternative assumes that the project site is developed with five single-family homes and a skate park or baseball field. This alternative would reduce overall floor area of the proposed homes by approximately 11 percent. This reduction would be accomplished by the following modifications to homes on Lots 1-5:

- Lot 1: Reduction of the square footage on the second floor from 3,344 square feet to 1,619 square feet and the total square footage of the residence from 11,081 square feet to 10,052 square feet
- Lot 2: Reduction of the height of the entire residence not to exceed 18 feet and the square footage of the home from 11,068 square feet to 9,642 square feet
- Lot 3: Reduction of the square footage of the residence from 11,009 square feet to 8,999 square feet
- Lot 4: Reduction of the square footage on the second floor from 3,409 square feet to 3,152 square feet and the total square footage of the residence from 11,157 square feet to 9,536 square feet
- Lot 5: Relocation of the pool cabana from the western side of the pool to the eastern side; movement of the residence further north and approximately 6 ½ feet to the east; and a 4 foot and 4 inch reduction of the height of approximately 26 linear feet of roof on the southwestern portion of the house by changing the roof from flat to pitched

This alternative also involves modifications to the proposed landscape plan intended to reduce impacts of the proposed project on visual resources. This alternative would require slightly less, but a similar amount of, soil export and import. Impacts to air quality, noise, and construction traffic impacts would remain less than significant under the Reduced Project Alternative. The FEIR further concludes that the Reduced Project Alternative would slightly reduce impacts in a variety of environmental categories, including visual resources, construction air quality, biological resources, cultural resources, geotechnical properties, and construction noise. However, these impacts would be substantially similar to those under the proposed project and they would remain less than significant. This alternative would also be environmentally similar to the proposed project in the area of operational air quality, cultural resources, greenhouse gas emissions, fire hazards, hydrology and water quality, land use, operational noise, recreation, and traffic.

The Planning Commission recommends approval of the Reduced Project Alternative because the reductions in height, floor area and massing of portions of the homes proposed in this alternative reduce the visual bulk of the overall project site when it is viewed from afar. As a result, the Reduced Project Alternative would preserve more bluewater views for the surrounding communities, including from the Malibu Knolls neighborhood and Malibu Country, while still meeting the project objectives. Thus, the Reduced Project Alternative is the least environmentally damaging feasible alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

According to the LCP ESHA Overlay Map, the project site is not designated as ESHA; however ESHA is located immediately to the southwest of the subject property in State Park land. There are two drainage channels located on the subject property; however, there is no resource dependent riparian vegetation present. The DEIR was reviewed by the Environmental Review Board (ERB). The ERB had several recommendations for the proposed project and all feasible recommendations have been incorporated into the project as conditions of approval in this Resolution. The project conforms to the recommendations of the ERB.

B. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)

The project site is not designated as ESHA on the LCP ESHA Overlay Map. In addition, biological Resource Studies prepared by Impact Sciences, Inc. in 2009 and Updated Reports prepared by Glenn Lukos Associates in 2012 and 2013 did not identify any biological resources that meet the definition of ESHA pursuant to LIP Chapter 4. Furthermore, the FEIR concludes the biological resources on the project site are not rare or especially valuable; do not contribute to the viability of plant and wildlife species designated as threatened or endangered under state or federal law; do not contribute to the viability of any fully protected species or species of special concern; do not contribute to the viability of other rare species such as those listed by the California Native Plant Society; nor are they easily damaged by human activities. The onsite channels are not designated Special Biological Significance or Marine Protected Area. Therefore, the onsite resources are determined to not qualify as ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

C. Native Tree Protection Ordinance (LIP Chapter 5)

The provisions of the Native Tree Protection Ordinance only apply to those areas containing one or more native Oak, California Black Walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, four and one-half feet from the ground. According to a Protected Tree Report prepared by Impact Sciences, Inc. in January 2009, the project site contains six southern California black walnut trees meet the City's definition of a Protected Tree. The locations of these southern California walnut trees are all outside of the project's grading limit and will be avoided, therefore, the Chapter 5 findings are not applicable.

D. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Ordinance governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road or public viewing area. This Resolution covers the proposed scope under CDP No. 07-144 and VTTM No. 07-033, which includes the subdivision of one legal parcel into seven individual parcels, grading associated with the proposed VTTM and development on Lot 6, dedication of a voluntary conservation easement to the Mountains Recreation and Conservation Authority and dedication of Lot 7 (1.74 acres) to the City of Malibu for public active and passive recreational uses. Lot 6 would be developed with a private gated street, a gatehouse, an onsite wastewater treatment system (OWTS), landscaping, and open space, a parking area for gatehouse employees.

The project site is visible from certain areas of the beach and two LUP designated scenic roads, Malibu Canyon Road and PCH. The five findings set forth in LIP Section 6.4(A) are made below.

Finding D1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

A visual analysis of the project's visual impact from public viewing areas was conducted through site reconnaissance, a review of the story poles, architectural plans, visual simulations and an

investigation of the character of the surrounding properties. The project site is visible from certain areas of the beach and two LUP-designated scenic roads, Malibu Canyon Road and PCH. While on the beach, views of the ocean are oriented to the south, away from the proposed project and therefore, the project does not result in scenic resources on the beach.

On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the guard house proposed under this subject application, CDP No. 07-144 and VTTM No. 07-033 and the five proposed single-family residences and accessory structures proposed under CDP Nos. 07-045 through 07-049. The placement of the story poles was certified by a professional land surveyor. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds, and the placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

Due to comments received during the 45-days public comment period, a Reduced Project Alternative was analyzed in the FEIR. The Reduced Project Alternative consists of a reduction of the square footage of each residence to comply with the maximum permitted under LIP Section 3.6(K), resulting in an overall 11 percent reduction in TDSF and reduction of height on Lot 2 to 18 feet or lower. The Reduced Project Alternative also includes a revised landscaping plan reflecting the removal and relocation of numerous trees. The Reduced Project Alternative does not require any changes to the subject application, CDP No. 07-144 and VTTM No. 07-033. The applicant was not required to install story poles for the Reduced Project Alternative; however, extensive view simulations of the Reduced Project Alternative, with all proposed structures and mature landscaping as viewed from 26 different viewpoints, including Malibu Canyon Road looking south toward the project site, PCH and Cross Creek Road looking west toward the project site and on PCH, west of entrance to Bluffs Park were submitted. The visual simulations, included as Appendix A of the FEIR, show that the Reduced Project Alternative and landscaping blend into the surrounding natural environment and do not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from a public scenic area. The Reduced Project Alternative will have no significant adverse scenic or visual impacts due to the project design and location on the site.

The subdivision proposed under CDP No. 07-144 and VTTM No. 07-033, as conditioned, will have no significant adverse scenic or visual impact.

Finding D2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated in Finding D1, CDP No. 07-144 and VTTM No. 07-033, as conditioned, will have no significant adverse scenic or visual impact. Additionally, the landscaping planned and conditions of approval regarding colors and materials for future development will also serve to improve the visual quality of the site.

Finding D3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the project as conditioned is the least environmentally damaging feasible alternative.

Finding D4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

The proposed project does not pose any significant adverse impacts on scenic and visual resources. As discussed in Finding A3, the project, as conditioned and with the incorporation of mitigation measures, will result in a less than significant impact on scenic and visual resources. Further, as discussed above, the No Development / Existing Use Alternative was rejected from further analysis because it is unreasonable to assume that the applicant will never develop this site and it will remain in its current condition. The No Project, Foreseeable Development Alternative would not lessen any of the environmental effects of the proposed project.

Finding D5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Findings A3 and D1, the project as conditioned will have no significant adverse scenic and visual impacts. With the incorporation of mitigation measures outlined in the MMRP, potential impacts to sensitive resources (e.g., native tree protection) have been mitigated to a less than significant level.

E. Transfer of Development Credits (LIP Chapter 7)

LIP Chapter 7 applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. CDP No. 07-144 and VTTM No. 07-033 is a land division; therefore, the Transfer of Development Credit (TDC) requirement must be met.

The intent of this chapter is to ensure that density increased through new land divisions and new multi-family unit development in the City, excluding affordable housing units, will not be approved unless TDCs are purchased to retire development rights on existing donor lots in the Santa Monica Mountains area. A lot from which development rights have been transferred is "retired", and loses its building potential through recordation of a permanent open space easement. TDC credits may be obtained through purchase of development rights on donor sites throughout the Santa Monica Mountains area coastal zone, as defined in the LIP, from private property owners. The responsibility for initiation of a transfer of a development credit is placed on the applicant and the project will be conditioned that the TDC take place prior to final map recordation.

The proposed project is subject to the requirements of LIP Chapter 7 and the three findings set forth in LIP Section 7.9 are hereby made as follows:

Finding E1. The requirements for Transfer of Development Credits is necessary to avoid cumulative impacts and find the project consistent with the policies of the certified Malibu LCP.

As stated above, the TDC requirement is necessary as the proposed subdivision creates seven new legal parcels and pursuant to LIP Section 7.8.1(a), the applicant shall be required to retire sufficient donor lots to provide one TDC credit for each newly created residential lot authorized. Although the subdivision consists of subdividing one legal parcel into seven parcels, only five of the seven parcels will be authorized for residential use; therefore, the proposed project includes the creation of four

newly created residential lots. The TDC requirement for the proposed project is four TDC credits.

Finding E2. The new residential building sites and/or units made possible by the purchase of TDC can be developed consistent with the policies of the certified Malibu LCP without the need for a variance or other modifications to LCP standards.

The approval of the proposed VTTM No. 07-033 is contingent on the approval of LCPA 12-001 / ZTA 12-001; therefore, as conditioned, the proposed VTTM conforms to the certified LCP in that it will meet the required lot size and density standards for new parcels. The proposed residences made possible by the purchase of TDCs can be developed consistent with the policies of the LCP and no variances from the City of Malibu zoning and development standards will be required if LCPA No. 12-001 / ZTA No. 12-001 is approved.

Finding E3. Open Space easements executed will assure that lot(s) to be retired will remain in permanent open space and that no development will occur on these sites.

The TDC candidate sites selected to be retired shall be reviewed by City staff in conjunction with a Subdivision Review Committee (SRC) representative. This review shall ensure that the sites selected for retirement meet the criteria desired for permanent open space. In addition, the three parcels selected to be retired shall be subject to deed restrictions prohibiting development in perpetuity. The conditions of approval state that the TDC requirements must be met prior to final map recordation.

F. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed for the hazards listed in LIP Section 9.2(A). The required findings of LIP Chapter 9 are made as follows:

Finding F1. The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The applicant submitted the following documents/data, which may be found in the Appendix X to the Final EIR.

- Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., December 5, 2007.
- Revised Addendum No. 1, Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., October 29, 2008.
- Responses to the City of Malibu Geotechnical Review Sheet Dated March 20, 2008 - Leighton and Associates, Inc., September 21, 2009a.
- Geotechnical Evaluation of Proposed OWTS - Leighton and Associates, Inc., September 21, 2009b.
- Phase I Environmental Site Assessment - Leighton and Associates, Inc., October 28, 2011.
- Response to City of Malibu Comments on "Hydrogeological/Treated Water Mounding Report" - Earth Consultants International, Inc., March 7, 2012.

- Responses to City of Malibu Geotechnical Review Dated January 12, 2010 - Leighton and Associates, Inc., March 7, 2012.
- Response to City of Malibu Environmental Health Review Sheet Dated December 21, 2009 - Earth Consultants International, Inc., March 7, 2012
- Response to City Of Malibu Geotechnical Review Dated May 7, 2012 - Leighton and Associates Inc., May 16, 2012
- 5 Geotechnical Reports, one for each individual residential lot - Leighton and Associates, Inc., May 16, 2012
- Response to City of Malibu Environmental Health Review Sheet Dated April 16, 2012 - Earth Consultants International, Inc., May 22, 2012.
- Geotechnical Responses to Comments on DEIR – Leighton and Associates, Inc., July 1, 2013
- City of Malibu Geology Review Sheets - City of Malibu 2008 through 2012

In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues. Based on extensive review of the above referenced information, it has been determined that:

- The project site is not located within an Alquist-Priolo Earthquake Fault Zone therefore, it is unlikely that the project site will be impacted by active faulting or ground rupture.
- The Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone.
- The site is not within a California Seismic Hazard Zone for potential liquefaction hazard.
- Preliminary slope stability analysis indicate that slopes in the eastern and southern portion of the site meet the minimum required factors of safety for pseudo-static stability; however, structural setbacks are required to establish buildings within areas of the site that meet the minimum required factor of safety in other areas.
- The project site is outside of the potential tsunami inundation zone.
- The property is not located within FEMA's 100 year flood zone.
- The project site is in the vicinity of extreme fire hazard areas.

The City Geologist, City Public Works Department and the LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslides and Slope Instability Hazards

During field investigations and reconnaissance, no signs of deep-seated landslide features were observed onsite, only isolated erosion, rilling, and gullies were noted along the lower slopes. Immediately to the south of the site along Malibu Road is the historical Amarillo Beach landslide. This landslide is documented as a complex of rotational landslides affecting the south-facing coastal cliffs and the area underlying the Malibu Road and the adjacent beachfront properties. Movement within the Malibu Coast Fault Zone, weathering, erosion, undercutting by wave action, and the presence of groundwater have been described as contributing factors for slope instability for the area. Significant movement of the Amarillo Beach landslide complex would most likely adversely affect the offsite residential structures along Malibu Road. Significant movement of the feature could cause

headward movement of the headscarp region of the Amarillo Beach landslide complex.

The State Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone, where "previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water condition indicate a potential for permanent ground displacements." The western and southern portions of the project site contain steep downward slopes. The height and steepness of the slopes are such that they may be susceptible to seismically induced slope failure or landsliding.

The 2007 Leighton and Associates, Inc. reports established a geotechnical setback zones for structures on the project site in order to avoid slope instability hazards. Similar to the proposed project, the reduced project alternative includes structures located within the structural setback zones; however, the City Geologist has conditionally approved the location of the proposed project with specific stabilization recommendations. Structures that are planned southerly of the geotechnical setback line are required to use deepen foundations that derive support below the geotechnical setback line. Based on the findings summarized in all referenced Leighton and Associates, Inc. reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton and Associates, Inc. determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site. The project will incorporate all recommendations contained in the above cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant prior to permit issuance.

Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone (VHFHSZ), a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The site has been affected by wildfires in the past. Most recently, an October 2007 wildfire severely burned the northern, eastern, southern, and southwestern perimeters of the project site. A preliminary fuel modification plan has been prepared and approved for the proposed project. The preliminary fuel modification plan was prepared in accordance with the County of Los Angeles Fire Department Fuel Modification Plan Guidelines and identifies specific zones within a property that are subject to fuel modification. The long-term maintenance of the fuel modification zones will be addressed in the proposed project's CC&Rs and will be maintained by the HOA. The LACFD has reviewed and approved the Preliminary Fuel Modification Plan, and the Final Fuel Modification Plan for the proposed project will need to be approved at the time of VTTM recordation.

Construction of the proposed structures would utilize appropriate building materials (i.e., ignition-resistant materials) and design features to complement the provided fuel modification. The design will also incorporate alternative fuel modification measures where fuel modification cannot be fully accommodated onsite, such as noncombustible firewalls and landscaping techniques that include irrigated, fire-resistant plant species.

In addition to the approved Preliminary Fuel Modification Plan, a supplementary Fire Protection Plan was prepared to evaluate the project's vulnerability to fires with regard to emergency access to the site, the adequacy of fire hydrants available to serve the site, and the design of the proposed

structures. The Fire Protection Plan includes recommendations for the design of the road, gate, and driveways that would be created by the proposed project. These recommendations address the following planning and design elements:

- Fuel modification zones and permitted vegetation
- Roadway access, gates, and driveways
- Ignition-resistant structural requirements
- Interior and exterior fire protection systems

Nonetheless, a condition of approval has been included in this Resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Finding F2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding F1, the proposed project, as conditioned and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards due to project modifications, landscaping or other conditions.

Finding F3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As stated in Finding A3, the proposed project is the least environmentally damaging alternative.

Finding F4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in Finding F1, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity of the proposed project.

Finding F5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The sensitive resource protection policies contained in the LCP are not applicable to the proposed project because it does not impact ESHA or ESHA buffer. As stated in Finding F1, the proposed project, as designed, conditioned, and approved by the City Geologist, City Biologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on sensitive resources as enumerated by the LCP.

G. Shoreline and Bluff Development Ordinance (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is seaward of Malibu Road. The required findings in LIP Section 10.3(A) are made as follows.

Finding G1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

Pursuant to LIP Section 10.4, "[a]ll new development located on a bluff top shall be set back from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure." The required setback is 100 feet from the bluff edge, however, this distance may be reduced to 50 feet if the City geotechnical staff determines that the proposed development will not be endangered by erosion or slope instability with a lesser setback. The project site contains descending slopes along the north, east, and south portion of the site. Slope stability analyses and erosion rate estimates were performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer.

The December 2007 Leighton and Associates, Inc., report established a geotechnical setback line away from the slope delineating areas with factor of safety of 1.5 or greater. Furthermore, the October 2008 Leighton and Associates, Inc. report determined that the average historic rate of bluff retreat is 0.12 feet per year. To account for future extreme conditions, such as future El Niño storm events, Leighton and Associates, Inc. assumed a long-term bluff retreat rate of 0.2 feet per year. Based on a .20 bluff retreat rate, the current top of bluff is estimated to erode 20 feet over the course of 100 years. The study also concluded that the bluff retreat line is less restrictive than the 1.5 geotechnical setback line. The proposed residence and all accessory structures are located landward of both the 100 year bluff retreat line and the 50 foot setback line. All structures are located a minimum of 55 feet from the top of the bluff.

Fencing, which does not require any structural foundations, extends into the 50 foot setback area but not closer than 15 feet from the bluff edge. Pursuant to LIP Section 10.4, "[a]ncillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge." The project is not anticipated to result in any new significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding G2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding G1, the project, as conditionally approved by the City Geologist will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging

alternative.

As discussed in Finding A3, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding G4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding G1, the project, as conditionally approved by the City Geologist, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding G5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, [that] there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and [that it] is the least environmentally damaging alternative.

The project does not include a shoreline protective device; therefore, this finding is not applicable.

H. Archaeological / Cultural Resources (LIP Chapter 11)

To adequately assess the project site, the following tasks were completed:

Phase I Archaeological Study: A Phase I Archaeological Study was prepared for the project site in July 2007 and included an on-foot surface reconnaissance of the entire project area and a records search at the South Central Coastal Information Center (SCCIC) at California State University, Fullerton. The records search performed by a professional archaeologist on July 12, 2007 at SCCIC indicated that no previously recorded prehistoric or historic archaeological site lie within the project area.

Updated Phase 1 Archaeological Study: Due to the lapse of time since the previous 2007 archaeology study and comments received during the public comment period, the applicant submitted an Updated Phase 1 Archaeology Study prepared for the project site in June 2013. An updated records search was performed by a certified archaeologist on June 10, 2013 at SCCIC which indicated that no previously recorded prehistoric or historic archaeological sites lie within the project site.

Consultation with the Native American Heritage Commission (NAHC): On July 16, 2007, the City sent a letter to NAHC regarding any concerns over potential heritage resources noted in there sacred lands files on the proposed project site. NAHC responded in a letter dated July 19, 2007 that no sacred lands concerns or other issues were expressed for the proposed project. The NAHC letter is included in Appendix B of the Final EIR.

Paleontology Collection Records Search: The Natural History Museum (NHM) of Los Angeles County was contacted regarding the potential presence of paleontological resources such as fossils on the project site. The NHM performed a search of its paleontology collection records, which catalogs finds throughout southern California. The NHM also reviewed the geology of the project site to determine the project site's potential to contain paleontological resources. There are no vertebrate

fossil localities that lie within the project boundaries. Additional details of the NHM determination and the results of its records search are discussed in Section 5.3.3 of the Final EIR.

A discussion of cultural resources is included in Chapter 5-04 of the Final EIR because project construction activities could disturb previously unidentified archaeological resources. Mitigation measures have been included for the project to require a qualified archaeologist and a Native American Monitor of Chumash heritage to monitor all ground-disturbing activities, including but not limited to all grading, excavation and site preparation.

Nonetheless, conditions of approval have been included in this Resolution pertaining to the protection of cultural resources. Should any potentially important cultural resources be found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information.

I. Public Access Ordinance (LIP Chapter 12)

In accordance with LIP Section 12.5(B)(2), the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Lateral and Vertical Public Access - The project is not located on or adjacent to a shoreline; therefore, no condition for lateral or vertical access is required by the LCP.

Bluff-top Public Access - The project is located on a bluff-top property; however, no potential project-related or cumulative impact on bluff-top access is anticipated because the site does not have potential to offer bluff-top access. The project site is accessible by way of private property and is not accessible to the public. Furthermore, due to the topography of the project site, public safety concerns may arise if bluff-top access was provided.

Trail Public Access - The project site does not include any existing or planned trails as indicated on the City Trails Master Plan or the LCP Parklands Map; therefore, no condition for trail access is required by the LCP.

Recreational Public Access - The project site is located adjacent to Malibu Bluffs Park and Lot 7 which is proposed to be dedicated to the City for public recreational uses. The proposed private street providing access to the single-family homes would include sufficient turnaround area in the event that vehicles intending to go to Malibu Bluffs Park inadvertently turn into the private residential road. No condition for recreational access is required by the LCP.

J. Land Division (LIP Chapter 15)

Pursuant to LIP Section 15.2(B), the Planning Commission may approve or conditionally approve a land division application only if it affirmatively finds that the proposal meets all of the following:

Finding J1. Does not create any parcels that do not contain an identified building site that: a. Could be developed consistent with all policies and standards of the LCP; b. Is safe from flooding, erosion, geologic and extreme fire hazards; c. Is not located on slopes over 30% and will not result in grading

on slopes over 30%. All required approvals certifying that these conditions are met shall be obtained.

a. Building sites developed consistent with the LCP

The proposed building pads for the five residences proposed under CDP No. 07-145 through 07-149 can be developed consistent with the policies and standards regarding residential development in the PD zone established by LCPA No. 12-001.

b. Building sites are safe from flooding, erosion, geologic and extreme fire hazards

As discussed in detail in the FEIR and in Section F of this report, the proposed site of development is safe from flooding, erosion, geologic and extreme fire hazards. A number of mitigation measures and conditions of approval are included in the project to minimize the potential for impacts from these hazards. Additionally, the project has been reviewed and approved by the City Geologist, City Public Works Department and the LACFD.

c. Buildings sites are not located on slopes over 30 percent

The proposed building sites are located on the flattest areas of the property. Development of the proposed residences will not be located on slopes in excess of 30 percent and will not require grading on slopes in excess of 30 percent.

The City Geologist, after reviewing the geological reports submitted, did not identify any hazards or mitigation related to the subject land division. Therefore, the land division does not pose a threat of any adverse impacts to the proposed parcels.

Finding J2. Is designed to cluster development, including building pads, if any, to maximize open space and minimize site disturbance, erosion, sedimentation and required fuel modification.

The proposed land division clusters the five residences proposed under CDP No. 07-145 through 07-149, each within a two-acre convex. Parcels 6 will be maintained by the HOA and will include the majority of landscaping, the majority of the access road, gate house and OWTS package plant. Additionally, the building pads are located on the flattest portions of the property, thereby minimizing necessary site disturbance due to grading. The fuel modification plan does not disturb any sensitive resources and the zones for several residences overlap; thereby minimizing required vegetation clearance.

Finding J3. Does not create any parcels where a safe, all-weather access road and driveway cannot be constructed that complies with all applicable policies of the LCP and all applicable fire safety regulations; is not located on slopes over 30% and does not result in grading on slopes over 30%. All required approvals certifying that these conditions are met shall be obtained.

The proposed private street which will provide access from Winter Canyon Road to the five residences proposed under CDP No. 07-145 through 07-149 has been reviewed and approved by the LACFD with several conditions of approval which have been incorporated in this Resolution pertaining to maintenance of an unobstructed circular driveway on several parcels. The minimum turning radius of the cul-de-sac is required to be not less than 32 feet. As conditioned, the project

includes a safe, all-weather access road which complies with the LCP and LACFD requirements and is not located on slopes in excess of 30 percent.

Finding J4. Does not create any parcels without the legal rights that are necessary to use, improve, and/or construct an all-weather access road to the parcel from an existing, improved public road.

As previously stated in Finding J3, a private, gated street will be constructed to link the five residences proposed under CDP No. 07-145 through 07-149 to Winter Mesa Road, a public road.

Finding J5. Is designed to minimize impacts to visual resources by complying with the following: a. Clustering the building sites to minimize site disturbance and maximize open space; b. Prohibiting building sites on ridgelines; c. Minimizing the length of access roads and driveways; d. Using shared driveways to access development on adjacent lots; e. Reducing the maximum allowable density in steeply sloping and visually sensitive areas; f. Minimizing grading and alteration of natural landforms, consistent with Chapter 8 of the Malibu LIP; g. Landscaping or revegetating all cut and fill slopes and other disturbed areas at the completion of grading, consistent with Section 3.12 of the Malibu LIP; h. Incorporating interim seeding of graded building pad areas, if any, with native plants unless construction of approved structures commences within 30 days of the completion of grading.

a. Clustering building sites

The five building sites are clustered as close to the private street easement as possible while maintaining required setbacks proposed under LCPA No. 12-001 / ZTA No. 12-001.

b. Prohibiting construction on ridgelines

The project site does not include a ridgeline, as defined in LIP Section 2.1.

c. Minimizing access road and driveway length

The project includes the dedication of Lot 7 to the City for public active and passive recreational uses. The proposed location of Lot 7 is dependent on the existing location of Malibu Bluffs Park because it will expand the recreational uses of the park. Due to the irregular shape of the project site and the proposed location of Lot 7, the proposed private driveway is approximately 950 feet in length. The initial ~600 feet of the driveway would run adjacent to Lot 7 prior to providing access to the five single-family homes. The remainder of the driveway serves as one main access road to five proposed homes; the homes are proposed to be clustered to the main access driveway.

d. Using shared driveways on steep lots

The area proposed for residential development is fairly flat. The five residences proposed under CDP No. 07-145 through 07-149 will all share one access road off of Winter Canyon Road.

e. Reducing density in steeply sloping areas

The proposed development is located away from the sloping area on the property and all structures requiring structural foundation maintain 50 feet or more from the top of bluff.

f. Minimizing grading

The residences have been sited on the flattest areas of the property with the specific goal of minimizing required landform alteration.

g. Landscaping cut and fill slopes

The City Biologist has added a condition of approval which states that the project applicant shall comply with LIP Section 3.10, requiring that all cut and fill slopes be landscaped or revegetated at the completion of grading.

h. Interim seeding of graded building pads

A condition of approval has been included which requires that building pads be seeded unless construction of approved structures commences within 30 days of the completion of grading.

Finding J6. Avoids or minimizes impacts to visual resources, consistent with all scenic and visual resources policies of the LCP.

As discussed in Finding D1, the Reduced Project Alternative will not have significant scenic and visual impacts.

Finding J7. Does not create any additional parcels in an area where adequate public services are not available and will not have significant effects, either individually or cumulatively, on coastal resources.

The DEIR for the proposed project was distributed to all applicable public agencies, including, but not limited to: the LACFD, Los Angeles Regional Water Quality Control Board (RWQCB), Los Angeles County Water Works District No. 29, Southern California Edison and the Los Angeles County Sheriff's Department and no issue relative to public services was noted. As discussed throughout this report and in the EIR, as conditioned, the land division will not have significant effects on coastal resources.

Finding J8. Does not create any parcels without the appropriate conditions for a properly functioning onsite wastewater treatment system or without an adequate water supply for domestic use. All required approvals certifying that these requirements are met must be obtained.

An OWTS package plant has been engineered to serve the proposed guard house in addition to the five residences proposed under CDP No. 07-145 through 07-149. The proposed land division application, along with the package plant, was reviewed and approved by the City's Environmental Health Administrator.

In addition, the application was reviewed by the Los Angeles County Water Works District No. 29 and the applicant received the required "will serve" letters which indicate the adequate water supply

exists to serve the proposed development.

Finding J9. Is consistent with the maximum density designated for the property by the Land Use Plan map and the slope density criteria (pursuant to Section 15.6 of the Malibu LIP).

The proposed project is consistent with the maximum density designated for the project site if LCPA No. 12-001 / ZTA 12-001 is approved.

Finding J10. Does not create any parcels that are smaller than the average size of surrounding parcels.

The surrounding properties are all zoned single-family (SF), Commercial Visitor Serving – 2 (CV-2) and multi-family (MF) with varying lot sizes. The surrounding residential parcels along Malibu Road range in size from approximately 5,000 square feet to more than 20,000 square feet. These parcels represent the closest residential development and closest properties utilizing Malibu Road for vehicular access. The proposed subdivision does not create parcels smaller than the average size of surrounding parcels.

Finding J11. Does not subdivide a parcel that consists entirely of ESHA and/or ESHA buffer or create a new parcel that consists entirely of ESHA and/or ESHA buffer.

The subject parcel is not located in or adjacent to an ESHA, ESHA buffer zone or any streams as designated in the LCP. Therefore, this finding is not applicable.

Finding J12. Does not create any new parcels without an identified, feasible building site that is located outside of ESHA and the ESHA buffer required in the LCP and that would not require vegetation removal or thinning for fuel modification in ESHA and/or the ESHA buffer.

As discussed in Finding A4, the subject site is not located in an ESHA or ESHA buffer and the proposed building sites indicated on the VTTM do not require any vegetation removal or thinning for fuel modification requirements within ESHA or ESHA buffer.

Finding J13. Does not result in construction of roads and/or driveways in ESHA, ESHA buffer, on a coastal bluff or on a beach.

The subject site is not located in an ESHA or ESHA buffer, coastal bluff or on a beach. Therefore, this finding does not apply.

Finding J14. Does not create any parcel where a shoreline protection structure or bluff stabilization structure would be necessary to protect development on the parcel from wave action, erosion or other hazards at any time during the full 100 year life of such development.

The subject site is located inland and does not require a shoreline protection device. The project site is a bluff top property. As discussed in Finding F1, the proposed project will not neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

Finding J15. If located on a beachfront parcel, only creates parcels that contain sufficient area to site a dwelling or other principal structure, onsite wastewater treatment system, if necessary, and any other necessary facilities without development on sandy beaches or bluffs.

The subject site is located inland and is not in a beachfront location or on the bluff portion of the project site.

Finding J16. Includes the requirement to acquire transfer of development credits in compliance with the provisions of the LCP, when those credits are required by the Land Use Plan policies of the LCP.

As discussed in Section E above, the applicant shall comply with the requirements of LIP Chapter 7 which requires the retirement of one lot (in designated donor areas) per new lot created. The project includes the creation of four newly created residential parcels; therefore, the applicant must retire four lots prior to final map recordation.

K. Onsite Wastewater Treatment System Standards (LIP Chapter 18)

LIP Section 18.7 includes specific siting, design and performance requirements for OWTSSs. New discharges from onsite wastewater disposal systems are prohibited within the Malibu Civic Center area under Los Angeles RWQCB Resolution R4-2009-007 issued in November 2009. The proposed project is one of a few projects excepted from the prohibition because the project had already progressed far enough through the entitlement process. Under the terms of the prohibition, the proposed project must be connected to a certified wastewater treatment facility by 2019. In addition, as a condition of approval, the applicant / property owner or successor is required to obtain a permit for the Alternative OWTS (AOWTS) from the RWQCB and legally establish a HOA governing document that obligates the collection of assessments, specifies how the AOWTS will be operated and maintained.

The project includes an OWTS consisting of six septic tanks, a 2,000 gallon septic tank for each of the single-family residences on Lots 1 through 5 and a 1,500 gallon septic tank for the guard house on Lot 6, a treatment plant located on Lot 6 and seepage pits located on Lot 7, all of which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. All wastewater would be routed to a 35,000-gallon, four-compartment equalization/recirculation/polishing/dosing tank connected with treatment units. Treatment would be performed in two stages. Three Advantex AX100 treatment units would be used for Stage I treatment, and three additional Advantex AX100 treatment units would be used for nitrogen reduction (secondary nitrification). After treatment, disinfection of the effluent would occur by liquid chlorination and the effluent then would be dechlorinated prior to discharge to the seepage pits. The seepage pits would be six feet in diameter and range from 61 to 65 feet deep. Soil conditions at the proposed seepage pit locations allow for a separation between groundwater and the bottom of the seepage pits, ranging from 17 to 22 feet.

Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.

L. Subdivision Findings (M.M.C. Chapter 16)

No tentative map application shall be approved unless it complies with the provisions of the Subdivision Map Act and of M.M.C. Section 16.12.130. The Planning Commission shall deny an application map if it makes any of the following findings:

Finding L1. The proposed map is not consistent with the adopted general plan or specific plans of the city.

The proposed VTTM is consistent with the General Plan, which designates the site as PD. The sizes of the parcels are consistent with the minimum lot sizes proposed under LCPA No. 12-001 / ZTA No. 12-001.

Finding L2. The design or improvement of the proposed development is not consistent with the general or specific plan of the city.

As detailed in this report, the proposed is consistent with the General Plan.

Finding L3. The site is not physically suitable for the type of development proposed.

The approval of the VTTM will allow subdivision of the property into seven parcels, five of which will contain new single-family residences. As discussed in this report, based on review by City departments and applicable agencies, it has been determined that the subject site is physically suitable for the proposed development. Prior to the issuance of grading or building permits, the project construction plans will be reviewed and approved for structural integrity and stability. All final recommendations of the applicant's structural engineer as well as those recommendations of the Environmental Sustainability Department, the City Geotechnical staff and City Public Works Department will be incorporated into the project.

Finding L4. The site is not suitable for the proposed density of the development.

As described in this report, the subject site is zoned PD. Currently, Malibu LCP does not include maximum density permitted on the project site. With the inclusion of LCPA No. 12-001 / ZTA No. 12-001, the proposed project would be consistent with the maximum density for the project site.

Finding L5. The design of the development or the proposed improvements are likely to cause substantial environmental damage or to substantially injure fish or wildlife or their habitat.

The subject property does not contain ESHA or ESHA buffer and does not contain any areas which could accommodate fish. The proposed subdivision will not negatively affect nor injure fish or wildlife or their habitat.

Finding L6. The design of the development or the type of improvement is likely to cause serious public health hazards.

Leighton and Associates, Inc. prepared a Phase 1 Environmental Site Assessment dated October 28, 2011 for the project site. The ESA revealed no evidence of recognized environmental conditions in connection with the property. The proposed VTTM includes grading and infrastructure improvements required to service the five single-family homes are proposed under CDP No. 07-145

through 07-149; therefore, the design of the development and the type of improvement are not likely to cause serious public health hazards.

Finding L7. The design of the development or the type of improvement will conflict with easements, acquired by the public at large, for access through or use of property within the proposed development and no alternate easements, for access or for use, will be provided, which are substantially equivalent to the ones previously acquired by the public.

The proposed project site is surrounded adjacent to PCH and Winter Canyon Drive. The following easements currently exist on the property:

- a. Variable width Caltrans slope easement along the northern section of the property adjacent to PCH;
- b. 10 foot wide easement for utility purposes along the northern property line;
- c. 2 foot wide easement for electrical power purposes running north / south and east / west through the southern and southeastern area of the property;
- d. 5 foot wide easement for utility purposes along the southwestern property line;
- e. Waiver of damages in favor of the State of California resulting from location of the property adjoining PCH;
- f. Right to restrict access to PCH in favor of the County of Los Angeles; and
- g. Conditional Certificate of Compliance in favor of the County of Los Angeles near the bluff perimeter in the southern portion of the property;

The easements discussed under subsections b and c, d and g will be abandoned and/or relocated as part of the final VTTM. The easements indicated under subsections a, e and f will remain.

New proposed easements on the property include:

- a. Variable width street easement to the HOA for access and utilities on multiple lots.
- b. 10 foot wide storm drain easements on Lots 3 and 4.
- c. 6.23 acres to the Mountains Recreation and Conservation Authority Open space and landscaping.

With the recordation of the final map, the existing slope easement along PCH will not be affected. A private street easement is included in the proposed VTTM and will provide direct access from Winter Mesa Road to the five proposed NSFRs.

Finding L8. Any proposed subdivision of property with coastal frontage that does not provide or have available reasonable public access by fee or easement from public highways to land below the ordinary high water mark on any ocean coastline, pursuant to Government Code Section 66478.11.

The subject property is not located along the shoreline; therefore, this finding does not apply.

Section 8. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby recommends that the City Council certify Environmental Impact Report No. 09-

001 and approves the Mitigation Monitoring and Reporting Program, Vesting Tentative Tract Map No. 07-033 and Coastal Development Permit Nos. 07-044, subject to the following conditions:

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify, defend and hold harmless the City of Malibu and its elected and appointed officials, officers, employees and agents from and against any and all claims, actions, proceedings, liabilities and costs brought against the City and its elected and appointed officials, officers, employees and agents relating to the City's actions concerning this project, including but not limited to any proceeding under CEQA. This indemnification shall include (without limitation) damages, fees, and/or costs awarded against the City, cost of suit, attorney's fees, and 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 the property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project and the City's costs, fees, and damages that it incurs in enforcing the indemnification provisions set forth in this section.
2. The scope of work approved includes:
 - a. A vesting tentative tract map (County Reference: VTTM No. 070038) for the subdivision of a ~24 acre property into seven individual parcels;
 - b. Extension of ~3,200 linear feet water line;
 - c. Development on Lot 6:
 - i. 16.5 foot tall, 280 square foot guard house
 - ii. Private access road
 - iii. Fencing, walls, hardscape, lighting
 - iv. Landscaping
 - v. Onsite wastewater treatment plant
 - vi. Grading
 - d. Development on Lot 7:
 - i. Seepage pits
 - e. Dedication of Lot 7, a 1.74 acre parcel to the City of Malibu for public active and passive recreational uses; and
 - f. Dedication of 6.23 acres to the Mountains Recreation and Conservation Authority Open space and landscaping.
3. Subsequent submittals for this project shall be in substantial compliance with the plans on file, dated March 16, 2012 with the Planning Department. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of the

City Council's approval of the resolution and prior to issuance of any development permits.

5. The property owner / applicant or their successor shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City Environmental Sustainability Department for plan check, and the City Public Works Department for an encroachment permit (as applicable).
7. The CDP shall be null and void if the project has not commenced within three (3) years after issuance of the permit, unless a time extension has been granted, or work has commenced and substantial progress made (as determined by the Building Official) and the work is continuing under a valid building permit. If no building permit is required, the CDP approval shall expire after three years from the date of final planning approval if construction is not completed. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the two-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All structures shall conform to requirements of the City Environmental Sustainability Department, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Water District No. 29 and the Los Angeles County Fire Department (LACFD), as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code (M.M.C.) and the LCP. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission (CCC), have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
12. The property owner must submit payment for all outstanding fees payable to the City prior to issuance of any building permit, including grading or demolition.
13. Any building or demolition permits issued for work commenced or completed without the benefit of required permits are subject to appropriate "Investigation Fees" as required in the Building Code.

14. Prior to the issuance of the first Certificate of Occupancy, the property owner shall provide a copy of a valid Operating Permit pursuant to M.M.C. Section 15.14.030 or an Operating Permit application fee receipt unless the project does not include an OWTS and ties into the City wastewater treatment system.

Cultural Resources

15. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
16. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
17. A Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's standard conditions of approval. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

Vesting Tentative Tract Map

18. The Tract shall be developed in full compliance with the State Map Act and the M.M.C. Chapter 16.20, except as authorized by the Planning Commission and/or City Council. In accordance with M.M.C. Section 16.20.070, approval of the VTTM is contingent upon the adoption and certification of LCPA No. 12-001, ZTA No. 12-001, and all other discretionary land use approvals required for the project.
19. Details shown on the vesting tentative map are not necessarily approved. Any details which are inconsistent with requirements of ordinances, general conditions of approval, or City Engineer's policies, must be specifically approved in the final map or improvement plan approvals.

20. A final map prepared by, or under the direction of a Registered Civil Engineer authorized to practice land surveying, or a Licensed Land Surveyor, must be processed through the City Public Work's office prior to being filed with the County Recorder.
21. A preliminary subdivision guarantee is required showing all fee interest holders and encumbrances. An updated title report shall be provided before the final map is released for filing with the County Recorder.
22. Monumentation of vesting tract map boundaries, street centerline and lot boundaries is required.
23. Lot 7 shall be dedicated to the City in connection with the recordation of the Final Map.
24. The final map shall be filed with the County Recorder and one (1) mylar copy of filed map shall be submitted to the City Engineer's office prior to issuance of building permits. The final map and all off-site improvements required to be made or installed by the applicant / property owner shall meet the approval of the City Engineer.
25. Approval for filing of this land division is contingent upon approval of plans and conditions of approval in this resolution. If the improvements are not installed prior to the filing of this division, the property owner / applicant or their successor must enter into a Subdivision Improvement Agreement/Undertaking Agreement with the City and a Faithful Performance and Labor and Materials Bond in the amount estimated by the City Engineer guaranteeing the installation of the improvements.
26. Plans for private road improvements and street light layout for the proposed access road shall be submitted to the City Engineer and must be approved prior to filing the final map.
27. The City reserves the right to impose any new plan check and/or permit fees approved by City Council subsequent to tentative approval of this vesting tract map.
28. The applicant/property owner or its successor shall pay a voluntary additional public benefit of one million dollars (\$1,000,000.00) payable to the City of Malibu to be used to develop Lot 7 prior to the recordation of the final map.
29. Subject to the time limits established in Condition No. 30 of this Resolution, the approval or conditional approval of the proposed VTTM shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Government Code Section 66474.2. If Section 66474.2 of the Government Code is repealed, however, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved, subject to the time limits established by Condition No. 30 of this Resolution.
30. Notwithstanding Condition No. 28, a permit, approval, extension, or entitlement may be made

conditional or denied, even though such action may be contrary to the ordinances, policies, and standards described in Condition No. 28, if any of the following are determined:

- a. A failure to do so would place the residents of the subdivision, or the immediate community, or both, in a condition dangerous to their health or safety, or both;
 - b. The condition or denial is required in order to comply with state or federal law.
31. The rights referred to in Condition No. 28 shall expire if a final map is not approved prior to the expiration of the vesting tentative map. If the final map is timely approved, such rights shall exist for the following periods of time:
- a. An initial time period of one year after the recording of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, this initial time period shall begin for each phase when the final map for that phase is recorded.
 - b. The initial time period set forth in Condition 30(a), shall be automatically extended by any time used for processing a complete application for a plot plan review, grading permit or other development application, if such processing exceeds thirty (30) days from the date a complete application is filed.
 - c. The applicant may apply to the planning commission for a one-year extension at any time before the expiration of the initial time period set forth in subsection (C)(1) of this section. If the extension is denied, the applicant may appeal that denial to the city council within fifteen (15) days thereafter.
 - d. If the applicant submits a complete application for a building permit during the periods of time specified in subsection Condition 30(a) through Condition 30(c), the rights referred to herein shall continue to exist until the expiration of such permit, or any extension thereof.

Transfer of Development Credit

32. The property owner / applicant or their successor shall be required to retire sufficient donor lots to provide one (1) transfer of development credit (TDC) for each newly created residential lot authorized. Therefore, the TDC requirement for the proposed project is four (4) TDC credits.
33. TDC candidate sites selected to be retired shall be reviewed by the Planning Director. This review shall ensure that the site selected for retirement meets the criteria desired for permanent open space.
34. The four parcels selected to be retired shall be deed restricted to prohibit development into perpetuity.
35. The TDC requirements must be met prior to final map recordation.

Walls and Fencing

36. The property owner / applicant or their successor shall include an elevation of the proposed

electronic driveway gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.

37. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed 6 feet in height or 12 feet in height for a combination of two or more walls.

Colors and Materials

38. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
- a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
39. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.
40. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

Lighting

41. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
42. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
- d. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - e. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - f. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - g. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - h. Site perimeter lighting shall be prohibited;
 - i. Outdoor decorative lighting for aesthetic purposes is prohibited;

- j. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
- 43. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot candle.

Swimming Pools / Spas / Water Features

- 44. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in M.M.C. Chapter 8.24 (Noise).
- 45. All pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
- 46. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
- 47. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool/spa is prohibited unless it is discharged to a sanitary sewer system. Provide information on the plans regarding the type of sanitation proposed for pools.
 - a. Ozonization systems are an acceptable alternative to chlorine. The release of clear water from ozonization system is permitted to the street or sewer;
 - b. Salt water sanitation is an acceptable alternative, but the discharge of salt water is prohibited to the street and sewer;
- 48. Highly chlorinated water from pools or spa shall be discharged to a public sewer or may be trucked to a publicly owned treatment works (POTW) for discharge.
- 49. The discharge of chlorinated pool water shall be prohibited.
- 50. The discharge of non-chlorinated pool water into streets, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters shall be prohibited.
- 51. Pursuant to M.M.C. Section 9.20.040(B), all ponds, decorative fountains and water features shall require a water re-circulating/recycling system.

Biology/Landscaping

- 52. The Maximum Applied Water Allowance (MAWA) for the common area (Lot 6) totals 746,153 gallons per year. The Estimated Applied Water Use (EAWU) totals 529,719 gpy, thus meeting the Landscape Water Conservation Ordinance Requirements.
- 53. Prior to Final Plan Check Approval, please provide landscape water use approval from the Los Angeles County Waterworks Department.

54. No new development, planting, or irrigation is permitted within public easements. Any new structure, plant or irrigation system occurring in the public easement shall be removed at the owner's expense. Re-striping and traffic improvements on Winter Mesa Drive are permitted.
55. Invasive plant species, as determined by the City of Malibu, are prohibited.
56. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
57. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within the side or rear yard setback shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.
58. The use of building materials treated with toxic compounds such as copper arsenate shall be prohibited.
59. Prior to final Plan Check, a detailed irrigation plan shall be submitted to Building Safety Department for review and approval.
60. Prior to final landscape inspection, provide a signed copy of the Certificate of Completion, certifying the irrigation installation and operational efficiency is consistent with the approved plans.
61. Grading shall be scheduled only during the dry season from April 1-October 31st. If it becomes necessary to conduct grading activities from November 1-March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
62. Grading scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 300 feet (500 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to ANY vegetation removal on site.
63. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting.
64. No lighting for aesthetic purposes such as up-lighting of landscaping, is permitted.
65. Necessary boundary fencing of any single area exceeding one half (1/2) acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire.

A split rail design that blends with the natural environment is preferred.

Environmental Review Board

66. The applicant/property owner or its successor shall prepare a drainage plan, demonstrating that drainage is collected in drainage facilities with non-erosive devices.
67. The drafting hydrant for swimming pools above 5,000 gallons shall be located in an area easily accessible to the LACFD. The locations of the drafting hydrant shall be approved by the LACFD.
68. Irrigation of steep slopes shall be avoided, if possible.

Geology

69. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
70. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading and drainage. Any substantial changes may require amendment of the CDP or a new coastal development permit.
71. Engineered structures such as retaining walls, footings for small structures and significant cut and fill grading, will require the preparation of a geotechnical report that provides recommendations for the design of these structures and grading procedures in accordance with the City's Geotechnical Guidelines and Building Codes.
72. The project geotechnical consultants should review the referenced plans. The project engineering geologist and a registered geotechnical engineer or civil engineer practicing in geotechnical engineering in the state of California should be retained to perform geotechnical investigations for the proposed improvements discussed above and prepare a report(s) providing recommendations for the structural improvements and grading, as applicable. City geotechnical staff shall review the report(s) for conformance to the City's geotechnical guidelines and Building/Grading Codes during the building/grading plan check phase.

Public Works

73. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
74. Geology and geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The applicant's consulting engineer shall sign the final plans prior to the issuance of permits.

75. The Total Grading Yardage Verification Certificates shall be copied onto the coversheet of the Grading Plans submitted for the project. No alternative formats or substitute may be accepted.
76. Grading permits shall not be issued between November 1 and March 31 each year. Projects approved for a grading permit shall not receive grading permit unless the project can be rough-graded before November 1 or if it becomes necessary to conduct grading activities from November 1-March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
77. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
78. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
79. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the WDID number prior to the issuance of grading or building permits.
80. Storm drainage improvements are required to mitigate increase runoff generated by property development. The applicant/property owner or its successor shall have the choice of one method specified within the City's LIP.
81. The property owner / applicant or their successor shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template.
82. Prior to final approval of the Public Works Department, the applicant shall submit a digital drawing of the project's storm drainage and post-construction BMPs.
83. A Grading and Drainage Plan is required, and shall be submitted to the City Public Works Department for review and approval, prior to the issuance of grading permits for the project. The following elements shall be included in this plan:
 - a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.

84. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the rainy season). The following elements shall be included:
- a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
 - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
85. A Storm Water Pollution Prevention Plan (SWPP) shall be provided prior to the issuance of grading permits. This plan shall include:
- a. Dust Control for the management of fugitive dust during extended periods without rain;
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
 - d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent discharge of runoff through the waste.
86. A Water Quality Mitigation Plan (WQMP) is required for this project (also known as Standard Urban Stormwater Management Plan or SUSMP). The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The following elements shall be included within the WQMP:
- a. Site Design Best Management Practices (BMPs);
 - b. Source Control BMPs;
 - c. Treatment Control BMPs;
 - d. Drainage improvements;
 - e. Methods for on-site percolation, site re-vegetation and analysis for off-site project impacts;
 - f. Measures to treat and infiltrate runoff from impervious areas;
 - g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
 - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
 - i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at time of submittal for the review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted to the Public Works Department's approval of the building plans for the project.
87. The property owner / applicant or their successor shall contract with a City approved hauler to

facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion Goal.

88. Prior to grading permit issuance, final grading and drainage plans incorporating construction-phase erosion control and storm water pollution prevention, as well as post-construction storm water management must be approved by the City Public Works Department.

Environmental Health

89. Prior to final City Environmental Health Administrator approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
90. The applicant/property owner or its successor shall provide complete engineering design drawings, calculations, construction specification, and an operation and maintenance manual to the City Environmental Sustainability Department. Describe all AOWTS components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of systems for onsite wastewater treatment and disposal. Electronically monitored flow meters shall be flowing daily through the wastewater system. The final AOWTS design shall provide sufficient capacity for onsite treatment and disposal of all project wastewater discharges in accordance with the requirements of the MPC, LCP/LIP and RWQCB. In addition, the wastewater treatment process shall be reviewed and approved by the City's wastewater engineering consultant (currently Tetra Tech, Inc.) prior to Environmental Health final approval.
91. The applicant/property owner or its successor shall building plans, wastewater plans, and all necessary supporting forms, and reports, to the RWQCB, 320 W. 4th St., Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). Waste Discharge Requirements (WDRs) for this project have not yet been issued by the RWQCB. A copy of applicable WDRs issued by the RWQCB must be included with your Plan Check submittal. The City's Plan Check wastewater engineering review will be performed relative to the treatment objectives expressed in the WDRs. Please note that while the wastewater system renovation project has been approved in-concept for the Coastal Development Permit, the final design of the treatment train may need to be substantially modified from what has been shown in the Conformance Review wastewater engineering preliminary design documents.
92. Prior to receiving Environmental Health final approval, the project owner shall legally

establish a homeowners' association governing document that obligates the collection of assessments, specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation of the homeowner's association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.

93. An operations and maintenance manual specified by the AOWTS designer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.
94. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted.
95. City of Public Works Department final approval shall be submitted. The City of Malibu Public Works reviewer shall review the AOWTS design to determine conformance with Public Works Department requirements.
96. City of Malibu Geologist, Geotechnical Engineer, and Hydrogeologist final approvals shall be submitted.
97. The applicant/property owner or its successor shall submit an application the Environmental Sustainability Department for an OWTS operating permit. An operating permit fee in accordance with the fee schedule in effect at the time of submittal shall be submitted with the application.
98. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42-inches tall.

Fire Safety

99. The applicant/property owner or its successor shall provide water mains, fire hydrants and fire flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.
100. The required fire flow for public fire hydrants at this location is 1,375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 hydrant flowing simultaneously may be used to achieve the required fire flow.
101. Fire hydrant requirements are as follows: Install 3 private on-site fire hydrants
102. All hydrants shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approved equal. All onsite hydrants shall be installed a minimum of 25' feet from a structure or protected by two-hour rated firewall, location as per map on file with the office.

103. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
104. Additional water system requirements will be required when this land is further subdivided and/or during the building permits.
105. Per the County of Los Angeles Water Works 29, the Fire Flow Availability form dated March 30, 2012 indicated adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrant shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approve equal and meet the required fire flow requirements as noted above.
106. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
107. Emergency access for firefighter pedestrian use shall be extended to all exterior walls or all proposed structure within the subdivision. Additional walking access shall be reviewed and approved by the Fire Prevention Engineering prior to Building Permit issuance.
108. The applicant/property owner or its successor shall submit three copies of the final map to LACFD, Land Development for review and approval recordation.
109. The project may require interior fire sprinklers.
110. The project requires LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.
111. Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.
112. Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.
113. Where driveways shall be indicated on the final maps as "Private Driveway and Fire lane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.
114. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
115. The applicant/property owner or its successor shall provide Fire Department or City approved street signs and building access numbers prior to occupancy.

Trash Storage Areas

116. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
117. Trash container areas must be screened or walled to prevent off-site transport of trash, other than by approved haulers.

Utilities

118. Power, telephone and cable television service shall be placed underground. The applicant / property owner or its successor shall coordinate with the proper utilities providers to properly relocate any existing facilities within the project site, if necessary.
119. Any utilities that are in conflict with the development shall be relocated at the developer's expense.

Water Service

120. The applicant shall be required to comply with the requirements of the Los Angeles County Waterworks District No. 29, as stated in the Will Serve Letters dated December 26, 2012.
121. All lots shall be served by adequately sized water system facilities, which shall include fire hydrants of the size, type and location as determined by the Fire Chief.
122. The water mains shall be of sufficient size to accommodate the total domestic and fire flow required for the land division. Domestic flows required are to be determined by the City Engineer. Fire flows required are to be determined by the Fire Chief.
123. Plans and specifications for the water system facilities shall be submitted for approval to the water company serving this land division. The applicant/property owners or its successor shall submit an agreement and other evidence, satisfactory to the City Engineer indicating that the applicant/property owner or its successor has entered into a contract with the servicing water purveyor guaranteeing payment and installation of the water improvements.
124. Prior to the filing of the final vesting tract map, there shall also be filed with the City Engineer, a statement from the water purveyor indicating the applicant/property owner or its successor compliance with the Fire Chief's fire flow requirements.

Site Specific Conditions

125. The property owner / applicant or their successor shall implement all mitigation measures specified in Environmental Impact Report No. 09-001 pursuant to the final MMRP dated December 2013 (Exhibit B).
126. The property owner / applicant or their successor shall obtain an encroachment permit from the City Public Works Department prior to commencement of any work within the Winter Mesa Canyon right of way.

127. The property owner / applicant or their successor shall obtain an encroachment permit from Caltrans prior to commencement of any work within the Pacific Coast Highway public right-of-way.

Deed Restrictions

128. The property owner / applicant or their successor is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or a bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
129. The property owner / applicant or their successor is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
130. Prior to final planning approval, the property owner / applicant or their successor shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 37 - 39. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
131. Prior to final planning approval, the property owner / applicant or their successor shall be required to execute and record a deed restriction for each of the five residential parcels reflecting that each property owner is responsible for maintaining the access road in a manner that guarantees adequate access for emergency vehicles and adequate ingress/egress for the properties served thereby.

Prior to the Issuance of Certificate of Occupancy

132. Prior to the issuance of the first Certificate of Occupancy, the property owner / applicant or their successor shall provide the Planning Department with a copy of the recorded Covenants, Conditions and Restrictions (CC&Rs) for the property. The CC&Rs shall be reviewed by the City Attorney prior to recordation and must include all applicable provisions required as mitigation measures in the MMRP.
133. Prior to the issuance of the Certificate of Occupancy, the property owner / applicant or their

successor shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.

134. Prior to final sign off by the Planning Department, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.

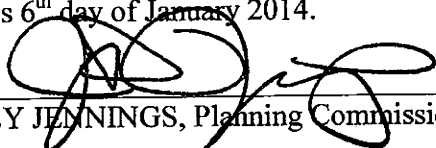
Section 9. Severability.

If any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

Section 10. Certification.

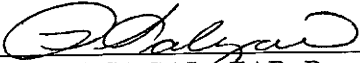
The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 6th day of January 2014.



JEFFREY JENNINGS, Planning Commission Chair

ATTEST:



PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), 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.

COASTAL COMMISSION APPEAL - An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-03**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-145 AND SITE PLAN REVIEW NO. 07-139 FOR DEVELOPMENT ON LOT 1 OF THE CRUMMER SITE SUBDIVISION PROJECT, CONSISTING OF A 8,039 SQUARE FOOT, TWO-STORY SINGLE-FAMILY RESIDENCE WITH A 1,000 SQUARE FOOT BASEMENT, 891 SQUARE FOOT GARAGE, DETACHED 615 SQUARE FOOT SECOND UNIT, 507 SQUARE FEET OF COVERED LOGGIA SPACE THAT PROJECTS MORE THAN SIX FEET; OUTDOOR BARBEQUE AREA WITH TRELLIS, SWIMMING POOL, SPA AND POOL EQUIPMENT, DECKING, HARDSCAPE, ROOF-TOP MECHANICAL EQUIPMENT, WATER FEATURES, FENCING, GRADING, MOTOR COURT, SEPTIC TANK, AND LANDSCAPING, INCLUDING A SITE PLAN REVIEW FOR CONSTRUCTION IN EXCESS OF 18 FEET IN HEIGHT, LOCATED AT 24108 PACIFIC COAST HIGHWAY, IN THE PLANNED DEVELOPMENT ZONING DESIGNATION (PCH PROJECT OWNER)

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

Section 1. Recitals.

A. On September 30 2008, the City published a Notice of Preparation (NOP) and Initial Study for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The Initial Study determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.

B. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.

C. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed the Planning Department that the project could resume.

D. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

E. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30-day circulation period ran from May 10, 2012 through June 11, 2012.

F. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

G. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds. The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

H. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR (DEIR) to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearinghouse # 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

I. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit Application was posted on the subject property.

J. On April 23, 2013, the Environmental Review Board (ERB) / Subdivision Review Committee (SRC) reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

K. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR (FEIR). The FEIR responds to the comments received on the DEIR and proposes text revisions to the DEIR.

L. On November 7, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site.

M. On December 13, 2013, the Final EIR was made available on this date.

N. On December 20, 2013, an errata to the FEIR was made available. Response to Comments on the DEIR was circulated to all of those who submitted comments as well as to interested parties.

O. On January 6, 2014, a second errata to the Final EIR was made available.

P. At its January 6, 2014 meeting, the Planning Commission approved City of Malibu Planning Commission Resolution No. 14-02 in which it found that (i) the Final EIR for the project is adequate, complete and has been prepared in accordance with CEQA, (ii) it has reviewed and considered the Final EIR in reaching its decision, (iii) the Final EIR reflects the City's independent judgment and analysis, (iv) the Final EIR analyzed a reasonable range of alternatives, and (v) there are no significant, unmitigatable environmental impacts that result from the project. In Resolution No. 14-02, the Planning Commission adopted Findings of Fact attached thereto as Exhibit A and a Mitigation Monitoring and Reporting Program attached thereto as Exhibit B.

Q. On April 24, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 500 feet radius of the project site.

R. On April 25, 2014, story poles were re-installed to reflect the updated development plans for Lot 1. The placement of the story poles was re-certified by a professional land surveyor in May 2014.

S. On May 19, 2014, 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.

A. The Final EIR has been presented to the Planning Commission. All procedures have been duly followed as required by law. The Planning Commission has reviewed and considered the information contained in the Final EIR and the record as a whole in conjunction with its deliberations, in accordance with the California Environmental Quality Act (CEQA) Guidelines and Procedures of the State of California and the City of Malibu. The Final EIR reflects the City's independent judgment and analysis. The City Council certified the Final EIR, adopted the Findings of Fact, and approved the MMRP on February 24, 2014 (Resolution No. 14-11).

B. CEQA requires decision makers to adopt a mitigation monitoring and reporting program (MMRP) for those mitigation measures identified in the Final EIR that would mitigate or avoid each significant effect identified in the EIR, and to incorporate the MMRP including all mitigation measures as conditions of project approval. The Final EIR includes an analysis of the extent to which the proposed project's direct and indirect impacts will commit nonrenewable resources to uses that future generations will probably be unable to reverse.

C. CEQA requires that the responses to comments in the Final EIR demonstrate good faith and a well-reasoned analysis and may not be conclusive. In response to several comments received, portions of the DEIR have been revised. Although new material has been added to the DEIR through preparation of the FEIR, this new material provides clarification to points and information already included in the DEIR and is not considered to be significant new information or a substantial change to the DEIR that would necessitate recirculation.

D. The CEQA Guidelines note that "[t]he EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project" and "CEQA does not require technical perfection in an EIR, but rather adequacy, completeness and a good-faith effort at full disclosure." (14 Cal. Code of Regs. § 15003(c) and (i).)

E. The Final EIR includes an additional clarifying narrative and clarifying exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and exhibits in the Final EIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required.

F. There are no significant, unavoidable adverse environmental impacts caused by the project. As detailed in the Final EIR, the development of the Reduced Project Alternative would not

result in potentially significant adverse impacts in the following environmental subject areas: Aesthetics, Greenhouse Gas Emissions, Land Use, Noise, Recreation, Agricultural Resources, Mineral Resources, Population and Housing, Public Services and Utilities and Service Systems. The EIR provides substantial evidence that the remaining environmental subject areas (Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials and Hydrology and Water Quality and Transportation and Traffic) are less than significant with the implementation of certain, specified mitigation measures. The proposed development on Lot 1 was reviewed by Planning Department Staff and was found to be consistent with the Reduced Project Alternative. Impacts would be less than significant with the implementation of certain, specified mitigation measures.

G. In compliance with Public Resources Code Section 12081 and CEQA Guidelines Section 15093, the Planning Commission has determined that no Statement of Overriding Considerations is required as there are no significant, unmitigable environmental impacts that result from the proposed project.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 07-145 and SPR No. 07-139 for a 8,039 square foot, two-story single-family residence with a 1,000 square foot basement, 891 square foot garage, detached 615 square foot second unit, 507 square feet of loggia space that projects more than six feet, outdoor barbeque area with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, including a site plan review for construction in excess of 18 feet (proposed 28 feet for a pitched roof), located at 24108 PCH.

The proposed project has been reviewed by the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department, and the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP's zoning, grading and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The project, as conditioned conforms to the LCP in that it meets all residential development standards set forth in the underlying Planned Development (PD) Zoning

District.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is not located between the first public road and the sea and will not impact public access or recreation because the project site is not along the shoreline. The project will not result in significant impacts on public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

Finding A3. The project is the least environmentally damaging alternative.

An FEIR (EIR No. 09-001) was prepared in accordance to the California Environmentally Quality Act (CEQA) and presented to the Planning Commission for consideration. The proposed single-family residence and associated development is consistent with the Reduced Project Alternative reviewed under EIR 09-001. The development proposed on Lot 1 (consistent with the Reduced Project Alternative) would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no feasible alternatives that would further reduce any impacts on the environment. The project allows for a 8,039 square foot, two-story single-family residence with a 1,000 square foot basement, 891 square foot garage, detached 615 square foot second unit, 507 square feet of loggia space that projects more than six feet, outdoor barbeque area with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, septic tank, and landscaping, including a SPR for construction in excess of 18 feet (proposed 28 feet for a pitched roof), all of which are permitted uses within the PD zoning classification of the subject property.

An in-depth discussion of the alternatives considered when developing the plans for VTTM No. 07-033 is included in Resolution No. 14-02. This finding detailed the reasons for siting the proposed single-family residence and associated development on Lot 1.

The following alternatives were considered.

1. No Project, No Development Alternative - Under this alternative, the project site would remain unchanged. The project site would not be subdivided, and therefore, no development, including the proposed single-family residence would be constructed and Malibu Bluffs Park would not be expanded. Under this alternative, the project site would continue in its existing vacant land use.
2. One-Story Homes with Recreational Facilities Alternative – Under this alternative, the height of the structures on Lot 1 would be reduced from 28 feet to 18 feet, resulting in a larger building footprint. Compared to the project as originally proposed, the single-story alternative would almost double the building footprints for each of the five homes and would slightly increase impacts in a variety of environmental categories, including construction air quality, geotechnical, and construction noise. The increased fuel modification zones have the potential to cause a new significant impact.
3. Originally Proposed Project – Under this alternative, the maximum height of the single-family residence on Lot 1 would be 28 feet for a pitched roof, same as the Reduced Project Alternative,

however, the second story would be 3,344 square feet instead of 1,619 square feet. The proposed project would result in a net increase of 1,725 square feet of area in excess of 18 feet in height. In addition, the originally proposed landscaping included more landscaping than the Reduced Project Alternative. The originally Proposed Project would result in a slight increase of impacts to aesthetics and visual resources and therefore, not the least environmentally damaging alternative.

4. Reduced Project Alternative (Proposed Project) – Under this alternative, the second floor of the residence on Lot 1 would be reduced from 3,344 square feet to 2,565 square feet, and the total square footage of the residence would be reduced from 11,081 square feet to 10,052 square feet. This Alternative also involves modifications to the proposed landscape plan by not planting some of the taller plants and relocating some of the plant materials to allow for additional view corridor and to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. The FEIR further concludes that the Reduced Project Alternative would slightly reduce impacts in a variety of environmental categories, including visual resources, construction air quality, biological resources, cultural resources, geotechnical properties, and construction noise. However, these impacts would be substantially similar to those under the proposed project and they would remain less than significant. This alternative would also be environmentally similar to the originally proposed project in the area of operational air quality, cultural resources, greenhouse gas emissions, fire hazards, hydrology and water quality, land use, operational noise, recreation, and traffic.

Based on the site reconnaissance, visual analysis submitted by the applicant, photos, review of the landscape plan and architectural plans, and the nature of the surrounding area, the Planning Commission has determined that the proposed residence and associated development located on Lot 1 of the Crummer site (Reduced Project Alternative) will have no significant impacts to aesthetics of visual resources. The proposed project (which is the Reduced Project Alternative together with the additional modifications to the residence on Lot 1, landscaping plans for Lot 1 and the grading plans for Lot 1) is the least environmentally damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

According to the LCP ESHA Overlay Map, the project site is not designated as ESHA; however ESHA is located immediately to the southwest of the subject property in State Park land. There are two drainage channels located on the subject property; however, there is no resource dependent riparian vegetation present. The DEIR was reviewed by the Environmental Review Board (ERB). The ERB had several recommendations for the proposed project; all feasible recommendations have been incorporated to the project as conditions of approval in this Resolution. The project conforms to the recommendations of the ERB.

B. Site Plan Review for Structure Height in Excess of 18 feet (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review for construction in excess of the City's base 18 feet in height up to 24 feet for a flat roof and 28 feet for a pitched roof. Four additional findings are required pursuant to Malibu

Municipal Code (M.M.C.) Section 17.62.040 and M.M.C. Section 17.62.060. The proposed residence is a maximum of 28 feet. Based on the evidence contained within the record, the required findings for SPR No. 07-039 are made as follows. As used herein, "project" means the Reduced Project Alternative for Lot 1 included in the Final EIR together with the additional modifications to the residence on Lot 1, the landscaping plans for Lot 1, and the grading plans for Lot 1 that are included in the plans dated May 2, 2014.

Finding B1. The project is consistent with policies and provisions of the Malibu LCP.

The proposed single-family residence and associated development on Lot 1 has been reviewed for compliance with all relevant policies and provisions of the LCP. Based on site visits, inspections, and review of the visual analysis, it has been determined that the project is consistent with all LCP policies and provisions. On February 24, 2014, the Malibu City Council approved LCPA No. 12-001, which amended the Local Coast Program with respect to the Planned Development Designation for the project site. On February 24, 2014, the City Council also enacted Ordinance No. 379, which amended the Local Coastal Program Land Implementation Plan and included Zoning Text Amendment No. 12-001, which amended the Municipal Code applicable to the project site. The proposed single-family residence and associated development on Lot 1 has been reviewed for compliance with all relevant policies and provisions of the LCP, as amended by the City Council. The project has been reviewed for all relevant policies and provisions of the LCP by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department, and the LACFD. Based on staff review, site visits, inspections, and review of the visual analysis in the record, it has been determined that the project is consistent with all LCP policies and provisions, including the Local Implementation Plan. The findings made in connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B2. The project does not adversely affect neighborhood character.

The project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional. Development within approximately one-half of a mile from the project site includes single-family residential development on Malibu Road; the Malibu Knolls (229 homes) and Malibu Country Estates (97 homes) subdivisions; two condominium developments totaling 152 units; office buildings, including the HRL Research complex (approximately 225,000 square feet); Malibu City Hall and Los Angeles County offices; two wastewater treatment plants; Pepperdine University; Bluffs Park and the Malibu Colony Plaza Shopping Center. Thus, the project, when assessed within the context of the extensive and diverse surrounding residential and commercial uses, including single family residential development, condominium developments, office buildings, civic buildings, Pepperdine University and retail centers, would be compatible with development within the vicinity of the project and would not adversely affect the neighborhood character.

The uses immediately adjacent to the project site include (i) to the east, a site designated for single family residences known as the Towing Site, (ii) to the south, single family residences, and (iii) to the west, recreational uses in Bluffs Park. When compared to the existing development surrounding the project site, the development proposed for the property is a relatively low density and less intense use and is compatible with the surrounding uses.

Story poles were placed on Lot 1 to demonstrate the project's potential for aesthetic changes to the site relative to neighboring properties. In April 2012 and again in April 2014, Planning Department staff conducted a site visit to inspect the story poles after installation. A professional land surveyor subsequently verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. While the proposed development on Lot 1 may be larger in square footage than some homes in the vicinity, the parcel is 3.86 acres, substantially larger than most residential properties in the vicinity. Residential homes within the vicinity are beachfront homes along Malibu Road and single-family homes located on parcels ranging from .5 acre to one acre on the inland side of Malibu Road. The mass, scale and height of the structures proposed in the project would not adversely affect neighborhood character, as demonstrated by the story poles and the detailed analysis of visual impacts contained in the EIR, which included the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson. The Visual Simulations report included 78 visual simulations of the originally proposed project, the one-story alternative and the reduced project alternative, including numerous views of Lot 1, from 26 different public and private viewpoints, including the site of the proposed Rancho Malibu hotel, private property within Malibu Country Estates, PCH, the beach near Malibu Colony Road, Bluffs Park, Malibu Road, Malibu Canyon Road, Malibu Knolls, Pepperdine University, Surfrider Beach, Malibu Colony Beach, Malibu Pier, Adamson House, Legacy Park and Malibu Library. The Visual Simulations report concluded that the project would not substantially degrade the visual character of the site or introduce any aesthetic elements incompatible with the project area. Therefore, the project, as proposed and conditioned, does not adversely affect neighborhood character.

Finding B3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed development on Lot 1 has been sited and designed to minimize impacts on scenic areas from scenic highways and public viewing areas through measures including, but not limited to, siting development in the least visible portion of the site, reducing the size of the second story, breaking up the mass of the residence, designing the residence to blend into the natural setting, restricting the building maximum size, minimizing grading, and incorporating landscape elements. The Final EIR concluded that the project would not obstruct or otherwise substantially impact scenic views or resources or block any significant scenic resources from public view sheds.

Based on story poles and visual simulations, development on the proposed project site would be visible from several public scenic areas, including two LUP designated scenic roads (Malibu Canyon Road and PCH), Malibu Bluffs Park, Legacy Park and public beaches located within the vicinity. A substantial number of photos of the site with the story poles in place are evidence in the record.

PCH and Malibu Canyon Road are designated scenic roads, however, the LUP does not consider commercial areas along PCH east of Malibu Canyon as scenic areas. A berm shields the proposed development on Lot 1 from view if standing on PCH directly adjacent to Lot 1 because PCH is well below the elevation of Lot 1. The project would be visible to people travelling west on PCH and from Legacy Park and may alter the skyline of project site's bluff from certain portions of PCH because it would obstruct views of the sky, but it would not obstruct views of the ocean to the south and mountains to the north.

Development on Lot 1 would be briefly visible to people travelling east on PCH due to the topography of the area and the presence of roadside vegetation. Development on Lot 1 would be visible while traveling south on Malibu Canyon Road. However, based on story poles and the September 2013 Visual Simulations, the proposed project would not obscure a noticeable portion of the ocean view, and would not otherwise significantly alter the views from these roads and would not block any significant scenic resources from public viewsheds. Views on public beaches are directed south, toward the ocean and away from Lot 1.

As discussed previously in Finding A3, the project includes a 779 square foot reduction of the second floor compared to the originally proposed project and the second story element is located at the "center" of the house to create view corridors on either side of the second story. These changes are intended reduce the impact to visual resources. The residence has also been moved to the west to reduce the visual impact from the Civic Center area. The project also involves modifications to the proposed landscape plan by removing the quantity of plant materials to create more gaps, removing some of the taller plants and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. This reduction would be accomplished by the following modifications to Lot 1:

- Reduction of the square footage on the second floor from 3,344 square feet to 2,565 square feet;
- Reduction of the total square footage of the residence from 11,081 square feet to 10,052 square feet;
- Moved the residence to the west, away from the bluff thereby reducing the visual impact from public view points in the Civic Center area;
- Eliminated the walk out basement;
- Pool cabana moved from south to north side of property, and lowered cabana floor line by 1.5 feet;
- Reduced front courtyard wall heights from 12 feet to 6 feet for less visual impact from PCH;
- Replaced four (4) blue elderberries with 5 strawberry trees on north side of driveway;
- Added seven (7) strawberry trees along northern property line to be consistent with the change in location of the house and new footprint;
- Relocated three (3) Chitalpa tashkentensis to west the house to be consistent with the change in location of the house and new footprint;
- Removed palms in front of house; and
- Removed two (2) Mexican blue palms, one (1) strawberry tree, and two (2) Mediterranean fan palms in the rear yard and along south side of the house to coordinate with changes in the location of the house and new footprint.

In addition, conditions of approval have been included to minimize the project's impact on public views over the project site, especially from PCH and other view points in the Civic Center area. These features include:

- a. Incorporation of colors and materials that blend into the surrounding environment;
- b. The use of non-glare materials and non-reflective windows;
- c. The development has been set back from the edge of the slope above the road grade of PCH;
- d. Planting of landscaping to screen the residential development onsite;

- e. Use of low wattage lighting to minimize nighttime light impacts; and
- f. The undergrounding of utility lines which are currently above ground.

With the incorporation of these project features and conditions of approval, the project provides maximum feasible protection to significant public views over the subject site. Although the story poles are visible from several public scenic areas, the Reduced Project Alternative is not anticipated to substantially impact scenic views or resources because the Reduced Project Alternative and landscaping would blend into the surrounding natural environment and would not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from public scenic areas; therefore, the project provides maximum feasible protection to significant public views.

Finding B4. The proposed project complies with all applicable requirements of state and local law.

The EIR for the project contains a detailed analysis of the proposed project's consistency with the all applicable federal, state and local laws and regulations regarding the development of the project site. The EIR concluded that the project is consistent with and will meet all of the applicable laws and regulations. The proposed project has received LCP conformance review by the Planning Department, the City Biologist, City Environmental Health Administrator, City Geologist, the City Public Works Department and the LACFD. Prior to issuance of building permits, the project must have final approval by the City Environmental Sustainability Department. The proposed project complies with all applicable requirements of state and local law.

Finding B5. The project is consistent with the City's general plan and local coastal program.

According to the General Plan, the "PD designation provides for a mix of residential and recreational development on the Crummer Trust property [the subject project site] located east of Malibu Bluffs State park and south of Pacific Coast Highway." The proposed development of Lot 1 with a single-family residence and related ancillary development is consistent with the PD designation as defined in the General Plan. Table 5.9-1 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu General Plan, and the analysis concluded that the project is consistent with all applicable policies of the General Plan.

On February 24, 2014, the City Council adopted Resolution No. 14-13 to amend the Local Coastal Program Land Use Plan (the "LUP") to specifically provide that the "PD designation is intended as a zoning tool to encourage innovation in development concepts, land use mixes and site designs on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway." The City Council found that the amendment of the LUP would not result in impacts on public access to the beach, marine resources, scenic views, or environmentally sensitive habitat areas. On February 24, 2014, the City Council adopted Ordinance No. 379 to amend the Local Coastal Program LIP to specifically provide for the development of five single-family residences and 1.74 acres of recreational area on the project site. The LIP amendment establishes the permitted uses, lot development criteria, and property development and design standards for the project site. The proposed development of Lot 1 with a single-family residence and related ancillary development is consistent with the LUP and LIP, as amended, and complies with the LIP development standards. In addition, Table 5.9-3 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu Local Coastal Program, and the analysis concluded that the project is consistent with all applicable policies of the Local Coastal Program. The findings made in

connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in MMC Section 17.40.040(A)(17).

In April 2012, story poles were installed on the project site reflecting the originally proposed project. The story poles were installed again in April 2014 to show the configuration and height of the proposed project (Reduced Project Alternative). The story poles were certified by a professional land surveyor. The EIR includes the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson, which depicts the project, including structures and landscaping at maturity, from 26 viewpoints, including the privately owned residential areas Malibu Country Estates and Malibu Knolls. The View Simulation report concluded that the project would not block any significant scenic resources from these private residential areas.

Pursuant to M.M.C. Section 17.40.040(A)(17), a primary view corridor may be assessed from principal residences within a 1,000 foot radius of the proposed structure or addition. Primary views are defined as "visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines." Using GIS, staff conducted a 1,000 foot radius buffer search and determined that the only residential units located north of the project site with a protected primary view corridor are condominiums and townhouses along Civic Center Way and DeVille Way. Based on aerial photographs and site inspections, the primary views of the residential units along Civic Center Way and DeVille Way are unaffected by the proposed project because the project site is at a higher elevation and the proposed project does not obstruct views of the Pacific Ocean, offshore islands, the Santa Monica Mountains canyons, valleys, or ravines. While the project would obstruct views of the sky, sky views are not protected as primary views and views of the sky would be only minimally obstructed. No primary view determinations were requested from residents in condominiums or townhouse units along Civic Center Way and DeVille Way. Furthermore, the proposed project consistent with the Reduced Project Alternative, minimizes this obstruction by reducing the height and bulk of the project.

During the planning process, Planning Department staff has received comments from some residents of the Malibu Country Estates and Malibu Knolls neighborhoods regarding potential view obstruction. The September 2013 visual simulations included viewpoints within both neighborhoods. The residences within the Malibu Country Estates and Malibu Knolls neighborhoods are located beyond the 1,000 foot radius of the proposed project, and therefore, the project site is not within the protected primary view corridor of these neighborhoods. Based on evaluation and site inspections, the proposed development on Lot 1, as represented by the story poles and as shown in the visual simulations, would not result in obstruction of visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

Finding B7: The project will not have a significant adverse impact on natural resources and makes suitable provisions for the preservation of natural hydrology, native plant materials, wooded areas, visually significant rock outcroppings, rough terrain, coastal bluffs and similar natural features.

The analysis of biological resources in the EIR for the project concluded that the proposed development would not result in the loss of sensitive habitat. No wetlands or sensitive natural communities would be impacted by the project. Glenn Lukos Associates determined that there are no streams associated with the project site that would be subject to Army Corps or California Department of Fish and Wildlife jurisdiction. No riparian habitat occurs on the project site. None of the plant communities identified as occurring on the project site are listed as sensitive communities by the California Department of Fish and Wildlife or the US Fish and Wildlife Service. Therefore, no significant impacts to sensitive plant communities would occur as a result of the proposed project's implementation. The project would also not impact any visually significant rock outcroppings, coastal bluffs, and similar natural features. Therefore, the project will not have a significant adverse impact on natural resources.

Finding B8: The project does not affect solar access.

The proposed development on Lot 1 consists of a two-story residence on a 3.86 acre lot. Development will be required to be set back from the property lines in accordance with the Planned Development standards, which would ensure that solar access would be maintained on surrounding properties, given the 28 foot height of the residence. Therefore, the project does not affect solar access.

C. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)

The project site is not designated as ESHA on the LCP ESHA Overlay Map. In addition, biological Resource Studies prepared by Impact Sciences, Inc. in 2009 and Updated Reports prepared by Glenn Lukos Associates in 2012 and 2013 did not identify any biological resources that meet the definition of ESHA pursuant to LIP Chapter 4. Furthermore, the FEIR concludes the biological resources on the project site are not rare or especially valuable; do not contribute to the viability of plant and wildlife species designated as threatened or endangered under state or federal law; do not contribute to the viability of any fully protected species or species of special concern; do not contribute to the viability of other rare species such as those listed by the California Native Plant Society; nor are they easily damaged by human activities. The onsite channels are not designated Special Biological Significance or Marine Protected Area. Therefore, the onsite resources are determined to not qualify as ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

D. Native Tree Protection Ordinance (LIP Chapter 5)

The provisions of the Native Tree Protection Chapter only apply to those areas containing one or more native Oak, California Black Walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, four and one-half feet from the ground. According to a Protected Tree Report prepared by Impact Sciences, Inc. in January 2009, the project site contains six southern California black walnut trees meet the City's definition of a Protected Tree. The locations of these southern California walnut trees are all outside of the project's grading limit and will be avoided, therefore, the Chapter 5 findings are not applicable.

E. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, or provide views to or is visible from any scenic area, scenic road or public viewing area. Development on Lot 1 would be visible from PCH, and Malibu Canyon Road, designated as scenic roadways per the LCP. In addition, other public scenic areas within the vicinity include Malibu Bluffs Park immediately adjacent, Malibu Lagoon, approximately one-half mile to the east. Amarillo Beach, approximately 300 feet south of the project site, and Legacy Park, approximately one-half mile east of the project site. The required findings in Chapter 6 are made below.

Finding E1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Lot 1 is located in the northeastern portion of the site. In April 2012, story poles were installed on the project site reflecting the originally proposed design of Lot 1. The story poles were installed again in April 2014 to show the configuration and height of the proposed project in conformance with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. Due to comments received during the 45-days public comment period, a Reduced Project Alternative was analyzed in the FEIR. The Reduced Project Alternative consists of a reduction of 1,725 square feet from the second story element of the proposed residence. The Reduced Project Alternative also includes a revised landscaping plan reflecting deletion of and relocation of numerous trees. The development plans prepared for Lot 1 are consistent with this Reduced Project Alternative.

While on the beach, views of the ocean are oriented to the south, away from the proposed project and therefore, the project does not result in scenic impacts to views from the beach. The proposed project will be visible from Malibu Canyon Road and PCH; however, extensive view simulations were prepared, including all proposed structures and mature landscaping as viewed from 26 different viewpoints, including Malibu Canyon Road looking south toward the project site, PCH and Cross Creek Road looking west toward the project site and on PCH, west of entrance to Bluffs Park. The visual simulations, included in Appendix A of the FEIR, show that the Reduced Project Alternative and landscaping blend into the surrounding natural environment and do not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from a public scenic area. The project's changes in project bulk and siting are consistent with the Reduced Project Alternative and ensure that the project will have no significant adverse scenic or visual impacts due to the project design and location on the site.

As conditioned, the proposed project will have no significant adverse scenic or visual impact.

Finding E2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated in Finding E1, CDP No. 07-145 and SPR No. 07-139, as conditioned, will have no significant adverse scenic or visual impact. Additionally, the landscaping planned and conditions of approval regarding colors and materials for future development will also serve to improve the visual quality of the site.

Finding E3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project (Reduced Project Alternative) is the least environmentally damaging feasible alternative.

Finding E4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

The proposed project does not pose any significant adverse impacts on scenic and visual resources. As discussed in Finding A3, the proposed project (Reduced Project Alternative), as conditioned and with the incorporation of mitigation measures, will result in a less than significant impact on scenic and visual resources. Further, as discussed above, the No Development / Existing Use Alternative was rejected from further analysis because it is unreasonable to assume that the applicant will never develop this site and it will remain in its current condition. The No Project, Foreseeable Development Alternative would not lessen any of the environmental effects of the proposed project.

Finding E5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Findings A3 and D1, the proposed project (Reduced Project Alternative) as conditioned will have no adverse scenic and visual impacts. With the incorporation of mitigation measures outlined in the MMRP have been mitigated to a less than significant level.

F. Transfer of Development Credits (LIP Chapter 7)

LIP Chapter 7 applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 1, as conditioned.

G. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The required findings of LIP Chapter 9 are made as follows:

Finding G1. The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project was analyzed for the hazards listed in LIP Section 9.2(A). The applicant submitted the following documents/data, which may be found on file at the City.

- Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., December 5, 2007.
- Revised Addendum No. 1, Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., October 29, 2008.
- Responses to the City of Malibu Geotechnical Review Sheet Dated March 20, 2008 - Leighton and Associates, Inc., September 21, 2009a.
- Geotechnical Evaluation of Proposed OWTS - Leighton and Associates, Inc., September 21, 2009b.
- Phase I Environmental Site Assessment - Leighton and Associates, Inc., October 28, 2011.
- Response to City of Malibu Comments on "Hydrogeological/Treated Water Mounding Report" - Earth Consultants International, Inc., March 7, 2012.
- Responses to City of Malibu Geotechnical Review Dated January 12, 2010 - Leighton and Associates, Inc., March 7, 2012.
- Response to City of Malibu Environmental Health Review Sheet Dated December 21, 2009 - Earth Consultants International, Inc., March 7, 2012
- Response to City Of Malibu Geotechnical Review Dated May 7, 2012 - Leighton and Associates Inc., May 16, 2012
- 5 Geotechnical Reports, one for each individual residential lot - Leighton and Associates, Inc., May 16, 2012
- Response to City of Malibu Environmental Health Review Sheet Dated April 16, 2012 - Earth Consultants International, Inc., May 22, 2012.
- Geotechnical Responses to Comments on DEIR – Leighton and Associates, Inc., July 1, 2013
- City of Malibu Geology Review Sheets - City of Malibu 2008 through 2012

In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues. Based on extensive review of the above referenced information, it has been determined that:

- The project site is not located within an Alquist-Priolo Earthquake Fault Zone therefore, it is unlikely that the project site will be impacted by active faulting or ground rupture.
- The Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone.
- The site is not within a California Seismic Hazard Zone for potential liquefaction hazard.
- Preliminary slope stability analysis indicate that slopes in the eastern and southern portion of the site meet the minimum required factors of safety for pseudo-static stability; however, structural setbacks are required to establish buildings within areas of the site that meet the minimum required factor of safety in other areas.
- The project site is outside of the potential tsunami inundation zone.
- The property is not located within FEMA's 100 year flood zone.
- The project site is in the vicinity of extreme fire hazard areas.

The City Geologist, City Public Works Department and the LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslides and Slope Instability Hazards

During field investigations and reconnaissance, no signs of deep-seated landslide features were observed onsite, only isolated erosion, rilling, and gullies were noted along the lower slopes. Immediately to the south of the site along Malibu Road is the historical Amarillo Beach landslide. This landslide is documented as a complex of rotational landslides affecting the south-facing coastal cliffs and the area underlying the Malibu Road and the adjacent beachfront properties. Movement within the Malibu Coast Fault Zone, weathering, erosion, undercutting by wave action, and the presence of groundwater have been described as contributing factors for slope instability for the area. Significant movement of the Amarillo Beach landslide complex would most likely adversely affect the offsite residential structures along Malibu Road. Significant movement of the feature could cause headward movement of the headscarp region of the Amarillo Beach landslide complex.

The State Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone, where "previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water condition indicate a potential for permanent ground displacements." The western and southern portions of the project site contain steep downward slopes. The height and steepness of the slopes are such that they may be susceptible to seismically induced slope failure or landsliding.

The 2007 Leighton and Associates, Inc. reports established a geotechnical setback zones for structures on the project site in order to avoid slope instability hazards. Similar to the proposed project, the reduced project alternative includes structures located within the structural setback zones; however, the City Geologist has conditionally approved the location of the proposed project with specific stabilization recommendations. Structures that are planned southerly of the geotechnical setback line are required to use deepen foundations that derive support below the geotechnical setback line. Based on the findings summarized in all referenced Leighton and Associates, Inc. reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton and Associates, Inc. determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site. The project will incorporate all recommendations contained in the above cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant prior to permit issuance.

Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone (VHFHSZ), a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The site has been affected by wildfires in the past. Most recently, an October 2007 wildfire severely burned the northern, eastern, southern, and southwestern perimeters of the project site. A preliminary fuel modification plan has been prepared and approved for the proposed project. The preliminary fuel modification plan was prepared in accordance with the County of Los Angeles Fire Department Fuel Modification Plan Guidelines and identifies specific zones within a property that are subject to fuel modification. The long-term maintenance of the fuel modification zones will be addressed in the proposed project's CC&Rs and will be maintained by the homeowners' association (HOA). The LACFD has reviewed and approved the Preliminary Fuel Modification Plan, and the Final Fuel Modification Plan for the proposed project will need to be

approved at the time of VTTM recordation.

Construction of the proposed structures would utilize appropriate building materials (i.e., ignition-resistant materials) and design features to complement the provided fuel modification. The design will also incorporate alternative fuel modification measures where fuel modification cannot be fully accommodated onsite, such as noncombustible firewalls and landscaping techniques that include irrigated, fire-resistant plant species.

In addition to the approved Preliminary Fuel Modification Plan, a supplementary Fire Protection Plan was prepared to evaluate the project's vulnerability to fires with regard to emergency access to the site, the adequacy of fire hydrants available to serve the site, and the design of the proposed structures. The Fire Protection Plan includes recommendations for the design of the road, gate, and driveways that would be created by the proposed project. These recommendations address the following planning and design elements:

- Fuel modification zones and permitted vegetation
- Roadway access, gates, and driveways
- Ignition-resistant structural requirements
- Interior and exterior fire protection systems

Nonetheless, a condition of approval has been included in this Resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Finding G2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding G1, the proposed project, as conditioned and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards due to project modifications, landscaping or other conditions.

Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As stated in Finding A3, the proposed project is the least environmentally damaging alternative.

Finding G4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in Finding G1, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity of the proposed project.

Finding G5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The sensitive resource protection policies contained in the LCP are not applicable to the proposed project because it does not impact ESHA or ESHA buffer. As stated in Finding G1, the proposed project, as designed, conditioned, and approved by the City Geologist, City Biologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on sensitive resources as enumerated by the LCP.

H. Shoreline and Bluff Development Ordinance (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is seaward of Malibu Road. The required findings in LIP Section 10.3(A) are made as follows.

Finding H1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

Pursuant to LIP Section 10.4, "[a]ll new development located on a bluff top shall be set back from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure." The required setback is 100 feet from the bluff edge, however, this distance may be reduced to 50 feet if the City geotechnical staff determines that the proposed development will not be endangered by erosion or slope instability with a lesser setback. The project site contains descending slopes along the north, east, and south portion of the site. Slope stability analyses and erosion rate estimates were performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer.

The December 2007 Leighton and Associates, Inc., report established a geotechnical setback line away from the slope delineating areas with factor of safety of 1.5 or greater. Furthermore, the October 2008 Leighton and Associates, Inc. report determined that the average historic rate of bluff retreat is 0.12 feet per year. To account for future extreme conditions, such as future El Niño storm events, Leighton and Associates, Inc. assumed a long-term bluff retreat rate of 0.2 feet per year. Based on a 0.2 bluff retreat rate, the current top of bluff is estimated to erode 20 feet over the course of 100 years. The study also concluded that the bluff retreat line is less restrictive than the 1.5 geotechnical setback line.

The proposed residence is located landward of the 100 foot bluff retreat line and all accessory structures are located landward of the 50 foot setback line. All structures on Lot 1 are located a minimum of 50 feet from the top of the bluff.

Fencing, which does not require any structural foundations, extends into the 50 foot setback area but not closer than 15 feet from the bluff edge. Pursuant to LIP Section 10.4, "ancillary structures such as

decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge." The project is not anticipated to result in any new significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding H2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding H4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, [that] there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The project does not include a shoreline protective device; therefore, this finding is not applicable.

I. Archaeological / Cultural Resources (LIP Chapter 11)

To adequately assess the project site, Phase 1 archaeology studies were completed in 2007 and 2013; a paleontology records search was also completed. No archaeological or paleontological resources were identified on-site. However, because project construction activities could possibly disturb previously unidentified archaeological resources, mitigation measures have been included for the project to require a qualified archaeologist and a Native American Monitor of Chumash heritage to monitor all ground-disturbing activities, including but not limited to all grading, excavation and site preparation.

Nonetheless, conditions of approval have been included in this Resolution pertaining to the protection of cultural resources. Should any potentially important cultural resources be found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information.

J. Public Access (LIP Chapter 12)

In accordance with LIP Section 12.5(B)(2), the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Lateral and Vertical Public Access - The project is not located on or adjacent to a shoreline; therefore, no condition for lateral or vertical access is required by the LCP.

Bluff-top Public Access - The project is located on a bluff-top property; however, no potential project-related or cumulative impact on bluff-top access is anticipated because the site does not have potential to offer bluff-top access. The project site is accessible by way of private property and is not accessible to the public. Furthermore, due to the topography of the project site, public safety concerns may arise if bluff-top access was provided.

Trail Public Access - The project site does not include any existing or planned trails as indicated on the City Trails Master Plan or the LCP Parklands Map; therefore, no condition for trail access is required by the LCP.

Recreational Public Access - The project site is located adjacent to Malibu Bluffs Park and Lot 7 which is proposed to be dedicated to the City for public recreational uses. The proposed private street providing access to the single-family homes would include sufficient turnaround area in the event that vehicles intending to go to Malibu Bluffs Park inadvertently turn into the private residential road. No condition for recreational access is required by the LCP.

K. Land Division (LIP Chapter 15)

LIP Chapter 15.2(B) applies to land division applications. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 1, as conditioned.

L. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Section 18.7 includes specific siting, design and performance requirements. New discharges from onsite wastewater disposal systems are prohibited within the Malibu Civic Center area under Los Angeles RWQCB Resolution R4-2009-007 issued in November 2009. The proposed project is one of a few projects excepted from the prohibition because those projects had already progressed far enough through the entitlement process. Under the terms of the prohibition, the proposed project must be connected to a certified wastewater treatment facility by 2019. In addition, as a condition of approval, the applicant / property owner or successor is required to obtain a permit for the alternative onsite wastewater treatment system (AOWTS) from the RWQCB and legally establish a HOA governing document that obligates the collection of assessments, specifies how the AOWTS will be operated and maintained.

The project includes an OWTS consisting of six septic tanks, a 2,000 gallon septic tank for each of the single-family residences on Lots 1 through 5 and a 1,500 gallon septic tank for the guard house on

Lot 6, a treatment plant located on Lot 6 and seepage pits located on Lot 7, all of which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. All wastewater would be routed to a 35,000-gallon, four-compartment equalization/recirculation/polishing/dosing tank connected with treatment units. Treatment would be performed in two stages. Three Advantex AX100 treatment units would be used for Stage I treatment, and three additional Advantex AX100 treatment units would be used for nitrogen reduction (secondary nitrification). After treatment, disinfection of the effluent would occur by liquid chlorination and the effluent then would be dechlorinated prior to discharge to the seepage pits. The seepage pits would be six feet in diameter and range from 61 to 65 feet deep. Soil conditions at the proposed seepage pit locations allow for a separation between groundwater and the bottom of the seepage pits, ranging from 17 to 22 feet.

Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 07-145 and Site Plan Review No. 07-139, subject to the following conditions. In approving the coastal development permit and the site plan review, the Planning Commission has relied on the findings made in Planning Commission Resolution No. 14-02, which are incorporated herein.

Section 5. Conditions of Approval.

1. The applicants and property owners, and their successors in interest, shall indemnify, defend and hold harmless the City of Malibu and its elected and appointed officials, officers, employees and agents from and against any and all claims, actions, proceedings, liabilities and costs brought against the City and its elected and appointed officials, officers, employees and agents relating to the City's actions concerning this project, including but not limited to any proceeding under CEQA. This indemnification shall include (without limitation) damages, fees, and/or costs awarded against the City, cost of suit, attorney's fees, and 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 the property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project and the City's costs, fees, and damages that it incurs in enforcing the indemnification provisions set forth in this section.
2. Approval of this application is to allow for the project described herein. The approved project is limited to:
 - a. 8,039 square foot, two-story single-family residence;
 - b. 1,000 square foot basement;
 - c. 891 square foot garage;
 - d. 615 square foot second unit;
 - e. 507 square feet of loggia space that projects more than six feet;

- f. outdoor barbeque area with trellis;
 - g. swimming pool, spa and pool equipment;
 - h. decking;
 - i. hardscape;
 - j. roof-top mechanical equipment;
 - k. water features;
 - l. fencing;
 - m. grading;
 - n. motor court;
 - o. landscaping; and
 - p. a septic tank
3. Subsequent submittals for this project shall be in substantial compliance with site plans on-file with the Planning Department, dated **May 2, 2014**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
 4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of the Planning Commission's resolution and prior to issuance of any development permits.
 5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
 6. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
 7. The coastal development permit shall be null and void if the project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized prior to expiration of the three- year period and shall set forth the reasons for the request.
 8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
 9. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Waterworks District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
 10. Minor changes to the approved plans or the conditions of approval may be approved by the

Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required. However, no changes to the square footages described above in Condition No. 2 shall be permitted without Planning Commission approval of a coastal development permit.

11. Coastal Development Permit No. 07-145 and Site Plan Review No. 07-139 shall not become effective unless and until the following legislative act (LCPA No. 12-001) is certified and in effect.
12. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
13. Prior to issuance of the Certificate of Occupancy, the property owner shall provide a copy of a valid Operating Permit pursuant to Malibu Municipal Code Section 15.14.030 or an Operating Permit application fee receipt, unless the project does not include an OWTS and ties into the City wastewater treatment system.

Cultural Resources

14. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
15. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
16. A Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's standard conditions of approval. This mitigation measure shall also apply to trenching

for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

Walls and Fencing

17. The applicant shall include an elevation of the proposed electronic driveway gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.
18. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed 6 feet in height or 12 feet in height for a combination of two or more walls.

Colors and Materials

19. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
 - a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
20. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.
21. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

Lighting

22. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
23. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
 - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe

- vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited;
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
24. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot candle.

Swimming Pools / Spas / Water Features

25. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in Malibu Municipal Code Chapter 8.24 (Noise).
26. All pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
27. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
28. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool/spa is prohibited unless it is discharged to a sanitary sewer system. Provide information on the plans regarding the type of sanitation proposed for pools.
- a. Ozonization systems are an acceptable alternative to chlorine. The release of clear water from ozonization system is permitted to the street or sewer;
 - b. Salt water sanitation is an acceptable alternative, but the discharge of salt water is prohibited to the street and sewer;
29. Highly chlorinated water from pools or spa shall be discharged to a public sewer or may be trucked to a publicly owned treatment works (POTW) for discharge.
30. The discharge of chlorinated pool water shall be prohibited.
31. The discharge of non-chlorinated pool water into streets, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters shall be prohibited.
32. Pursuant to M.M.C. Section 9.20.040(B), all ponds, decorative fountains and water features shall require a water re-circulating/recycling system.

Biology/Landscaping

33. The Maximum Applied Water Allowance (MAWA) for Lot 1 totals 746,153 gallons per year. The Estimated Applied Water Use (EAWU) totals 529,719 gpy, thus meeting the Landscape

Water Conservation Ordinance Requirements.

34. With the exception of the newly proposed water line no new development, planting, or irrigation is permitted within public easements. Any new structure, plant or irrigation system occurring in the public easement shall be removed at the owner's expense.
35. Prior to Final Plan Check Approval, if your property is serviced by the Los Angeles County Waterworks District, please provide landscape water use approval from that department.
36. Invasive plant species, as determined by the City of Malibu, are prohibited.
37. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth). The vegetation shall also be maintained so that the residential structures are screened to the maximum extent feasible. On-site trees shall be maintained so that they shall not exceed 35 feet in height.
38. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within the side or rear yard setback shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.
39. The use of building materials treated with toxic compounds such as copper arsenate is prohibited.
40. Prior to final landscape inspection, provide a signed copy of the Certificate of Completion, certifying the irrigation installation and operational efficiency is consistent with the approved plans.
41. New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values.
42. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.
43. Grading shall be scheduled only during the dry season from April 1 - October 31. If it becomes necessary to conduct grading activities from November 1 - March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
44. Grading/excavation/grubbing or any other site preparation activities that has the potential to remove or encroach into existing vegetation (including the pipeline project) scheduled

between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 300 feet (500 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site. Nesting bird survey reports are valid for no more than 5 days.

45. Construction fencing shall be installed within five (5) feet of the limits of grading adjacent to native habitat prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.
46. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. All lighting fixtures shall be rated dark skies compliant. Prior to issuance of a Building Permit, the applicant shall submit a photometric plan for review and approval by the Planning Director. The photometric plan shall also demonstrate compliance with any dark skies ordinance or any other applicable lighting standards adopted by the City prior to issuance of a building permit for any structure on the site.
47. No lighting for aesthetic purposes such as up-lighting of landscaping, is permitted.
48. Necessary boundary fencing of any single area exceeding one half (1/2) acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred.
49. The upper reaches of the water pipeline are proposed close proximity of an ESHA area on the northwest side of Malibu Canyon Road. As designed, no impacts to ESHA would occur. In the event of any changes of design or construction methodologies that have the potential to extend beyond the identified easement/right-of-way, the City Biologist shall be notified immediately and before any work is done outside the easement/right-of-way.
50. Upon completion of landscape planting in the proposed common areas, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
51. All biological conditions outlined in the final approved Environmental Impact Report (EIR) and individual lot development reviews shall be adhered to. In the event of any conflicting conditions, the more restrictive shall apply.

Environmental Review Board

52. The applicant/property owner or its successor shall prepare a drainage plan, demonstrating that drainage is collected in drainage facilities with non-erosive devices.
53. The drafting hydrant for swimming pools above 5,000 gallons shall be located in an area

easily accessible to the LACFD. The locations of the drafting hydrant shall be approved by the LACFD.

54. Irrigation of steep slopes shall be avoided, if possible.

Geology

55. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
56. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading and drainage. Any substantial changes may require amendment of the CDP or a new coastal development permit.
57. Engineered structures such as retaining walls, footings for small structures and significant cut and fill grading, will require the preparation of a geotechnical report that provides recommendations for the design of these structures and grading procedures in accordance with the City's Geotechnical Guidelines and Building Codes.
58. The project geotechnical consultants should review the referenced plans. The project engineering geologist and a registered geotechnical engineer or civil engineer practicing in geotechnical engineering in the state of California should be retained to perform geotechnical investigations for the proposed improvements discussed above and prepare a report(s) providing recommendations for the structural improvements and grading, as applicable. City geotechnical staff shall review the report(s) for conformance to the City's geotechnical guidelines and Building/Grading Codes during the building/grading plan check phase.

Public Works

59. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
60. Geology and geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The applicant's consulting engineer shall sign the final plans prior to the issuance of permits.
61. The Total Grading Yardage Verification Certificates shall be copied onto the coversheet of the Grading Plans submitted for the project. No alternative formats or substitute may be accepted.
62. Grading permits shall not be issued between November 1 and March 31 each year. Projects approved for a grading permit shall not receive grading permit unless the project can be rough-graded before November 1.

63. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
64. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
65. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the Waste Discharger Identification (WDID) number prior to the issuance of grading or building permits.
66. Storm drainage improvements are required to mitigate increase runoff generated by property development. The applicant/property owner or its successor shall have the choice of one method specified within the City's LIP.
67. The applicant shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template.
68. Prior to final approval of the Public Works Department, the applicant shall submit a digital drawing of the project's storm drainage and post-construction BMPs.
69. A Grading and Drainage Plan is required, and shall be submitted to the City Public Works Department for review and approval, prior to the issuance of grading permits for the project. The following elements shall be included in this plan:
 - a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.
70. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the rainy season). The following elements shall be included:
 - a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
 - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
71. A Storm Water Pollution Prevention Plan (SWPP) shall be provided prior to the issuance of

grading permits. This plan shall include:

- a. Dust Control for the management of fugitive dust during extended periods without rain;
- b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
- c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
- d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent discharge of runoff through the waste.

72. A Water Quality Mitigation Plan (WQMP) is required for this project (also known as Standard Urban Stormwater Management Plan or SUSMP). The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The following elements shall be included within the WQMP:

- a. Site Design Best Management Practices (BMPs);
- b. Source Control BMPs;
- c. Treatment Control BMPs;
- d. Drainage improvements;
- e. Methods for on-site percolation, site re-vegetation and analysis for off-site project impacts;
- f. Measures to treat and infiltrate runoff from impervious areas;
- g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
- h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
- i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at time of submittal for the review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted to the Public Works Department's approval of the building plans for the project.

73. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion Goal.

74. Prior to grading permit issuance, final grading and drainage plans incorporating construction-phase erosion control and storm water pollution prevention, as well as post-construction storm water management must be approved by the City Public Works Department.

Environmental Health

75. Prior to final City Environmental Health Administrator approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
76. The applicant/property owner or its successor shall provide complete engineering design drawings, calculations, construction specification, and an operation and maintenance manual to the City Environmental Sustainability Department. Describe all AOWTS components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of systems for onsite wastewater treatment and disposal. Electronically monitored flow meters shall be flowing daily through the wastewater system. The final AOWTS design shall provide sufficient capacity for onsite treatment and disposal of all project wastewater discharges in accordance with the requirements of the MPC, LCP/LIP and RWQCB. In addition, the wastewater treatment process shall be reviewed and approved by the City's wastewater engineering consultant (currently Tetra Tech, Inc.) prior to Environmental Health final approval.
77. The applicant/property owner or its successor shall building plans, wastewater plans, and all necessary supporting forms, and reports, to the RWQCB, 320 W. 4th St., Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). Waste Discharge Requirements (WDRs) for this project have not yet been issued by the RWQCB. A copy of applicable WDRs issued by the RWQCB must be included with your Plan Check submittal. The City's Plan Check wastewater engineering review will be performed relative to the treatment objectives expressed in the WDRs. Please note that while the wastewater system renovation project has been approved in-concept for the Coastal Development Permit, the final design of the treatment train may need to be substantially modified from what has been shown in the Conformance Review wastewater engineering preliminary design documents.
78. Prior to receiving Environmental Health final approval, the project owner shall legally establish a homeowners' association governing document that obligates the collection of assessments, specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation of the homeowner's association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.
79. An operations and maintenance manual specified by the AOWTS designer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.

80. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted.
81. City of Public Works Department final approval shall be submitted. The City of Malibu Public Works reviewer shall review the AOWTS design to determine conformance with Public Works Department requirements.
82. City of Malibu Geologist, Geotechnical Engineer, and Hydrogeologist final approvals shall be submitted.
83. The applicant/property owner or its successor shall submit an application the Environmental Sustainability Department for an OOWTS operating permit. An operating permit fee in accordance with the fee schedule in effect at the time of submittal shall be submitted with the application.
84. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42-inches tall.

Fire Safety

85. The applicant/property owner or its successor shall provide water mains, fire hydrants and fire flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.
86. The required fire flow for public fire hydrants at this location is 1,375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 hydrant flowing simultaneously may be used to achieve the required fire flow.
87. Fire hydrant requirements are as follows: Install 3 private on-site fire hydrants
88. All hydrants shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approved equal. All onsite hydrants shall be installed a minimum of 25' feet from a structure or protected by two-hour rated firewall, location as per map on file with the office.
89. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
90. Additional water system requirements will be required when this land is further subdivided and/or during the building permits.
91. Per the County of Los Angeles Waterworks District No. 29, the Fire Flow Availability form dated March 30, 2012 indicated adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrant shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approve equal and meet the required fire

flow requirements as noted above.

92. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
93. Emergency access for firefighter pedestrian use shall be extended to all exterior walls or all proposed structure within the subdivision. Additional walking access shall be reviewed and approved by the Fire Prevention Engineering prior to Building Permit issuance.
94. The applicant/property owner or its successor shall submit three copies of the final map to LACFD, Land Development for review and approval recordation.
95. The project may require interior fire sprinklers.
96. The project requires LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.
97. Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.
98. Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.
99. Where driveways shall be indicated on the final maps as "Private Driveway and Fire lane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.
100. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
101. The applicant/property owner or its successor shall provide Fire Department or City approved street signs and building access numbers prior to occupancy.

Trash Storage Areas

102. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
103. Trash container areas must be screened or walled to prevent off-site transport of trash, other than by approved haulers.

Utilities

104. Power, telephone and cable television service shall be placed underground. The applicant / property owner or its successor shall coordinate with the proper utilities providers to properly relocate any existing facilities within the project site, if necessary.

105. Any utilities that are in conflict with the development shall be relocated at the developer's expense.

Water Service

106. The applicant shall be required to comply with the requirements of the Los Angeles County Waterworks District No. 29, as stated in the Will Serve Letter dated December 26, 2012.
107. All lots shall be served by adequately sized water system facilities, which shall include fire hydrants of the size, type and location as determined by the Fire Chief.
108. The water mains shall be of sufficient size to accommodate the total domestic and fire flow required for the land division. Domestic flows required are to be determined by the City Engineer. Fire flows required are to be determined by the Fire Chief.
109. Plans and specifications for the water system facilities shall be submitted for approval to the water company serving this land division. The applicant/property owners or its successor shall submit an agreement and other evidence, satisfactory to the City Engineer indicating that the applicant/property owner or its successor has entered into a contract with the servicing water purveyor guaranteeing payment and installation of the water improvements.
110. Prior to the filing of the final vesting tract map, there shall also be filed with the City Engineer, a statement from the water purveyor indicating the applicant/property owner or its successor compliance with the Fire Chief's fire flow requirements.

Site Specific Conditions

111. The property owner/applicant or their successor shall implement all mitigation measures specified in Environmental Impact Report No. 09-001 pursuant to the final Mitigation Monitoring and Reporting Program dated December 2013 (Exhibit B of Resolution No. 14-02).
112. The property owner/applicant or their successor shall obtain an encroachment permit from the City Public Works Department prior to commencement of any work within the Winter Mesa Canyon right of way.
113. The property owner/applicant or their successor shall obtain an encroachment permit from Caltrans prior to commencement of any work within the Pacific Coast Highway public right-of-way.

Deed Restrictions

114. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or a bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to

indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.

115. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
116. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 21 – 23. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
117. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction for each of the five residential parcels reflecting that each property owner is responsible for maintaining the access road in a manner that guarantees adequate access for emergency vehicle access and adequate ingress/egress for the properties served thereby.

Prior to the Issuance of Certificate of Occupancy

118. Prior to issuance of the Certificate of Occupancy, the applicant shall provide the Planning Department with a copy of the recorded Covenants, Conditions and Restrictions (CC&Rs) for the property. The CC&Rs shall be reviewed by the City Attorney prior to recordation and must include all applicable provisions required as mitigation measures in the Mitigation Monitoring and Reporting Program.
119. Prior to the issuance of the Certificate of Occupancy, the applicant/property owners of its successor shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
120. Prior to final sign off by the Planning Department, the City Biologist shall inspect the project site and determine that all planting conditions to protect natural resources are in compliance with the plans as approved and conditioned.

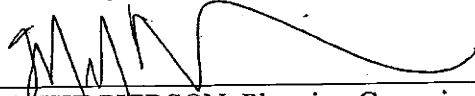
Section 6. Severability.

If any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

Section 7. Certification.


The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of May 2014.



MIKKE PIERSON, Planning Commission Chair

ATTEST:




PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), 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.

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-03 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of May 2014, by the following vote:

AYES:	3	Commissioners: Brotman, Jennings, and Stack
NOES:	2	Commissioners: Pierson and Mazza
ABSTAIN:	0	
ABSENT:	0	



PATRICIA SALAZAR, Recording Secretary

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-04**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-146 FOR DEVELOPMENT ON LOT 2 OF THE CRUMMER SITE SUBDIVISION PROJECT, CONSISTING OF A 7,951 SQUARE FOOT, ONE-STORY SINGLE-FAMILY RESIDENCE WITH A 1,579 SQUARE FOOT BASEMENT AND SUBTERRANEAN GARAGE, 458 SQUARE FOOT GYM, 480 SQUARE FOOT SECOND UNIT, 733 SQUARE FEET OF COVERED LOGGIA SPACE THAT PROJECTS MORE THAN SIX FEET; OUTDOOR FIREPLACE WITH TRELLIS, SWIMMING POOL, SPA AND POOL EQUIPMENT, DECKING, HARDSCAPE, ROOF-TOP MECHANICAL EQUIPMENT, WATER FEATURES, FENCING, GRADING, MOTOR COURT, SEPTIC TANK, AND LANDSCAPING, LOCATED AT 24120 PACIFIC COAST HIGHWAY, IN THE PLANNED DEVELOPMENT ZONING DESIGNATION (PCH PROJECT OWNER)

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

Section 1. Recitals.

A. On September 30 2008, the City published a Notice of Preparation and Initial Study for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The Initial Study determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.

B. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.

C. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed the Planning Department that the project could resume.

D. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

E. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30-day circulation period ran from May 10, 2012 through June 11, 2012.

F. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

G. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds.

The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

H. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR (DEIR) to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearinghouse # 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

I. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit Application was posted on the subject property.

J. On April 23, 2013, the Environmental Review Board (ERB) / Subdivision Review Committee (SRC) reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

K. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR (FEIR). The FEIR responds to the comments received on the DEIR and proposes text revisions to the DEIR.

L. On November 7, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site.

M. On December 13, 2013, the Final EIR was made available on this date.

N. On December 20, 2013, an errata to the FEIR was made available. Response to Comments on the DEIR was circulated to all of those who submitted comments as well as to interested parties.

O. On January 6, 2014, a second errata to the Final EIR was made available.

P. At its January 6, 2014 meeting, the Planning Commission approved City of Malibu Planning Commission Resolution No. 14-02 in which it found that (i) the Final EIR for the project is adequate, complete and has been prepared in accordance with CEQA, (ii) it has reviewed and considered the Final EIR in reaching its decision, (iii) the Final EIR reflects the City's independent judgment and analysis, (iv) the Final EIR analyzed a reasonable range of alternatives, and (v) there are no significant, unmitigatable environmental impacts that result from the project. In Resolution No. 14-02, the Planning Commission adopted Findings of Fact attached thereto as Exhibit A and a Mitigation Monitoring and Reporting Program attached thereto as Exhibit B.

Q. On April 24, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 500 feet radius of the project site.

R. On April 25, 2014, story poles were re-installed to reflect the updated development plans for Lot 2. The placement of the story poles was re-certified by a professional land surveyor in May 2014.

S. On May 19, 2014, 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.

A. The Final EIR has been presented to the Planning Commission. All procedures have been duly followed as required by law. The Planning Commission has reviewed and considered the information contained in the Final EIR and the record as a whole in conjunction with its deliberations, in accordance with the California Environmental Quality Act (CEQA) Guidelines and Procedures of the State of California and the City of Malibu. The Final EIR reflects the City's independent judgment and analysis. The City Council certified the Final EIR, adopted the Findings of Fact, and approved the MMRP on February 24, 2014 (Resolution No. 14-11).

B. CEQA requires decision makers to adopt a mitigation monitoring and reporting program (MMRP) for those mitigation measures identified in the Final EIR that would mitigate or avoid each significant effect identified in the EIR, and to incorporate the MMRP including all mitigation measures as conditions of project approval. The Final EIR includes an analysis of the extent to which the proposed project's direct and indirect impacts will commit nonrenewable resources to uses that future generations will probably be unable to reverse.

C. CEQA requires that the responses to comments in the Final EIR demonstrate good faith and a well-reasoned analysis and may not be conclusive. In response to several comments received, portions of the DEIR have been revised. Although new material has been added to the DEIR through preparation of the FEIR, this new material provides clarification to points and information already included in the DEIR and is not considered to be significant new information or a substantial change to the DEIR that would necessitate recirculation.

D. The CEQA Guidelines note that "[t]he EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project" and "CEQA does not require technical perfection in an EIR, but rather adequacy, completeness and a good-faith effort at full disclosure." (14 Cal. Code of Regs. § 15003(c) and (i).)

E. The Final EIR includes an additional clarifying narrative and clarifying exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and exhibits in the Final EIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required.

F. There are no significant, unavoidable adverse environmental impacts caused by the project. As detailed in the Final EIR, the development of the Reduced Project Alternative would not result in potentially significant adverse impacts in the following environmental subject areas: Aesthetics, Greenhouse Gas Emissions, Land Use, Noise, Recreation, Agricultural Resources, Mineral Resources, Population and Housing, Public Services and Utilities and Service Systems. The EIR provides substantial evidence that the remaining environmental subject areas (Air Quality,

Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials and Hydrology and Water Quality and Transportation and Traffic) are less than significant with the implementation of certain, specified mitigation measures. The proposed development on Lot 2 was reviewed by Planning Department Staff and was found to be consistent with the Reduced Project Alternative. Impacts would be less than significant with the implementation of certain, specified mitigation measures.

G. In compliance with Public Resources Code Section 12081 and CEQA Guidelines Section 15093, the Planning Commission has determined that no Statement of Overriding Considerations is required as there are no significant, unmitigable environmental impacts that result from the proposed project.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 07-146 for a 7,951 square foot, one-story single-family residence with a 1,579 square foot basement and subterranean garage, 458 square foot gym, 480 square foot second unit, 733 square feet of loggia space that projects more than six feet, outdoor fireplace with trellis, swimming pool, spa, and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank located at 24120 Pacific Coast Highway.

The proposed project has been reviewed by the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department, and the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP's zoning, grading and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The project, as conditioned conforms to the LCP in that it meets all residential development standards set forth in the underlying Planned Development (PD) Zoning District.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is not located between the first public road and the sea and will not impact public access or recreation because the project site is not along the shoreline. The project will not result in significant impacts on public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

Finding A3. The project is the least environmentally damaging alternative.

An FEIR (EIR No. 09-001) was prepared in accordance to the California Environmentally Quality Act (CEQA) and presented to the Planning Commission for consideration. The proposed single-family residence and associated development is consistent with the Reduced Project Alternative reviewed under EIR 09-001. The development proposed on Lot 2 (consistent with the Reduced Project Alternative) would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no feasible alternatives that would further reduce any impacts on the environment. The project allows for a 7,951 square foot, one-story single-family residence with a 1,579 square foot basement and subterranean garage, 458 square foot gym, 480 square foot second unit, 733 square feet of loggia space that projects more than six feet, outdoor fireplace with trellis, swimming pool, spa, and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, all of which are permitted uses within the PD zoning classification of the subject property.

An in-depth discussion of the alternatives considered when developing the plans for VTTM No. 07-033 is included in Resolution No. 14-02. This finding detailed the reasons for siting the proposed single-family residence and associated development on Lot 2.

The following alternatives were considered.

1. No Project, No Development Alternative - Under this alternative, the project site would remain unchanged. The project site would not be subdivided, and therefore, no development, including the proposed single-family residence would be constructed and Malibu Bluffs Park would not be expanded. Under this alternative, the project site would continue in its existing vacant land use.
2. One-Story Homes with Recreational Facilities Alternative – Under this alternative, the height of the structures on Lot 2 would be reduced from 28 feet to 18 feet, resulting in a larger building footprint. Compared to the project as originally proposed, the single-story alternative would almost double the building footprints for each of the five homes and would slightly increase impacts in a variety of environmental categories, including construction air quality, geotechnical, and construction noise. The increased fuel modification zones have the potential to cause a new significant impact.
3. Originally Proposed Project – Under this alternative, the maximum height of the single-family residence on Lot 2 would be 28 feet for a pitched roof and 24 feet for a flat roof. The originally proposed project would result in a net increase of 3,967 square feet of area in excess of 18 feet in height. In addition, the originally proposed landscaping included more landscaping than the Reduced Project Alternative. The originally proposed would result in a slight increase of impacts to aesthetics and visual resources and therefore, not the least environmentally damaging alternative.
4. Reduced Project Alternative (Proposed Project) – Under this alternative, the second floor of the

residence (3,967 square feet) on Lot 2 is eliminated entirely. This Alternative also involves modifications to the proposed landscape plan by not planting numerous trees and plant materials to create more gaps, and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. The FEIR further concludes that the Reduced Project Alternative would slightly reduce impacts in a variety of environmental categories, including visual resources, construction air quality, biological resources, cultural resources, geotechnical properties, and construction noise. However, these impacts would be substantially similar to those under the proposed project and they would remain less than significant. This alternative would also be environmentally similar to the proposed project in the area of operational air quality, cultural resources, greenhouse gas emissions, fire hazards, hydrology and water quality, land use, operational noise, recreation, and traffic.

Based on the site reconnaissance, visual analysis submitted by the applicant, photos, review of the landscape plan and architectural plans, and the nature of the surrounding area, the Planning Commission determined that the proposed residence and associated development located on Lot 2 of the Crummer Site (Reduced Project Alternative) will have no significant impacts to aesthetics of visual resources. The proposed project (which is the Reduced Project Alternative together with the additional modifications to the residence on Lot 2, landscaping plans for Lot 2 and the grading plans for Lot 2) is the least environmentally damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

According to the LCP ESHA Overlay Map, the project site is not designated as ESHA; however ESHA is located immediately to the southwest of the subject property in State Park land. There are two drainage channels located on the subject property; however, there is no resource dependent riparian vegetation present. The DEIR was reviewed by the Environmental Review Board (ERB). The ERB had several recommendations for the proposed project; all feasible recommendations have been incorporated to the project as conditions of approval in this Resolution. The project conforms to the recommendations of the ERB.

B. Environmentally Sensitive Habitat Area Overlay(LIP Chapter 4)

The project site is not designated as ESHA on the LCP ESHA Overlay Map. In addition, biological Resource Studies prepared by Impact Sciences, Inc. in 2009 and Updated Reports prepared by Glenn Lukos Associates in 2012 and 2013 did not identify any biological resources that meet the definition of ESHA pursuant to LIP Chapter 4. Furthermore, the FEIR concludes the biological resources on the project site are not rare or especially valuable; do not contribute to the viability of plant and wildlife species designated as threatened or endangered under state or federal law; do not contribute to the viability of any fully protected species or species of special concern; do not contribute to the viability of other rare species such as those listed by the California Native Plant Society; nor are they easily damaged by human activities. The onsite channels are not designated Special Biological Significance or Marine Protected Area. Therefore, the onsite resources are determined to not qualify as ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not

applicable.

C. Native Tree Protection Ordinance (LIP Chapter 5)

The provisions of the Native Tree Protection Chapter only apply to those areas containing one or more native Oak, California Black Walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, four and one-half feet from the ground. According to a Protected Tree Report prepared by Impact Sciences, Inc. in January 2009, the project site contains six southern California black walnut trees meet the City's definition of a Protected Tree. The locations of these southern California walnut trees are all outside of the project's grading limit and will be avoided, therefore, the Chapter 5 findings are not applicable.

D. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, or provide views to or is visible from any scenic area, scenic road or public viewing area. Development on Lot 2 would be visible from PCH, and Malibu Canyon Road, designated as scenic roadways per the LCP. In addition, other public scenic areas within the vicinity include Malibu Bluffs Park immediately adjacent, Malibu Lagoon, approximately one-half mile to the east. Amarillo Beach, approximately 300 feet south of the project site, and Legacy Park, approximately one-half mile east of the project site. The required findings in Chapter 6 are made below.

Finding D1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Lot 2 is located between PCH and Malibu Road. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the originally proposed design of Lot 2. The story poles were installed again in April 2014 to show the configuration and height of the proposed project in conformance with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. The placement of the story poles were certified by a professional land surveyor. Due to comments received during the 45-days public comment period, a Reduced Project Alternative was analyzed in the FEIR. The Reduced Project Alternative consists of eliminating the entire 3,697 square foot second story element from the main residence under the proposed project. The Reduced Project Alternative also includes a revised landscaping plan reflecting deletion of and relocation of numerous trees. The development plans prepared for Lot 2 are consistent with this Reduced Project Alternative.

While on the beach, views of the ocean are oriented to the south, away from the proposed project and therefore, the project does not result in scenic impacts to views from the beach. The proposed project will both be visible from Malibu Canyon Road and PCH; however, extensive view simulations were prepared, including all proposed structures and mature landscaping as viewed from 26 different viewpoints, including Malibu Canyon Road looking south toward the project site, PCH and Cross Creek Road looking west toward the project site and on PCH, west of entrance to Bluffs Park. The visual simulations, included in Appendix A of the FEIR, show that the Reduced Project Alternative and landscaping blend into the surrounding natural environment and do not obstruct visually

impressive scenes of the Pacific Ocean or Santa Monica Mountains from a public scenic area. The project's changes in project bulk and siting are consistent with the Reduced Project Alternative and ensure that the project, will have no significant adverse scenic or visual impacts due to the project design and location on the site.

As conditioned, the proposed project will have no significant adverse scenic or visual impact.

Finding D2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated in Finding D1, CDP No. 07-146, as conditioned, will have no significant adverse scenic or visual impact. Additionally, the landscaping planned and conditions of approval regarding colors and materials for future development will also serve to improve the visual quality of the site.

Finding D3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project (Reduced Project Alternative) is the least environmentally damaging feasible alternative.

Finding D4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As discussed in Finding A3, the proposed project (Reduced Project Alternative), as conditioned and with the incorporation of mitigation measures, will result in a less than significant impact on scenic and visual resources. Further, as discussed above, the No Development / Existing Use Alternative was rejected from further analysis because it is unreasonable to assume that the applicant will never develop this site and it will remain in its current condition. The No Project, Foreseeable Development Alternative would not lessen any of the environmental effects of the proposed project.

Finding D5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Findings A3 and D1, the proposed project (Reduced Project Alternative) as conditioned will have no adverse scenic and visual impacts. With the incorporation of mitigation measures outlined in the MMRP have been mitigated to a less than significant level.

E. Transfer of Development Credits (LIP Chapter 7)

LIP Chapter 7 applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 2, as conditioned.

F. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed by staff for the hazards listed in LIP Section 9.2(A)(1-7). The required findings of LIP Chapter 9 are made as follows:

Finding F1. The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The applicant submitted the following documents/data, which may be found on file with the City.

- Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., December 5, 2007.
- Revised Addendum No. 1, Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., October 29, 2008.
- Responses to the City of Malibu Geotechnical Review Sheet Dated March 20, 2008 - Leighton and Associates, Inc., September 21, 2009a.
- Geotechnical Evaluation of Proposed OWTS - Leighton and Associates, Inc., September 21, 2009b.
- Phase I Environmental Site Assessment - Leighton and Associates, Inc., October 28, 2011.
- Response to City of Malibu Comments on "Hydrogeological/Treated Water Mounding Report" - Earth Consultants International, Inc., March 7, 2012.
- Responses to City of Malibu Geotechnical Review Dated January 12, 2010 - Leighton and Associates, Inc., March 7, 2012.
- Response to City of Malibu Environmental Health Review Sheet Dated December 21, 2009 - Earth Consultants International, Inc., March 7, 2012
- Response to City Of Malibu Geotechnical Review Dated May 7, 2012 - Leighton and Associates Inc., May 16, 2012
- 5 Geotechnical Reports, one for each individual residential lot - Leighton and Associates, Inc., May 16, 2012
- Response to City of Malibu Environmental Health Review Sheet Dated April 16, 2012 - Earth Consultants International, Inc., May 22, 2012.
- Geotechnical Responses to Comments on DEIR - Leighton and Associates, Inc., July 1, 2013
- City of Malibu Geology Review Sheets - City of Malibu 2008 through 2012

In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues. Based on extensive review of the above referenced information, it has been determined that:

- The project site is not located within an Alquist-Priolo Earthquake Fault Zone therefore, it is unlikely that the project site will be impacted by active faulting or ground rupture.
- The Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone.
- The site is not within a California Seismic Hazard Zone for potential liquefaction hazard.

- Preliminary slope stability analysis indicate that slopes in the eastern and southern portion of the site meet the minimum required factors of safety for pseudo-static stability; however, structural setbacks are required to establish buildings within areas of the site that meet the minimum required factor of safety in other areas.
- The project site is outside of the potential tsunami inundation zone.
- The property is not located within FEMA's 100 year flood zone.
- The project site is in the vicinity of extreme fire hazard areas.

The City Geologist, City Public Works Department and the LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslides and Slope Instability Hazards

During field investigations and reconnaissance, no signs of deep-seated landslide features were observed onsite, only isolated erosion, rilling, and gullies were noted along the lower slopes. Immediately to the south of the site along Malibu Road is the historical Amarillo Beach landslide. This landslide is documented as a complex of rotational landslides affecting the south-facing coastal cliffs and the area underlying the Malibu Road and the adjacent beachfront properties. Movement within the Malibu Coast Fault Zone, weathering, erosion, undercutting by wave action, and the presence of groundwater have been described as contributing factors for slope instability for the area. Significant movement of the Amarillo Beach landslide complex would most likely adversely affect the offsite residential structures along Malibu Road. Significant movement of the feature could cause headward movement of the headscarp region of the Amarillo Beach landslide complex.

The State Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone, where "previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water condition indicate a potential for permanent ground displacements." The western and southern portions of the project site contain steep downward slopes. The height and steepness of the slopes are such that they may be susceptible to seismically induced slope failure or landsliding.

The 2007 Leighton and Associates, Inc. reports established a geotechnical setback zones for structures on the project site in order to avoid slope instability hazards. Similar to the proposed project, the reduced project alternative includes structures located within the structural setback zones; however, the City Geologist has conditionally approved the location of the proposed project with specific stabilization recommendations. Structures that are planned southerly of the geotechnical setback line are required to use deepen foundations that derive support below the geotechnical setback line. Based on the findings summarized in all referenced Leighton and Associates, Inc. reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton and Associates, Inc. determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site. The project will incorporate all recommendations contained in the above cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant prior to permit issuance.

Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone (VHFHSZ), a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The site has been affected by wildfires in the past. Most recently, an October 2007 wildfire severely burned the northern, eastern, southern, and southwestern perimeters of the project site. A preliminary fuel modification plan has been prepared and approved for the proposed project. The preliminary fuel modification plan was prepared in accordance with the County of Los Angeles Fire Department Fuel Modification Plan Guidelines and identifies specific zones within a property that are subject to fuel modification. The long-term maintenance of the fuel modification zones will be addressed in the proposed project's CC&Rs and will be maintained by the homeowners' association (HOA). The LACFD has reviewed and approved the Preliminary Fuel Modification Plan, and the Final Fuel Modification Plan for the proposed project will need to be approved at the time of VTTM recordation.

Construction of the proposed structures would utilize appropriate building materials (i.e., ignition-resistant materials) and design features to complement the provided fuel modification. The design will also incorporate alternative fuel modification measures where fuel modification cannot be fully accommodated onsite, such as noncombustible firewalls and landscaping techniques that include irrigated, fire-resistant plant species.

In addition to the approved Preliminary Fuel Modification Plan, a supplementary Fire Protection Plan was prepared to evaluate the project's vulnerability to fires with regard to emergency access to the site, the adequacy of fire hydrants available to serve the site, and the design of the proposed structures. The Fire Protection Plan includes recommendations for the design of the road, gate, and driveways that would be created by the proposed project. These recommendations address the following planning and design elements:

- Fuel modification zones and permitted vegetation
- Roadway access, gates, and driveways
- Ignition-resistant structural requirements
- Interior and exterior fire protection systems

Nonetheless, a condition of approval has been included in this Resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Finding F2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding F1, the proposed project, as conditioned and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards due to project modifications,

landscaping or other conditions.

Finding F3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As stated in Finding A3, the proposed project is the least environmentally damaging alternative.

Finding F4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in Finding F1, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity of the proposed project.

Finding F5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The sensitive resource protection policies contained in the LCP are not applicable to the proposed project because it does not impact ESHA or ESHA buffer. As stated in Finding F1, the proposed project, as designed, conditioned, and approved by the City Geologist, City Biologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on sensitive resources as enumerated by the LCP.

G. Shoreline and Bluff Development Ordinance (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is seaward of Cliffside Drive. The required findings in LIP Section 10.3 are made as follows.

Finding G1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

Pursuant to LIP Section 10.4, "[a]ll new development located on a bluff top shall be set back from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure." The required setback is 100 feet from the bluff edge, however, this distance may be reduced to 50 feet if the City geotechnical staff determines that the proposed development will not be endangered by erosion or slope instability with a lesser setback. The project site contains descending slopes along the north, east, and south portion of the site. Slope stability analyses and erosion rate estimates were performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer.

The December 2007 Leighton and Associates, Inc., report established a geotechnical setback line away

from the slope delineating areas with factor of safety of 1.5 or greater. Furthermore, the October 2008 Leighton and Associates, Inc. report determined that the average historic rate of bluff retreat is 0.12 feet per year. To account for future extreme conditions, such as future El Niño storm events, Leighton and Associates, Inc. assumed a long-term bluff retreat rate of 0.2 feet per year. Based on a .02 bluff retreat rate, the current top of bluff is estimated to erode 20 feet over the course of 100 years. The study also concluded that the bluff retreat line is less restrictive than the 1.5 geotechnical setback line.

The proposed residence and all accessory structures are located landward of the 50 foot setback line. All structures on Lot 2 are located a minimum of 77 feet from the top of bluff.

Fencing, which does not require any structural foundations, extends into the 50 foot setback area. Pursuant to LIP Section 10.4, "ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge." The project is not anticipated to result in any new significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding G2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding G1, the project, as conditionally approved by the City Geologist will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding G4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding G1, the project, as conditionally approved by the City Geologist, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding G5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The project does not include a shoreline protective device; therefore, this finding is not applicable.

H. Archaeological / Cultural Resources (LIP Chapter 11)

To adequately assess the project site, Phase 1 archaeology studies were completed in 2007 and 2013; a paleontology records search was also completed. No archaeological or paleontological resources were identified on-site. However, because project construction activities could possibly disturb

previously unidentified archaeological resources, mitigation measures have been included for the project to require a qualified archaeologist and a Native American Monitor of Chumash heritage to monitor all ground-disturbing activities, including but not limited to all grading, excavation and site preparation.

Nonetheless, conditions of approval have been included in this Resolution pertaining to the protection of cultural resources. Should any potentially important cultural resources be found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information.

I. Public Access (LIP Chapter 12)

In accordance with LIP Section 12.5(B)(2), the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Lateral and Vertical Public Access - The project is not located on or adjacent to a shoreline; therefore, no condition for lateral or vertical access is required by the LCP.

Bluff-top Public Access - The project is located on a bluff-top property; however, no potential project-related or cumulative impact on bluff-top access is anticipated because the site does not have potential to offer bluff-top access. The project site is accessible by way of private property and is not accessible to the public. Furthermore, due to the topography of the project site, public safety concerns may arise if bluff-top access was provided.

Trail Public Access - The project site does not include any existing or planned trails as indicated on the City Trails Master Plan or the LCP Parklands Map; therefore, no condition for trail access is required by the LCP.

Recreational Public Access - The project site is located adjacent to Malibu Bluffs Park and Lot 7 which is proposed to be dedicated to the City for public recreational uses. The proposed private street providing access to the single-family homes would include sufficient turnaround area in the event that vehicles intending to go to Malibu Bluffs Park inadvertently turn into the private residential road. No condition for recreational access is required by the LCP.

J. Land Division (LIP Chapter 15)

LIP Chapter 15 applies to land division applications. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 2, as conditioned.

K. Onsite Wastewater Treatment System Standards (LIP Chapter 18)

LIP Section 18.7 includes specific siting, design and performance requirements. New discharges from onsite wastewater disposal systems are prohibited within the Malibu Civic Center area under Los Angeles RWQCB Resolution R4-2009-007 issued in November 2009. The proposed project is one of a few projects excepted from the prohibition because those projects had already progressed far

enough through the entitlement process. Under the terms of the prohibition, the proposed project must be connected to a certified wastewater treatment facility by 2019. In addition, as a condition of approval, the applicant / property owner or successor is required to obtain a permit for the AOWTS from the RWQCB and legally establish a HOA governing document that obligates the collection of assessments, specifies how the AOWTS will be operated and maintained.

The project includes an OWTS consisting of six septic tanks, a 2,000 gallon septic tank for each of the single-family residences on Lots 1 through 5 and a 1,500 gallon septic tank for the guard house on Lot 6, a treatment plant located on Lot 6 and seepage pits located on Lot 7, all of which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the Malibu Municipal Code (M.M.C.) and the LCP. All wastewater would be routed to a 35,000-gallon, four-compartment equalization/recirculation/polishing/dosing tank connected with treatment units. Treatment would be performed in two stages. Three Advantex AX100 treatment units would be used for Stage I treatment, and three additional Advantex AX100 treatment units would be used for nitrogen reduction (secondary nitrification). After treatment, disinfection of the effluent would occur by liquid chlorination and the effluent then would be dechlorinated prior to discharge to the seepage pits. The seepage pits would be six feet in diameter and range from 61 to 65 feet deep. Soil conditions at the proposed seepage pit locations allow for a separation between groundwater and the bottom of the seepage pits, ranging from 17 to 22 feet.

Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 07-146, subject to the following conditions. In approving the coastal development permit, the Planning Commission has relied on the findings made in Planning Commission Resolution No. 14-02, which are incorporated herein.

Section 5. Conditions of Approval.

1. The applicants and property owners, and their successors in interest, shall indemnify, defend and hold harmless the City of Malibu and its elected and appointed officials, officers, employees and agents from and against any and all claims, actions, proceedings, liabilities and costs brought against the City and its elected and appointed officials, officers, employees and agents relating to the City's actions concerning this project, including but not limited to any proceeding under CEQA. This indemnification shall include (without limitation) damages, fees, and/or costs awarded against the City, cost of suit, attorney's fees, and 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 the property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project and the City's costs, fees, and damages that it incurs in enforcing the indemnification provisions set forth in this section.

2. Approval of this application is to allow for the project described herein. The scope of work approved includes:
 - a. 7,951 square foot, one-story single-family residence;
 - b. 1,579 square foot basement and subterranean garage;
 - c. 458 square foot gym;
 - d. 480 square foot second unit;
 - e. 733 square feet of loggia space that projects more than six feet;
 - f. outdoor fireplace with trellis;
 - g. swimming pool, spa, and pool equipment;
 - h. decking;
 - i. hardscape;
 - j. roof-top mechanical equipment;
 - k. water features;
 - l. fencing;
 - m. grading;
 - n. motor court;
 - o. landscaping; and
 - p. a septic tank
3. Subsequent submittals for this project shall be in substantial compliance with site plans on-file with the Planning Department, dated **May 2, 2014**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of the Planning Commission's resolution and prior to issuance of any development permits.
5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
7. The coastal development permit shall be null and void if the project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized prior to expiration of the three-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.

9. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Waterworks District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required. However, no changes to the square footages described above in Condition No. 2 shall be permitted without Planning Commission approval of a Coastal Development Permit.
11. Coastal Development Permit No. 07-146 shall not become effective unless and until the following legislative act (LCPA No. 12-001) is certified and in effect.
12. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
13. Prior to issuance of the Certificate of Occupancy, the property owner shall provide a copy of a valid Operating Permit pursuant to Malibu Municipal Code Section 15.14.030 or an Operating Permit application fee receipt, unless the project does not include an OWTS and ties into the City wastewater treatment system.

Cultural Resources

14. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
15. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
16. A Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at

California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's standard conditions of approval. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

Walls and Fencing

17. The property owner / applicant or their successor shall include an elevation of the proposed electronic driveway gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.
18. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed 6 feet in height or 12 feet in height for a combination of two or more walls.

Colors and Materials

19. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
 - a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
20. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
21. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.

Lighting

22. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
23. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and

concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:

- a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited;
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
24. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot candle.

Swimming Pools / Spas / Water Features

25. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in Malibu Municipal Code Chapter 8.24 (Noise).
26. All pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
27. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
28. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool/spa is prohibited unless it is discharged to a sanitary sewer system. Provide information on the plans regarding the type of sanitation proposed for pools.
- a. Ozonization systems are an acceptable alternative to chlorine. The release of clear water from ozonization system is permitted to the street or sewer;
 - b. Salt water sanitation is an acceptable alternative, but the discharge of salt water is prohibited to the street and sewer;
29. Highly chlorinated water from pools or spa shall be discharged to a public sewer or may be trucked to a publicly owned treatment works (POTW) for discharge.
30. The discharge of chlorinated pool water shall be prohibited.
31. The discharge of non-chlorinated pool water into streets, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters shall be prohibited.

32. Pursuant to M.M.C. Section 9.20.040(B), all ponds, decorative fountains and water features shall require a water re-circulating/recycling system.

Biology/Landscaping

33. The Maximum Applied Water Allowance (MAWA) for Lot 2 totals 849,165 gallons per year. The Estimated Applied Water Use (EAWU) totals 616,945 gpy, thus meeting the Landscape Water Conservation Ordinance Requirements.
34. With the exception of the newly proposed water line no new development, planting, or irrigation is permitted within public easements. Any new structure, plant or irrigation system occurring in the public easement shall be removed at the owner's expense.
35. Prior to Final Plan Check Approval, if your property is serviced by the Los Angeles County Waterworks District, please provide landscape water use approval from that department.
36. Invasive plant species, as determined by the City of Malibu, are prohibited.
37. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth). The vegetation shall also be maintained so that the residential structures are screened to the maximum extent feasible. On-site trees shall be maintained so that they shall not exceed 35 feet in height.
38. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within the side or rear yard setback shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.
39. The use of building materials treated with toxic compounds such as copper arsenate is prohibited.
40. Prior to final landscape inspection, provide a signed copy of the Certificate of Completion, certifying the irrigation installation and operational efficiency is consistent with the approved plans.
41. New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values.
42. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.

43. Grading shall be scheduled only during the dry season from April 1 - October 31. If it becomes necessary to conduct grading activities from November 1 - March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
44. Grading/excavation/grubbing or any other site preparation activities that has the potential to remove or encroach into existing vegetation (including the pipeline project) scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 300 feet (500 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site. Nesting bird survey reports are valid for no more than 5 days.
45. Construction fencing shall be installed within five (5) feet of the limits of grading adjacent to native habitat prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.
46. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. All lighting fixtures shall be rated dark skies compliant. Prior to issuance of a Building Permit, the applicant shall submit a photometric plan for review and approval by the Planning Director. The photometric plan shall also demonstrate compliance with any dark skies ordinance or any other applicable lighting standards adopted by the City prior to issuance of a building permit for any structure on the site.
47. No lighting for aesthetic purposes such as up-lighting of landscaping, is permitted.
48. Necessary boundary fencing of any single area exceeding one half (1/2) acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred.
49. The upper reaches of the water pipeline are proposed close proximity of an ESHA area on the northwest side of Malibu Canyon Road. As designed, no impacts to ESHA would occur. In the event of any changes of design or construction methodologies that have the potential to extend beyond the identified easement/right-of-way, the City Biologist shall be notified immediately and before any work is done outside the easement/right-of-way.
50. Upon completion of landscape planting in the proposed common areas, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
51. All biological conditions outlined in the final approved Environmental Impact Report (EIR) and individual lot development reviews shall be adhered to. In the event of any conflicting

conditions, the more restrictive shall apply.

Environmental Review Board

52. The applicant/property owner or its successor shall prepare a drainage plan, demonstrating that drainage is collected in drainage facilities with non-erosive devices.
53. The drafting hydrant for swimming pools above 5,000 gallons shall be located in an area easily accessible to the LACFD. The locations of the drafting hydrant shall be approved by the LACFD.
54. Irrigation of steep slopes shall be avoided, if possible.

Geology

55. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
56. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading and drainage. Any substantial changes may require amendment of the CDP or a new coastal development permit.
57. Engineered structures such as retaining walls, footings for small structures and significant cut and fill grading, will require the preparation of a geotechnical report that provides recommendations for the design of these structures and grading procedures in accordance with the City's Geotechnical Guidelines and Building Codes.
58. The project geotechnical consultants should review the referenced plans. The project engineering geologist and a registered geotechnical engineer or civil engineer practicing in geotechnical engineering in the state of California should be retained to perform geotechnical investigations for the proposed improvements discussed above and prepare a report(s) providing recommendations for the structural improvements and grading, as applicable. City geotechnical staff shall review the report(s) for conformance to the City's geotechnical guidelines and Building/Grading Codes during the building/grading plan check phase.

Public Works

59. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
60. Geology and geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The applicant's consulting engineer shall sign the final plans prior to the issuance of permits.

61. The Total Grading Yardage Verification Certificates shall be copied onto the coversheet of the Grading Plans submitted for the project. No alternative formats or substitute may be accepted.
62. Grading permits shall not be issued between November 1 and March 31 each year. Projects approved for a grading permit shall not receive grading permit unless the project can be rough-graded before November 1.
63. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
64. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
65. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the Waste Discharger Identification (WDID) number prior to the issuance of grading or building permits.
66. Storm drainage improvements are required to mitigate increase runoff generated by property development. The applicant/property owner or its successor shall have the choice of one method specified within the City's LIP.
67. The applicant shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template.
68. Prior to final approval of the Public Works Department, the applicant shall submit a digital drawing of the project's storm drainage and post-construction BMPs.
69. A Grading and Drainage Plan is required, and shall be submitted to the City Public Works Department for review and approval, prior to the issuance of grading permits for the project. The following elements shall be included in this plan:
 - a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.
70. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the rainy season). The following elements shall be included:

- a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
 - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
71. A Storm Water Pollution Prevention Plan (SWPP) shall be provided prior to the issuance of grading permits. This plan shall include:
- a. Dust Control for the management of fugitive dust during extended periods without rain;
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
 - d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent discharge of runoff through the waste.
72. A Water Quality Mitigation Plan (WQMP) is required for this project (also known as Standard Urban Stormwater Management Plan or SUSMP). The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The following elements shall be included within the WQMP:
- a. Site Design Best Management Practices (BMPs);
 - b. Source Control BMPs;
 - c. Treatment Control BMPs;
 - d. Drainage improvements;
 - e. Methods for on-site percolation, site re-vegetation and analysis for off-site project impacts;
 - f. Measures to treat and infiltrate runoff from impervious areas;
 - g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
 - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
 - i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at time of submittal for the review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted to the Public Works Department's approval of the building plans for the project.
73. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent

diversion Goal.

74. Prior to grading permit issuance, final grading and drainage plans incorporating construction-phase erosion control and storm water pollution prevention, as well as post-construction storm water management must be approved by the City Public Works Department.

Environmental Health

75. Prior to final City Environmental Health Administrator approval, a final alternative onsite wastewater treatment system (AOWTS) plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
76. The applicant/property owner or its successor shall provide complete engineering design drawings, calculations, construction specification, and an operation and maintenance manual to the City Environmental Sustainability Department. Describe all AOWTS components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of systems for onsite wastewater treatment and disposal. Electronically monitored flow meters shall be flowing daily through the wastewater system. The final AOWTS design shall provide sufficient capacity for onsite treatment and disposal of all project wastewater discharges in accordance with the requirements of the MPC, LCP/LIP and RWQCB. In addition, the wastewater treatment process shall be reviewed and approved by the City's wastewater engineering consultant (currently Tetra Tech, Inc.) prior to Environmental Health final approval.
77. The applicant/property owner or its successor shall building plans, wastewater plans, and all necessary supporting forms, and reports, to the RWQCB, 320 W. 4th St., Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). Waste Discharge Requirements (WDRs) for this project have not yet been issued by the RWQCB. A copy of applicable WDRs issued by the RWQCB must be included with your Plan Check submittal. The City's Plan Check wastewater engineering review will be performed relative to the treatment objectives expressed in the WDRs. Please note that while the wastewater system renovation project has been approved in-concept for the Coastal Development Permit, the final design of the treatment train may need to be substantially modified from what has been shown in the Conformance Review wastewater engineering preliminary design documents.
78. Prior to receiving Environmental Health final approval, the project owner shall legally establish a homeowners' association governing document that obligates the collection of assessments, specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation of the homeowner's association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package wastewater treatment

plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.

79. An operations and maintenance manual specified by the AOWTS designer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.
80. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted.
81. City of Public Works Department final approval shall be submitted. The City of Malibu Public Works reviewer shall review the AOWTS design to determine conformance with Public Works Department requirements.
82. City of Malibu Geologist, Geotechnical Engineer, and Hydrogeologist final approvals shall be submitted.
83. The applicant/property owner or its successor shall submit an application the Environmental Sustainability Department for an OWTS operating permit. An operating permit fee in accordance with the fee schedule in effect at the time of submittal shall be submitted with the application.
84. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42-inches tall.

Fire Safety

85. The applicant/property owner or its successor shall provide water mains, fire hydrants and fire flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.
86. The required fire flow for public fire hydrants at this location is 1,375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 hydrant flowing simultaneously may be used to achieve the required fire flow.
87. Fire hydrant requirements are as follows: Install 3 private on-site fire hydrants
88. All hydrants shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approved equal. All onsite hydrants shall be installed a minimum of 25' feet from a structure or protected by two-hour rated firewall, location as per map on file with the office.
89. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.

90. Additional water system requirements will be required when this land is further subdivided and/or during the building permits.
91. Per the County of Los Angeles Waterworks District No. 29, the Fire Flow Availability form dated March 30, 2012 indicated adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrant shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approve equal and meet the required fire flow requirements as noted above.
92. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
93. Emergency access for firefighter pedestrian use shall be extended to all exterior walls or all proposed structure within the subdivision. Additional walking access shall be reviewed and approved by the Fire Prevention Engineering prior to Building Permit issuance.
94. The applicant/property owner or its successor shall submit three copies of the final map to LACFD, Land Development for review and approval recordation.
95. The project may require interior fire sprinklers.
96. The project requires LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.
97. Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.
98. Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.
99. Where driveways shall be indicated on the final maps as "Private Driveway and Fire lane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.
100. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
101. The applicant/property owner or its successor shall provide Fire Department or City approved street signs and building access numbers prior to occupancy.

Trash Storage Areas

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

than by approved haulers.

Utilities

104. Power, telephone and cable television service shall be placed underground. The applicant / property owner or its successor shall coordinate with the proper utilities providers to properly relocate any existing facilities within the project site, if necessary.
105. Any utilities that are in conflict with the development shall be relocated at the developer's expense.

Water Service

106. The applicant shall be required to comply with the requirements of the Los Angeles County Waterworks District No. 29, as stated in the Will Serve Letter dated December 26, 2012.
107. All lots shall be served by adequately sized water system facilities, which shall include fire hydrants of the size, type and location as determined by the Fire Chief.
108. The water mains shall be of sufficient size to accommodate the total domestic and fire flow required for the land division. Domestic flows required are to be determined by the City Engineer. Fire flows required are to be determined by the Fire Chief.
109. Plans and specifications for the water system facilities shall be submitted for approval to the water company serving this land division. The applicant/property owners or its successor shall submit an agreement and other evidence, satisfactory to the City Engineer indicating that the applicant/property owner or its successor has entered into a contract with the servicing water purveyor guaranteeing payment and installation of the water improvements.
110. Prior to the filing of the final vesting tract map, there shall also be filed with the City Engineer, a statement from the water purveyor indicating the applicant/property owner or its successor compliance with the Fire Chief's fire flow requirements.

Site Specific Conditions

111. The property owner/applicant or their successor shall implement all mitigation measures specified in Environmental Impact Report No. 09-001 pursuant to the final Mitigation Monitoring and Reporting Program dated December 2013 (Exhibit B of Resolution No. 14-02).
112. The property owner/applicant or their successor shall obtain an encroachment permit from the City Public Works Department prior to commencement of any work within the Winter Mesa Canyon right of way.
113. The property owner/applicant or their successor shall obtain an encroachment permit from Caltrans prior to commencement of any work within the Pacific Coast Highway public right-of-way.

Deed Restrictions

114. The property owner/applicant or their successor is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or a bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
115. The property owner/applicant or their successor is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
116. Prior to issuance of the Certificate of Occupancy, the property owner/applicant or their successor shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 21- 23. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
117. Prior to issuance of the Certificate of Occupancy, the property owner/applicant or their successor shall be required to execute and record a deed restriction for each of the five residential parcels reflecting that each property owner is responsible for maintaining the access road in a manner that guarantees adequate access for emergency vehicle access and adequate ingress/egress for the properties served thereby.

Prior to the Issuance of Certificate of Occupancy

118. Prior to issuance of the Certificate of Occupancy, the property owner/applicant or their successor shall provide the Planning Department with a copy of the recorded Covenants, Conditions and Restrictions (CC&Rs) for the property. The CC&Rs shall be reviewed by the City Attorney prior to recordation and must include all applicable provisions required as mitigation measures in the Mitigation Monitoring and Reporting Program.
119. Prior to the issuance of the Certificate of Occupancy, the property owner/applicant or their successor shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.

120. Prior to final sign off by the Planning Department, the City Biologist shall inspect the project site and determine that all planting conditions to protect natural resources are in compliance with the plans as approved and conditioned.

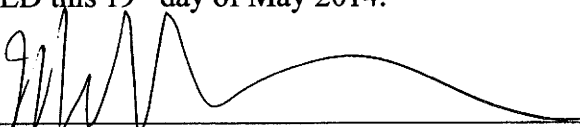
Section 6. Severability.

If any part, provision, or section of this Resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this Resolution are severable.

Section 7. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of May 2014.



MIKKE PIERSON, Planning Commission Chair

ATTEST:



PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), 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.

COASTAL COMMISSION APPEAL - An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-04 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of May 2014, by the following vote:

AYES:	3	Commissioners: Brotman, Jennings, and Stack
NOES:	2	Commissioners: Pierson and Mazza
ABSTAIN:	0	
ABSENT:	0	



PATRICIA SALAZAR, Recording Secretary

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-05**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-147 AND SITE PLAN REVIEW NO. 07-141 FOR DEVELOPMENT ON LOT 3 OF THE CRUMMER SITE SUBDIVISION PROJECT, CONSISTING OF A 7,720 SQUARE FOOT, TWO-STORY SINGLE-FAMILY RESIDENCE WITH A 1,000 SQUARE FOOT BASEMENT, 435 SQUARE FOOT DETACHED SECOND UNIT, 716 SQUARE FOOT GARAGE, 84 SQUARE FOOT CABANA, 479 SQUARE FEET OF COVERED LOGGIA SPACE THAT PROJECTS MORE THAN SIX FEET; TRELLIS, SWIMMING POOL, SPA AND POOL EQUIPMENT, DECKING, HARDSCAPE, ROOF-TOP MECHANICAL EQUIPMENT, WATER FEATURES, FENCING, GRADING, MOTOR COURT, SETPIC TANK, AND LANDSCAPING, INCLUDING A SITE PLAN REVIEW FOR CONSTRUCTION IN EXCESS OF 18 FEET IN HEIGHT, LOCATED AT 24134 PACIFIC COAST HIGHWAY, IN THE PLANNED DEVELOPMENT ZONING DESIGNATION (PCH PROJECT OWNER)

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

Section 1. Recitals.

A. On September 30 2008, the City published a Notice of Preparation and Initial Study for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The Initial Study determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.

B. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.

C. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed the Planning Department that the project could resume.

D. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

E. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30-day circulation period ran from May 10, 2012 through June 11, 2012.

F. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

G. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds. The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

H. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR (DEIR) to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearinghouse # 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

I. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit Application was posted on the subject property.

J. On April 23, 2013, the Environmental Review Board (ERB) / Subdivision Review Committee (SRC) reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

K. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR (FEIR). The FEIR responds to the comments received on the DEIR and proposes text revisions to the DEIR.

L. On November 7, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site.

M. On December 13, 2013, the Final EIR was made available on this date.

N. On December 20, 2013, an errata to the FEIR was made available. Response to Comments on the DEIR was circulated to all of those who submitted comments as well as to interested parties.

O. On January 6, 2014, a second errata to the Final EIR was made available.

P. At its January 6, 2014 meeting, the Planning Commission approved City of Malibu Planning Commission Resolution No. 14-02 in which it found that (i) the Final EIR for the project is adequate, complete and has been prepared in accordance with CEQA, (ii) it has reviewed and considered the Final EIR in reaching its decision, (iii) the Final EIR reflects the City's independent judgment and analysis, (iv) the Final EIR analyzed a reasonable range of alternatives, and (v) there are no significant, unmitigatable environmental impacts that result from the project. In Resolution No. 14-02, the Planning Commission adopted Findings of Fact attached thereto as Exhibit A and a Mitigation Monitoring and Reporting Program attached thereto as Exhibit B.

Q. On April 24, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 500 feet radius of the project site.

R. On April 25, 2014, story poles were re-installed to reflect the updated development plans for Lot 3. The placement of the story poles was re-certified by a professional land surveyor in May 2014.

S. On May 19, 2014, 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.

A. The Final EIR has been presented to the Planning Commission. All procedures have been duly followed as required by law. The Planning Commission has reviewed and considered the information contained in the Final EIR and the record as a whole in conjunction with its deliberations, in accordance with the California Environmental Quality Act (CEQA) Guidelines and Procedures of the State of California and the City of Malibu. The Final EIR reflects the City's independent judgment and analysis. The City Council certified the Final EIR, adopted the Findings of Fact, and approved the MMRP on February 24, 2014 (Resolution No. 14-11).

B. CEQA requires decision makers to adopt a mitigation monitoring and reporting program (MMRP) for those mitigation measures identified in the Final EIR that would mitigate or avoid each significant effect identified in the EIR, and to incorporate the MMRP including all mitigation measures as conditions of project approval. The Final EIR includes an analysis of the extent to which the proposed project's direct and indirect impacts will commit nonrenewable resources to uses that future generations will probably be unable to reverse.

C. CEQA requires that the responses to comments in the Final EIR demonstrate good faith and a well-reasoned analysis and may not be conclusive. In response to several comments received, portions of the DEIR have been revised. Although new material has been added to the DEIR through preparation of the FEIR, this new material provides clarification to points and information already included in the DEIR and is not considered to be significant new information or a substantial change to the DEIR that would necessitate recirculation.

D. CEQA Guidelines [California Code of Regulations Section 15003(c) and (I)] note that state courts have identified that the EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. CEQA does not require technical perfection in an EIR, but rather adequacy, completeness and a good-faith effort at full disclosure.

E. The Final EIR includes an additional clarifying narrative and clarifying exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and exhibits in the Final EIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required.

F. There are no significant, unavoidable adverse environmental impacts caused by the project. As detailed in the Final EIR, the development of the Reduced Project Alternative would not result in potentially significant adverse impacts in the following environmental subject areas: Aesthetics, Greenhouse Gas Emissions, Land Use, Noise, Recreation, Agricultural Resources, Mineral Resources, Population and Housing, Public Services and Utilities and Service Systems. The EIR provides substantial evidence that the remaining environmental subject areas (Air Quality,

Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials and Hydrology and Water Quality and Transportation and Traffic) are less than significant with the implementation of mitigation measures. The proposed development on Lot 3 was reviewed by Planning Department Staff and was found to be consistent with the Reduced Project Alternative. Impacts would be less than significant with the implementation of certain, specified mitigation measures.

G. In compliance with Public Resources Code Section 12081 and CEQA Guidelines Section 15093, the Planning Commission has determined that no Statement of Overriding Considerations is required as there are no unmitigable environmental impacts that result from the proposed project.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 07-147 and SPR No. 07-141 for a 7,720 square foot, two-story single-family residence with a 1,000 square foot basement, 450 square foot detached second unit, 716 square foot garage, 84 square foot cabana, 479 square feet of covered loggia space that projects more than six feet, trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, including a site plan review for construction in excess of 18 feet (proposed 24 feet for a flat roof and 28 feet for a pitched roof), located at 24134 PCH.

The proposed project has been reviewed by the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department, and the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP's zoning, grading and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The project, as conditioned conforms to the LCP in that it meets all residential development standards set forth in the underlying Planned Development (PD) Zoning District.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing

with Sections 30200 of the Public Resources Code).

The project is not located between the first public road and the sea and will not impact public access or recreation because the project site is not along the shoreline. The project will not result in significant impacts on public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

Finding A3. The project is the least environmentally damaging alternative.

An FEIR (EIR No. 09-001) was prepared in accordance to the California Environmentally Quality Act (CEQA) and presented to the Planning Commission for consideration. The proposed single-family residence and associated development is consistent with the Reduced Project Alternative reviewed under EIR 09-001. The development proposed on Lot 3 (consistent with the Reduced Project Alternative) would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no feasible alternatives that would further reduce any impacts on the environment. The project allows for a 7,720 square foot, two-story single-family residence with a 1,000 square foot basement, 450 square foot detached second unit, 716 square foot garage, 84 square foot cabana, 479 square feet of loggia space that projects more than six feet, trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, all of which are permitted uses within the PD zoning classification of the subject property.

An in-depth discussion of the alternatives considered when developing the plans for VTTM No. 07-033 is included in Resolution No. 14-02. This finding detailed the reasons for siting the proposed single-family residence and associated development on Lot 3.

The following alternatives were considered.

1. No Project, No Development Alternative - Under this alternative, the project site would remain unchanged. The project site would not be subdivided, and therefore, no development, including the proposed single-family residence would be constructed and Malibu Bluffs Park would not be expanded. Under this alternative, the project site would continue in its existing vacant land use.
2. One-Story Homes with Recreational Facilities Alternative – Under this alternative, the height of the structures on Lot 3 would be reduced from 28 feet to 18 feet, resulting in a larger building footprint. Compared to the project as originally proposed, the single-story alternative would almost double the building footprints for each of the five homes and would slightly increase impacts in a variety of environmental categories, including construction air quality, geotechnical, and construction noise. The increased fuel modification zones have the potential to cause a new significant impact.
3. Originally Proposed Project – Under this alternative, the maximum height of the single-family residence on Lot 3 would be 28 feet for a pitched roof and 24 feet for a flat roof, same as the Reduced Project Alternative, however, the total development square footage (TDSF) was 1,575.5 square feet larger than the Reduced Project Alternative. In addition, the originally proposed landscaping included more landscaping than the Reduced Project Alternative. The originally proposed project would result in a slight increase of impacts to aesthetics and visual resources and therefore, not the least environmentally damaging alternative.

4. Reduced Project Alternative (Proposed Project) – Under this alternative, the TDSF on Lot 3 would be reduced from 11,009.5 square feet to 9,434 square feet. This Alternative also involves modifications to the proposed landscape plan by not planting some landscaping on the originally proposed landscaping plan in order to provide more gaps, removing some of the taller plants and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. The FEIR further concludes that the Reduced Project Alternative would slightly reduce impacts in a variety of environmental categories, including visual resources, construction air quality, biological resources, cultural resources, geotechnical, and construction noise. However, these impacts would be substantially similar to those under the proposed project and they would remain less than significant. This alternative would also be environmentally similar to the originally proposed project in the area of operational air quality, cultural resources, greenhouse gas emissions, fire hazards, hydrology and water quality, land use, operational noise, recreation, and traffic.

Based on the site reconnaissance, visual analysis submitted by the applicant, photos, review of the landscape plan and architectural plans, and the nature of the surrounding area, the proposed residence and associated development located on Lot 3 of the Crummer site (Reduced Project Alternative) will have no significant impacts to aesthetics of visual resources. The proposed project (which is the Reduced Project Alternative together with the additional modifications to the residence on Lot 3, landscaping plans for Lot 3 and grading plans for Lot 3) is the least environmentally damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

According to the LCP ESHA Overlay Map, the project site is not designated as ESHA; however ESHA is located immediately to the southwest of the subject property in State Park land. There are two drainage channels located on the subject property; however, there is no resource dependent riparian vegetation present. The DEIR was reviewed by the Environmental Review Board (ERB). The ERB had several recommendations for the proposed project; all feasible recommendations have been incorporated to the project as conditions of approval in this Resolution. The project conforms to the recommendations of the ERB.

B. Site Plan Review for Structure Height in Excess of 18 feet (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review for construction in excess of the City's base 18 feet in height up to 24 feet for a flat roof and 28 feet for a pitched roof. Four additional findings are required pursuant to Malibu Municipal Code (M.M.C.) Section 17.62.040 and M.M.C Section 17.62.060. The proposed residence is a maximum of 28 feet in height. Based on the evidence contained within the record, the required findings for SPR No. 07-039 are made as follows. As used herein, "project" means the Reduced Project Alternative for Lot 3 included in the Final EIR together with the additional modifications to the residence on Lot 3, the landscaping plans for Lot 3, and the grading plans for Lot 3 that are included in the plans dated May 2, 2014.

Finding B1. The project is consistent with policies and provisions of the Malibu LCP.

The proposed single-family residence and associated development on Lot 3 has been reviewed for compliance with all relevant policies and provisions of the LCP. Based on site visits, inspections, and review of the visual analysis, it has been determined that the project is consistent with all LCP policies and provisions. On February 24, 2014, the City Council also adopted Ordinance No. 379, which amended the LCP Local Implementation Plan and included Zoning Text Amendment No. 12-001, which amended the Municipal Code applicable to the project site. The proposed single-family residence and associated development on Lot 3 has been reviewed for compliance with all relevant policies and provisions of the LCP, as amended by the City Council. The project has been reviewed for all relevant policies and provisions of the LCP by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department, and the LACFD. Based on staff review, site visits, inspections, and review of the visual analysis in the record, it has been determined that the project is consistent with all LCP policies and provisions, including the Local Implementation Plan. The findings made in connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B2. The project does not adversely affect neighborhood character.

The project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional. Development within approximately one-half of a mile from the project site includes single-family residential development on Malibu Road; the Malibu Knolls (229 homes) and Malibu Country Estates (97 homes) subdivisions; two condominium developments totaling 152 units; office buildings, including the HRL Research complex (approximately 225,000 square feet); Malibu City Hall and Los Angeles County offices; two wastewater treatment plants; Pepperdine University; Bluffs Park and the Malibu Colony Plaza Shopping Center. Thus, the project, when assessed within the context of the extensive and diverse surrounding residential and commercial uses, including single family residential development, condominium developments, office buildings, civic buildings, Pepperdine University and retail centers, would be compatible with development within the vicinity of the project and would not adversely affect the neighborhood character.

The uses immediately adjacent to the project site include (i) to the east, a site designated for single family residences known as the Towing Site, (ii) to the south, single family residences, and (iii) to the west, recreational uses in Bluffs Park. When compared to the existing development surrounding the project site, the development proposed for the property is a relatively low density and less intense use and is compatible with the surrounding uses.

Story poles were placed on Lot 3 to demonstrate the project's potential for aesthetic changes to the site relative to neighboring properties in April 2012 and again in April 2014. Planning Department staff conducted a site visit to inspect the story poles after installation. A professional land surveyor subsequently verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. While the proposed development on Lot 3 may be larger in square footage than some homes in the vicinity, the parcel is 2.51 acres, substantially larger than most residential properties in the vicinity. Residential homes within the vicinity are beachfront homes along Malibu Road and single-family homes located on parcels ranging

from .5 acre to one acre on the inland side of Malibu Road. The mass, scale and height of the structures proposed in the project would not adversely affect neighborhood character, as demonstrated by the story poles and the detailed analysis of visual impacts contained in the EIR, which included the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson. The Visual Simulations report included 78 visual simulations of the originally proposed project, the one-story alternative and the reduced project alternative, including numerous views of Lot 3 from 26 different public and private viewpoints, including the site of the proposed Rancho Malibu hotel, private property within Malibu Country Estates, PCH, the beach near Malibu Colony Road, Bluffs Park, Malibu Road, Malibu Canyon Road, Malibu Knolls, Pepperdine University, Surfrider Beach, Malibu Colony Beach, Malibu Pier, Adamson House, Legacy Park and Malibu Library. The Visual Simulations report concluded that the project would not substantially degrade the visual character of the site or introduce any aesthetic elements incompatible with the project area. Therefore, the project, as proposed and conditioned, does not adversely affect neighborhood character.

Finding B3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed development on Lot 3 has been sited and designed to minimize impacts on scenic areas from scenic highways and public viewing areas through measures including, but not limited to, siting development in the least visible portion of the site, reducing the size of the first and second story, breaking up the mass of the residence, designing the residence to blend into the natural setting, restricting the building maximum size, minimizing grading, and incorporating landscape elements. The Final EIR concluded that the project would not obstruct or otherwise substantially impact scenic views or resources or block any significant scenic resources from public view sheds.

Based on story poles and visual simulations, development on the proposed project site would be visible from several public scenic areas, including two Land Use Plan (LUP) designated scenic roads (Malibu Canyon Road and PCH), Malibu Bluffs Park, Legacy Park and public beaches located within the vicinity. A substantial number of photos of the site with the story poles in place are evidence in the record.

PCH and Malibu Canyon Road are designated scenic roads, however, the LUP does not consider commercial areas along PCH east of Malibu Canyon as scenic areas. A berm shields the proposed development on Lot 3 from view if standing on PCH directly adjacent to Lot 3 because PCH is well below the elevation of Lot 3. The project would be visible to people travelling west on PCH and from Legacy Park and may alter the skyline of project site's bluff from certain portions of PCH because it would partially obstruct views of the sky, but it would not obstruct views of the ocean to the south and mountains to the north.

Development on Lot 3 would be visible from various public viewpoints. However, based on story poles and the September 2013 Visual Simulations report, the project would not obscure a noticeable portion of the ocean view, would not otherwise significantly alter the views from these view points and would not block any significant scenic resources from public view sheds.

As discussed previously in Finding A3, the project includes a 1,575.5 square foot reduction of TDSF, including a 223 square foot reduction of the second floor compared to the originally proposed project

and the second story element is located at the "center" of the house to create view corridors on either side of the second story. These changes are intended to reduce the impact to visual resources. The project also involves modifications to the proposed landscape plan by removing the quantity of plant materials to create more gaps, removing some of the taller plants and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. This reduction would be accomplished by the following modifications to Lot 3:

- Reduction of the square footage on the second floor from 3,508 square feet to 3,285 square feet;
- Reduction of the total square footage of the residence from 11,009 square feet to 9,434 square feet;
- Adjusted trees around updated entry water feature in site plan.

In addition, conditions of approval have been included to minimize the project's impact on public views over the project site; especially from PCH and other view points in the Civic Center area. These features include:

- a. Incorporation of colors and materials that blend into the surrounding environment;
- b. The use of non-glare materials and non-reflective windows;
- c. The development has been set back from the edge of the slope above the road grade of PCH;
- d. Planting of landscaping to screen the residential development onsite;
- e. Use of low wattage lighting to minimize nighttime light impacts; and
- f. The undergrounding of utility lines which are currently above ground.

With the incorporation of these project features and conditions of approval, the project provides maximum feasible protection to significant public views over the subject site. Although the story poles are visible from several public scenic areas, the Reduced Project Alternative is not anticipated to substantially impact scenic views or resources because the Reduced Project Alternative and landscaping would blend into the surrounding natural environment and would not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from public scenic areas. In addition, the modified landscaping plan of the project, particularly when compared to the originally proposed project, shields the residences somewhat more, which result in a somewhat less prominent appearance than the originally proposed project. Therefore, the project provides maximum feasible protection to significant public views.

Finding B4. The proposed project complies with all applicable requirements of state and local law.

The EIR for the project contains a detailed analysis of the proposed project's consistency with the all applicable federal, state and local laws and regulations regarding the development of the project site. The EIR concluded that the project is consistent with and will meet all of the applicable laws and regulations. The proposed project has received LCP conformance review by the Planning Department, the City Biologist, City Environmental Health Administrator, City Geologist, the City Public Works Department and the LACFD. Prior to issuance of building permits, the project must have final approval by the City Environmental Sustainability Department. The proposed project complies with all applicable requirements of state and local law.

Finding B5. The project is consistent with the City's general plan and local coastal program.

According to the General Plan, the "PD designation provides for a mix of residential and recreational development on the Crummer Trust property [the project site] located east of Malibu Bluffs State park and south of Pacific Coast Highway." The proposed development of Lot 3 with a single-family residence and related ancillary development is consistent with the PD designation as defined in the General Plan. Table 5.9-1 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu General Plan, and the analysis concluded that the project is consistent with all applicable policies of the General Plan.

On February 24, 2014, the City Council adopted Resolution No. 14-13 to amend the Local Coastal Program Land Use Plan (the "LUP") to specifically provide that the "PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway." The City Council found that the amendment of the LUP would not result in impacts on public access to the beach, marine resources, scenic views, or environmentally sensitive habitat areas. On February 24, 2014, the City Council adopted Ordinance No. 379 to amend the Local Coastal Program Local Implementation Plan (the "LIP") to specifically provide for the development of five single-family residences and 1.74 acres of recreational area on the project site. The LIP amendment establishes the permitted uses, lot development criteria, and property development and design standards for the project site. The proposed development of Lot 3 with a single-family residence and related ancillary development is consistent with the LUP and LIP, as amended, and complies with the LIP development standards. In addition, Table 5.9-3 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu Local Coastal Program, and the analysis concluded that the project is consistent with all applicable policies of the Local Coastal Program. The findings made in connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in MMC Section 17.40.040(A)(17).

In April 2012, story poles were installed on the project site reflecting the proposed project. The story poles were installed again in April 2014 to show the revised Lot 3 design consistent with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. The EIR includes the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson, which depicts the project, including structures and landscaping at maturity, from 26 viewpoints, including the privately owned residential areas Malibu Country Estates and Malibu Knolls. The View Simulation report concluded that the project would not block any significant scenic resources from these private residential areas.

Pursuant to M.M.C. Section 17.40.040(A)(17), a primary view corridor may be assessed from principal residences within a 1,000 foot radius of the proposed structure or addition. Primary views are defined as "visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines." Using GIS, staff conducted a 1,000 foot radius buffer search and determined that the only residential units located north of the project site with a protected primary view corridor are condominiums and townhouses along Civic Center Way and DeVille Way.

Based on aerial photographs and site inspections, the primary views of the residential units along Civic Center Way and DeVille Way are unaffected by the proposed project because the project site is at a higher elevation and the proposed project does not obstruct views of the Pacific Ocean, offshore islands, Santa Monica Mountains, canyons, valleys, or ravines. While the project would obstruct views of the sky, sky views are not protected as primary views and views of the sky would be only minimally obstructed. No primary view determinations were requested from residents in condominiums or townhouse units along Civic Center Way and DeVille Way. Furthermore, the proposed project is consistent with the Reduced Project Alternative, which minimizes this obstruction by reducing the height and bulk of the project.

During the planning process, the Planning Department has received comments from some residents of the Malibu Country Estates and Malibu Knolls neighborhoods regarding potential view obstruction. The September 2013 visual simulations included viewpoints within both neighborhoods. The Malibu Country Estates and Malibu Knolls neighborhoods are located beyond the 1,000 foot radius of the proposed project, and therefore, the project site is not within the protected primary view corridor of these neighborhoods. Based on evaluation and site inspections, the proposed development on Lot 3, as represented by the story poles and as shown in the visual simulations, would not result in obstruction of visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

Finding B7: The project will not have a significant adverse impact on natural resources and makes suitable provisions for the preservation of natural hydrology, native plant materials, wooded areas, visually significant rock outcroppings, rough terrain, coastal bluffs and similar natural features.

The analysis of biological resources in the EIR for the project concluded that the proposed development would not result in the loss of sensitive habitat. No wetlands or sensitive natural communities would be impacted by the project. Glenn Lukos Associates determined that there are no streams associated with the project site that would be subject to Army Corps or California Department of Fish and Wildlife jurisdiction. No riparian habitat occurs on the project site. None of the plant communities identified as occurring on the project site are listed as sensitive communities by the California Department of Fish and Wildlife or the US Fish and Wildlife Service. Therefore, no significant impacts to sensitive plant communities would occur as a result of the proposed project's implementation. The project would also not impact any visually significant rock outcroppings, coastal bluffs, and similar natural features. Therefore, the project will not have a significant adverse impact on natural resources.

Finding B8: The project does not affect solar access.

The proposed development on Lot 3 consists of a two-story residence on a 2.51 acre lot. Development will be required to be set back from the property lines in accordance with the Planned Development standards, which would ensure that solar access would be maintained on surrounding properties, given the 28 foot height of the residence. Therefore, the project does not affect solar access.

C. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)

The project site is not designated as ESHA on the LCP ESHA Overlay Map. In addition, biological

Resource Studies prepared by Impact Sciences, Inc. in 2009 and Updated Reports prepared by Glenn Lukos Associates in 2012 and 2013 did not identify any biological resources that meet the definition of ESHA pursuant to LIP Chapter 4. Furthermore, the FEIR concludes the biological resources on the project site are not rare or especially valuable; do not contribute to the viability of plant and wildlife species designated as threatened or endangered under state or federal law; do not contribute to the viability of any fully protected species or species of special concern; do not contribute to the viability of other rare species such as those listed by the California Native Plant Society; nor are they easily damaged by human activities. The onsite channels are not designated Special Biological Significance or Marine Protected Area. Therefore, the onsite resources are determined to not qualify as ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

D. Native Tree Protection Ordinance (LIP Chapter 5)

The provisions of the Native Tree Protection Chapter only apply to those areas containing one or more native Oak, California Black Walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, four and one-half feet from the ground. According to a Protected Tree Report prepared by Impact Sciences, Inc. in January 2009, the project site contains six southern California black walnut trees meet the City's definition of a Protected Tree. The locations of these southern California walnut trees are all outside of the project's grading limit and will be avoided, therefore, the Chapter 5 findings are not applicable.

E. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, or provide views to or is visible from any scenic area, scenic road or public viewing area. Development on Lot 3 would be visible from PCH, and Malibu Canyon Road, designated as scenic roadways per the LCP. In addition, other public scenic areas within the vicinity include Malibu Bluffs Park immediately adjacent, Malibu Lagoon, approximately one-half mile to the east. Amarillo Beach, approximately 300 feet south of the project site, and Legacy Park, approximately one-half mile east of the project site. The required findings in Chapter 6 are made below.

Finding E1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Lot 3 is located between Malibu Road and PCH. In April 2012, story poles were installed on the project site reflecting the originally proposed design of Lot 3. The story poles were installed again in April 2014 to show the configuration and height of the proposed project in conformance with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. Due to comments received during the 45-days public comment period, a Reduced Project Alternative was analyzed in the FEIR. The project consists of a reduction of 1,575.5 square feet of TDSF. The project also includes a revised landscaping plan reflecting deletion of and relocation of numerous trees. The development plans prepared for Lot 3 are consistent with this Reduced Project Alternative.

While on the beach, views of the ocean are oriented to the south, away from the proposed project and therefore, the project does not result in scenic impacts to views from the beach. The proposed project will both be visible from Malibu Canyon Road and PCH; however, extensive view simulations were prepared, including all proposed structures and mature landscaping as viewed from 26 different viewpoints, including Malibu Canyon Road looking south toward the project site, PCH and Cross Creek Road looking west toward the project site and on PCH, west of entrance to Bluffs Park. The visual simulations, included in Appendix A of the FEIR, show that the Reduced Project Alternative and landscaping blend into the surrounding natural environment and do not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from a public scenic area. The project's changes in project bulk and siting is consistent with the Reduced Project Alternative and will ensure that the project will have no significant adverse scenic or visual impacts due to the project design and location on the site.

As conditioned, the proposed project will have no significant adverse scenic or visual impact.

Finding E2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated in Finding E1, CDP No. 07-147 and SPR No. 07-141, as conditioned, will have no significant adverse scenic or visual impact. Additionally, the landscaping planned and conditions of approval regarding colors and materials for future development will also serve to improve the visual quality of the site.

Finding E3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project is the least environmentally damaging feasible alternative.

Finding E4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

The proposed project does not pose any significant adverse impacts on scenic and visual resources. As discussed in Finding A3, the proposed project (Reduced Project Alternative), as conditioned and with the incorporation of mitigation measures, will result in a less than significant impact on scenic and visual resources. Further, as discussed above, the No Development / Existing Use Alternative was rejected from further analysis because it is unreasonable to assume that the applicant will never develop this site and it will remain in its current condition. The No Project, Foreseeable Development Alternative would not lessen any of the environmental effects of the proposed project.

Finding E5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Findings A3 and D1, the proposed project as conditioned will have no adverse scenic and visual impacts. With the incorporation of mitigation measures outlined in the MMRP have been mitigated to a less than significant level.

F. Transfer of Development Credits (LIP Chapter 7)

LIP Chapter 7 applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 3, as conditioned.

G. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The required findings of LIP Chapter 9 are made as follows:

Finding G1. The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The applicant submitted the following documents/data, which may be found on file with the City.

- Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., December 5, 2007.
- Revised Addendum No. 1, Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., October 29, 2008.
- Responses to the City of Malibu Geotechnical Review Sheet Dated March 20, 2008 - Leighton and Associates, Inc., September 21, 2009a.
- Geotechnical Evaluation of Proposed OWTS - Leighton and Associates, Inc., September 21, 2009b.
- Phase I Environmental Site Assessment - Leighton and Associates, Inc., October 28, 2011.
- Response to City of Malibu Comments on "Hydrogeological/Treated Water Mounding Report" - Earth Consultants International, Inc., March 7, 2012.
- Responses to City of Malibu Geotechnical Review Dated January 12, 2010 - Leighton and Associates, Inc., March 7, 2012.
- Response to City of Malibu Environmental Health Review Sheet Dated December 21, 2009 - Earth Consultants International, Inc., March 7, 2012
- Response to City Of Malibu Geotechnical Review Dated May 7, 2012 - Leighton and Associates Inc., May 16, 2012
- 5 Geotechnical Reports, one for each individual residential lot - Leighton and Associates, Inc., May 16, 2012
- Response to City of Malibu Environmental Health Review Sheet Dated April 16, 2012 - Earth Consultants International, Inc., May 22, 2012.
- Geotechnical Responses to Comments on DEIR – Leighton and Associates, Inc., July 1, 2013
- City of Malibu Geology Review Sheets - City of Malibu 2008 through 2012

In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues. Based on extensive review of the above referenced information, it has been determined that:

- The project site is not located within an Alquist-Priolo Earthquake Fault Zone therefore, it is unlikely that the project site will be impacted by active faulting or ground rupture.
- The Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone.
- The site is not within a California Seismic Hazard Zone for potential liquefaction hazard.
- Preliminary slope stability analysis indicate that slopes in the eastern and southern portion of the site meet the minimum required factors of safety for pseudo-static stability; however, structural setbacks are required to establish buildings within areas of the site that meet the minimum required factor of safety in other areas.
- The project site is outside of the potential tsunami inundation zone.
- The property is not located within FEMA's 100 year flood zone.
- The project site is in the vicinity of extreme fire hazard areas.

The City Geologist, City Public Works Department and the LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslides and Slope Instability Hazards

During field investigations and reconnaissance, no signs of deep-seated landslide features were observed onsite, only isolated erosion, rilling, and gullies were noted along the lower slopes. Immediately to the south of the site along Malibu Road is the historical Amarillo Beach landslide. This landslide is documented as a complex of rotational landslides affecting the south-facing coastal cliffs and the area underlying the Malibu Road and the adjacent beachfront properties. Movement within the Malibu Coast Fault Zone, weathering, erosion, undercutting by wave action, and the presence of groundwater have been described as contributing factors for slope instability for the area. Significant movement of the Amarillo Beach landslide complex would most likely adversely affect the offsite residential structures along Malibu Road. Significant movement of the feature could cause headward movement of the headscarp region of the Amarillo Beach landslide complex.

The State Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone, where "previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water condition indicate a potential for permanent ground displacements." The western and southern portions of the project site contain steep downward slopes. The height and steepness of the slopes are such that they may be susceptible to seismically induced slope failure or landsliding.

The 2007 Leighton and Associates, Inc. reports established a geotechnical setback zones for structures on the project site in order to avoid slope instability hazards. Similar to the proposed project, the reduced project alternative includes structures located within the structural setback zones; however, the City Geologist has conditionally approved the location of the proposed project with

specific stabilization recommendations. Structures that are planned southerly of the geotechnical setback line are required to use deepen foundations that derive support below the geotechnical setback line. Based on the findings summarized in all referenced Leighton and Associates, Inc. reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton and Associates, Inc. determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site. The project will incorporate all recommendations contained in the above cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant prior to permit issuance.

Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone (VHFHSZ), a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The site has been affected by wildfires in the past. Most recently, an October 2007 wildfire severely burned the northern, eastern, southern, and southwestern perimeters of the project site. A preliminary fuel modification plan has been prepared and approved for the proposed project. The preliminary fuel modification plan was prepared in accordance with the County of Los Angeles Fire Department Fuel Modification Plan Guidelines and identifies specific zones within a property that are subject to fuel modification. The long-term maintenance of the fuel modification zones will be addressed in the proposed project's CC&Rs and will be maintained by the homeowners' association (HOA). The LACFD has reviewed and approved the Preliminary Fuel Modification Plan, and the Final Fuel Modification Plan for the proposed project will need to be approved at the time of VTTM recordation.

Construction of the proposed structures would utilize appropriate building materials (i.e., ignition-resistant materials) and design features to complement the provided fuel modification. The design will also incorporate alternative fuel modification measures where fuel modification cannot be fully accommodated onsite, such as noncombustible firewalls and landscaping techniques that include irrigated, fire-resistant plant species.

In addition to the approved Preliminary Fuel Modification Plan, a supplementary Fire Protection Plan was prepared to evaluate the project's vulnerability to fires with regard to emergency access to the site, the adequacy of fire hydrants available to serve the site, and the design of the proposed structures. The Fire Protection Plan includes recommendations for the design of the road, gate, and driveways that would be created by the proposed project. These recommendations address the following planning and design elements:

- Fuel modification zones and permitted vegetation
- Roadway access, gates, and driveways
- Ignition-resistant structural requirements
- Interior and exterior fire protection systems

Nonetheless, a condition of approval has been included in this Resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area

where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Finding G2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding G1, the proposed project, as conditioned and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards due to project modifications, landscaping or other conditions.

Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As stated in Finding A3, the proposed project is the least environmentally damaging alternative.

Finding G4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in Finding G1, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity of the proposed project.

Finding G5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The sensitive resource protection policies contained in the LCP are not applicable to the proposed project because it does not impact ESHA or ESHA buffer. As stated in Finding G1, the proposed project, as designed, conditioned, and approved by the City Geologist, City Biologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on sensitive resources as enumerated by the LCP.

H. Shoreline and Bluff Development Ordinance (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is seaward of Malibu Road. The required findings in LIP Section 10.3 are made as follows.

Finding H1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

Pursuant to LIP Section 10.4, "all new development located on a bluff top shall be set back from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure." The required setback is 100 feet from the bluff edge, however, this distance may be reduced to 50 feet if the City geotechnical staff determines that the proposed development will not be endangered by erosion or slope instability with a lesser setback. The project site contains descending slopes along the north, east, and south portion of the site. Slope stability analyses and erosion rate estimates were performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer.

The December 2007 Leighton and Associates, Inc., report established a geotechnical setback line away from the slope delineating areas with factor of safety of 1.5 or greater. Furthermore, the October 2008 Leighton and Associates, Inc. report determined that the average historic rate of bluff retreat is 0.12 feet per year. To account for future extreme conditions, such as future El Niño storm events, Leighton and Associates, Inc. assumed a long-term bluff retreat rate of 0.2 feet per year. Based on a 0.2 bluff retreat rate, the current top of bluff is estimated to erode 20 feet over the course of 100 years. The study also concluded that the bluff retreat line is less restrictive than the 1.5 geotechnical setback line.

The proposed residence and all accessory structures are located landward of both the 100 year bluff retreat line and the 50 foot setback line. All structures on Lot 3 are located a minimum of 55 feet from the top of bluff.

Fencing, which does not require any structural foundations, extends into the 50 foot setback area. Pursuant to LIP Section 10.4, "ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge." The project is not anticipated to result in any new significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding H2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding H4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no

alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The project does not include a shoreline protective device; therefore, this finding is not applicable.

I. Archaeological / Cultural Resources (LIP Chapter 11)

To adequately assess the project site, Phase 1 archaeology studies were completed in 2007 and 2013; a paleontology records search was also completed. No archaeological or paleontological resources were identified on-site. However, because project construction activities could possibly disturb previously unidentified archaeological resources, mitigation measures have been included for the project to require a qualified archaeologist and a Native American Monitor of Chumash heritage to monitor all ground-disturbing activities, including but not limited to all grading, excavation and site preparation.

Nonetheless, conditions of approval have been included in this Resolution pertaining to the protection of cultural resources. Should any potentially important cultural resources be found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information.

J. Public Access (LIP Chapter 12)

In accordance with LIP Section 12.5(B)(2), the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Lateral and Vertical Public Access - The project is not located on or adjacent to a shoreline; therefore, no condition for lateral or vertical access is required by the LCP.

Bluff-top Public Access - The project is located on a bluff-top property; however, no potential project-related or cumulative impact on bluff-top access is anticipated because the site does not have potential to offer bluff-top access. The project site is accessible by way of private property and is not accessible to the public. Furthermore, due to the topography of the project site, public safety concerns may arise if bluff-top access was provided.

Trail Public Access - The project site does not include any existing or planned trails as indicated on the City Trails Master Plan or the LCP Parklands Map; therefore, no condition for trail access is required by the LCP.

Recreational Public Access - The project site is located adjacent to Malibu Bluffs Park and Lot 7 which is proposed to be dedicated to the City for public recreational uses. The proposed private street providing access to the single-family homes would include sufficient turnaround area in the event that vehicles intending to go to Malibu Bluffs Park inadvertently turn into the private residential road. No condition for recreational access is required by the LCP.

K. Land Division (LIP Chapter 15)

LIP Chapter 15 applies to land division applications. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 3, as conditioned.

L. Onsite Wastewater Treatment System Standards (LIP Chapter 18)

LIP Section 18.7 includes specific siting, design and performance requirements. New discharges from onsite wastewater disposal systems are prohibited within the Malibu Civic Center area under Los Angeles RWQCB Resolution R4-2009-007 issued in November 2009. The proposed project is one of a few projects excepted from the prohibition because those projects had already progressed far enough through the entitlement process. Under the terms of the prohibition, the proposed project must be connected to a certified wastewater treatment facility by 2019. In addition, as a condition of approval, the applicant / property owner or successor is required to obtain a permit for the alternative onsite wastewater treatment system (AOWTS) from the RWQCB and legally establish a HOA governing document that obligates the collection of assessments, specifies how the AOWTS will be operated and maintained.

The project includes an OWTS consisting of six septic tanks, a 2,000 gallon septic tank for each of the single-family residences on Lots 1 through 5 and a 1,500 gallon septic tank for the guard house on Lot 6, a treatment plant located on Lot 6 and seepage pits located on Lot 7, all of which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. All wastewater would be routed to a 35,000-gallon, four-compartment equalization/recirculation/polishing/dosing tank connected with treatment units. Treatment would be performed in two stages. Three Advantex AX100 treatment units would be used for Stage I treatment, and three additional Advantex AX100 treatment units would be used for nitrogen reduction (secondary nitrification). After treatment, disinfection of the effluent would occur by liquid chlorination and the effluent then would be dechlorinated prior to discharge to the seepage pits. The seepage pits would be six feet in diameter and range from 61 to 65 feet deep. Soil conditions at the proposed seepage pit locations allow for a separation between groundwater and the bottom of the seepage pits, ranging from 17 to 22 feet.

Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 07-147 and Site Plan Review No. 07-141, subject to the following conditions. In approving the coastal development permit and the site plan review, the Planning Commission has relied on the findings made in Planning Commission Resolution No. 14-02, which are incorporated herein.

Section 5. Conditions of Approval.

1. The applicants and property owners, and their successors in interest, shall indemnify, defend and hold harmless the City of Malibu and its elected and appointed officials, officers, employees and agents from and against any and all claims, actions, proceedings, liabilities and costs brought against the City and its elected and appointed officials, officers, employees and agents relating to the City's actions concerning this project, including but not limited to any proceeding under CEQA. This indemnification shall include (without limitation) damages, fees, and/or costs awarded against the City, cost of suit, attorney's fees, and 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 the property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project and the City's costs, fees, and damages that it incurs in enforcing the indemnification provisions set forth in this section.
2. Approval of this application is to allow for the project described herein. The approved project is limited to:
 - a. 7,720 square foot, two-story single-family residence;
 - b. 1,000 square foot basement;
 - c. 450 square foot detached second unit;
 - d. 716 square foot garage;
 - e. 84 square foot cabana;
 - f. 479 square feet of loggia space that projects more than six feet;
 - g. trellis;
 - h. swimming pool, spa and pool equipment;
 - i. decking;
 - j. hardscape;
 - k. roof-top mechanical equipment;
 - l. water features;
 - m. fencing;
 - n. grading;
 - o. motor court;
 - p. landscaping; and
 - q. a septic tank
3. Subsequent submittals for this project shall be in substantial compliance with site plans on-file with the Planning Department, dated **May 2, 2014**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of the Planning Commission's resolution and prior to issuance of any development permits.

5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
7. The coastal development permit shall be null and void if the project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized prior to expiration of the three-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Waterworks District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required. However, no changes to the square footages described above in Condition No. 2 shall be permitted without Planning Commission approval of a coastal development permit.
11. Coastal Development Permit No. 07-147 and Site Plan Review 07-141 shall not become effective unless and until the following legislative act (LCPA No. 12-001) is certified and in effect.
12. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
13. Prior to issuance of the Certificate of Occupancy, the property owner shall provide a copy of a valid Operating Permit pursuant to Malibu Municipal Code Section 15.14.030 or an Operating Permit application fee receipt, unless the project does not include an OWTS and ties into the City wastewater treatment system.

Cultural Resources

14. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
15. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
16. A Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's standard conditions of approval. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

Walls and Fencing

17. The applicant shall include an elevation of the proposed electronic driveway gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.
18. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed 6 feet in height or 12 feet in height for a combination of two or more walls.

Colors and Materials

19. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
 - a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.

c. All windows shall be comprised of non-glare glass.

20. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.
21. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

Lighting

22. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
23. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
 - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited;
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
24. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot candle.

Swimming Pools / Spas / Water Features

25. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in Malibu Municipal Code Chapter 8.24 (Noise).
26. All pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.

27. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
28. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool/spa is prohibited unless it is discharged to a sanitary sewer system. Provide information on the plans regarding the type of sanitation proposed for pools.
 - a. Ozonization systems are an acceptable alternative to chlorine. The release of clear water from ozonization system is permitted to the street or sewer;
 - b. Salt water sanitation is an acceptable alternative, but the discharge of salt water is prohibited to the street and sewer;
29. Highly chlorinated water from pools or spa shall be discharged to a public sewer or may be trucked to a publicly owned treatment works (POTW) for discharge.
30. The discharge of chlorinated pool water shall be prohibited.
31. The discharge of non-chlorinated pool water into streets, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters shall be prohibited.
32. Pursuant to Malibu Municipal Code Section 9.20.040(B), all ponds, decorative fountains and water features shall require a water re-circulating/recycling system.

Biology/Landscaping

33. The Maximum Applied Water Allowance (MAWA) for Lot 3 totals 785,267 gallons per year. The Estimated Applied Water Use (EAWU) totals 573,059 gpy, thus meeting the Landscape Water Conservation Ordinance Requirements.
34. With the exception of the newly proposed water line no new development, planting, or irrigation is permitted within public easements. Any new structure, plant or irrigation system occurring in the public easement shall be removed at the owner's expense.
35. Prior to Final Plan Check Approval, if your property is serviced by the Los Angeles County Waterworks District, please provide landscape water use approval from that department.
36. Invasive plant species, as determined by the City of Malibu, are prohibited.
37. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth). The vegetation shall also be maintained so that the residential structures are screened to the maximum extent feasible. On-site trees shall be maintained so that they shall not exceed 35 feet in height.
38. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within the side or rear yard setback shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in

height.

39. The use of building materials treated with toxic compounds such as copper arsenate is prohibited.
40. Prior to final landscape inspection, provide a signed copy of the Certificate of Completion, certifying the irrigation installation and operational efficiency is consistent with the approved plans.
41. New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values.
42. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.
43. Grading shall be scheduled only during the dry season from April 1 - October 31. If it becomes necessary to conduct grading activities from November 1 - March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
44. Grading/excavation/grubbing or any other site preparation activities that has the potential to remove or encroach into existing vegetation (including the pipeline project) scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 300 feet (500 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site. Nesting bird survey reports are valid for no more than 5 days.
45. Construction fencing shall be installed within five (5) feet of the limits of grading adjacent to native habitat prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.
46. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. All lighting fixtures shall be rated dark skies compliant. Prior to issuance of a Building Permit, the applicant shall submit a photometric plan for review and approval by the Planning Director. The photometric plan shall also demonstrate compliance with any dark skies ordinance or any other applicable lighting standards adopted by the City prior to issuance of a building permit for any structure on the site.
47. No lighting for aesthetic purposes such as up-lighting of landscaping, is permitted.

48. Necessary boundary fencing of any single area exceeding one half (1/2) acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred.
49. The upper reaches of the water pipeline are proposed close proximity of an ESHA area on the northwest side of Malibu Canyon Road. As designed, no impacts to ESHA would occur. In the event of any changes of design or construction methodologies that have the potential to extend beyond the identified easement/right-of-way, the City Biologist shall be notified immediately and before any work is done outside the easement/right-of-way.
50. Upon completion of landscape planting in the proposed common areas, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
51. All biological conditions outlined in the final approved Environmental Impact Report (EIR) and individual lot development reviews shall be adhered to. In the event of any conflicting conditions, the more restrictive shall apply.

Environmental Review Board

52. The applicant/property owner or its successor shall prepare a drainage plan, demonstrating that drainage is collected in drainage facilities with non-erosive devices.
53. The drafting hydrant for swimming pools above 5,000 gallons shall be located in an area easily accessible to the LACFD. The locations of the drafting hydrant shall be approved by the LACFD.
54. Irrigation of steep slopes shall be avoided, if possible.

Geology

55. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
56. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading and drainage. Any substantial changes may require amendment of the CDP or a new coastal development permit.
57. Engineered structures such as retaining walls, footings for small structures and significant cut and fill grading, will require the preparation of a geotechnical report that provides recommendations for the design of these structures and grading procedures in accordance with the City's Geotechnical Guidelines and Building Codes.

58. The project geotechnical consultants should review the referenced plans. The project engineering geologist and a registered geotechnical engineer or civil engineer practicing in geotechnical engineering in the state of California should be retained to perform geotechnical investigations for the proposed improvements discussed above and prepare a report(s) providing recommendations for the structural improvements and grading, as applicable. City geotechnical staff shall review the report(s) for conformance to the City's geotechnical guidelines and Building/Grading Codes during the building/grading plan check phase.

Public Works

59. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
60. Geology and geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The applicant's consulting engineer shall sign the final plans prior to the issuance of permits.
61. The Total Grading Yardage Verification Certificates shall be copied onto the coversheet of the Grading Plans submitted for the project. No alternative formats or substitute may be accepted.
62. Grading permits shall not be issued between November 1 and March 31 each year. Projects approved for a grading permit shall not receive grading permit unless the project can be rough-graded before November 1.
63. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
64. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
65. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the Waste Discharger Identification (WDID) number prior to the issuance of grading or building permits.
66. Storm drainage improvements are required to mitigate increase runoff generated by property development. The applicant/property owner or its successor shall have the choice of one method specified within the City's LIP.
67. The applicant shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template.
68. Prior to final approval of the Public Works Department, the applicant shall submit a digital drawing of the project's storm drainage and post-construction BMPs.

69. A Grading and Drainage Plan is required, and shall be submitted to the City Public Works Department for review and approval, prior to the issuance of grading permits for the project. The following elements shall be included in this plan:
- a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.
70. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the rainy season). The following elements shall be included:
- a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
 - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
71. A Storm Water Pollution Prevention Plan (SWPP) shall be provided prior to the issuance of grading permits. This plan shall include:
- a. Dust Control for the management of fugitive dust during extended periods without rain;
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
 - d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent discharge of runoff through the waste.
72. A Water Quality Mitigation Plan (WQMP) is required for this project (also known as Standard Urban Stormwater Management Plan or SUSMP). The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The following elements shall be included within the WQMP:
- a. Site Design Best Management Practices (BMPs);
 - b. Source Control BMPs;
 - c. Treatment Control BMPs;
 - d. Drainage improvements;
 - e. Methods for on-site percolation, site re-vegetation and analysis for off-site project impacts;
 - f. Measures to treat and infiltrate runoff from impervious areas;

- g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
 - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
 - i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at time of submittal for the review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted to the Public Works Department's approval of the building plans for the project.
73. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion Goal.
74. Prior to grading permit issuance, final grading and drainage plans incorporating construction-phase erosion control and storm water pollution prevention, as well as post-construction storm water management must be approved by the City Public Works Department.

Environmental Health

75. Prior to final City Environmental Health Administrator approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
76. The applicant/property owner or its successor shall provide complete engineering design drawings, calculations, construction specification, and an operation and maintenance manual to the City Environmental Sustainability Department. Describe all AOWTS components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of systems for onsite wastewater treatment and disposal. Electronically monitored flow meters shall be flowing daily through the wastewater system. The final AOWTS design shall provide sufficient capacity for onsite treatment and disposal of all project wastewater discharges in accordance with the requirements of the MPC, LCP/LIP and RWQCB. In addition, the wastewater treatment process shall be reviewed and approved by the City's wastewater engineering consultant (currently Tetra Tech, Inc.) prior to Environmental Health final approval.

77. The applicant/property owner or its successor shall building plans, wastewater plans, and all necessary supporting forms, and reports, to the RWQCB, 320 W. 4th St., Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). Waste Discharge Requirements (WDRs) for this project have not yet been issued by the RWQCB. A copy of applicable WDRs issued by the RWQCB must be included with your Plan Check submittal. The City's Plan Check wastewater engineering review will be performed relative to the treatment objectives expressed in the WDRs. Please note that while the wastewater system renovation project has been approved in-concept for the Coastal Development Permit, the final design of the treatment train may need to be substantially modified from what has been shown in the Conformance Review wastewater engineering preliminary design documents.
78. Prior to receiving Environmental Health final approval, the project owner shall legally establish a homeowners' association governing document that obligates the collection of assessments, specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation of the homeowner's association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.
79. An operations and maintenance manual specified by the AOWTS designer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.
80. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted.
81. City of Public Works Department final approval shall be submitted. The City of Malibu Public Works reviewer shall review the AOWTS design to determine conformance with Public Works Department requirements.
82. City of Malibu Geologist, Geotechnical Engineer, and Hydrogeologist final approvals shall be submitted.
83. The applicant/property owner or its successor shall submit an application the Environmental Sustainability Department for an OWTS operating permit. An operating permit fee in accordance with the fee schedule in effect at the time of submittal shall be submitted with the application.
84. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42-inches tall.

Fire Safety

85. The applicant/property owner or its successor shall provide water mains, fire hydrants and fire

flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.

86. The required fire flow for public fire hydrants at this location is 1,375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 hydrant flowing simultaneously may be used to achieve the required fire flow.
87. Fire hydrant requirements are as follows: Install 3 private on-site fire hydrants
88. All hydrants shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approved equal. All onsite hydrants shall be installed a minimum of 25' feet from a structure or protected by two-hour rated firewall, location as per map on file with the office.
89. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
90. Additional water system requirements will be required when this land is further subdivided and/or during the building permits.
91. Per the County of Los Angeles Waterworks District No. 29, the Fire Flow Availability form dated March 30, 2012 indicated adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrant shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approve equal and meet the required fire flow requirements as noted above.
92. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
93. Emergency access for firefighter pedestrian use shall be extended to all exterior walls or all proposed structure within the subdivision. Additional walking access shall be reviewed and approved by the Fire Prevention Engineering prior to Building Permit issuance.
94. The applicant/property owner or its successor shall submit three copies of the final map to LACFD, Land Development for review and approval recordation.
95. The project may require interior fire sprinklers.
96. The project requires LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.
97. Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.
98. Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.

99. Where driveways shall be indicated on the final maps as "Private Driveway and Fire lane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.
100. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
101. The applicant/property owner or its successor shall provide Fire Department or City approved street signs and building access numbers prior to occupancy.

Trash Storage Areas

102. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
103. Trash container areas must be screened or walled to prevent off-site transport of trash, other than by approved haulers.

Utilities

104. Power, telephone and cable television service shall be placed underground. The applicant / property owner or its successor shall coordinate with the proper utilities providers to properly relocate any existing facilities within the project site, if necessary.
105. Any utilities that are in conflict with the development shall be relocated at the developer's expense.

Water Service

106. The applicant shall be required to comply with the requirements of the Los Angeles County Waterworks District No. 29, as stated in the Will Serve Letter dated December 26, 2012.
107. All lots shall be served by adequately sized water system facilities, which shall include fire hydrants of the size, type and location as determined by the Fire Chief.
108. The water mains shall be of sufficient size to accommodate the total domestic and fire flow required for the land division. Domestic flows required are to be determined by the City Engineer. Fire flows required are to be determined by the Fire Chief.
109. Plans and specifications for the water system facilities shall be submitted for approval to the water company serving this land division. The applicant/property owners or its successor shall submit an agreement and other evidence, satisfactory to the City Engineer indicating that the applicant/property owner or its successor has entered into a contract with the servicing water purveyor guaranteeing payment and installation of the water improvements.
110. Prior to the filing of the final vesting tract map, there shall also be filed with the City

Engineer, a statement from the water purveyor indicating the applicant/property owner or its successor compliance with the Fire Chief's fire flow requirements.

Site Specific Conditions

111. The property owner/applicant or their successor shall implement all mitigation measures specified in Environmental Impact Report No. 09-001 pursuant to the final Mitigation Monitoring and Reporting Program dated December 2013 (Exhibit B of Resolution No. 14-02).
112. The property owner/applicant or their successor shall obtain an encroachment permit from the City Public Works Department prior to commencement of any work within the Winter Mesa Canyon right of way.
113. The property owner/applicant or their successor shall obtain an encroachment permit from Caltrans prior to commencement of any work within the Pacific Coast Highway public right-of-way.

Deed Restrictions

114. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or a bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
115. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
116. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 21 - 23. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
117. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction for each of the five residential parcels reflecting that each property owner is responsible for maintaining the access road in a manner that guarantees adequate access for emergency vehicle access and adequate ingress/egress for the properties served thereby.

Prior to the Issuance of Certificate of Occupancy

118. Prior to issuance of the Certificate of Occupancy, the applicant shall provide the Planning Department with a copy of the recorded Covenants, Conditions and Restrictions (CC&Rs) for the property. The CC&Rs shall be reviewed by the City Attorney prior to recordation and must include all applicable provisions required as mitigation measures in the Mitigation Monitoring and Reporting Program.
119. Prior to the issuance of the Certificate of Occupancy, the applicant/property owners of its successor shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
120. Prior to final sign off by the Planning Department, the City Biologist shall inspect the project site and determine that all planting conditions to protect natural resources are in compliance with the plans as approved and conditioned.

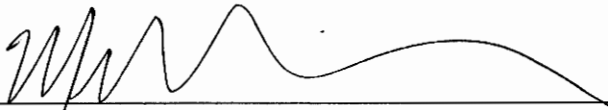
Section 6. Severability.

If any part, provision, or section of this Resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this Resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

Section 7. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of May 2014.



MIKKE PIERSON, Planning Commission Chair

ATTEST:




PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), 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.

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-05 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of May 2014, by the following vote:

AYES:	3	Commissioners: Brotman, Jennings, and Stack
NOES:	2	Commissioners: Pierson and Mazza
ABSTAIN:	0	
ABSENT:	0	


PATRICIA SALAZAR, Recording Secretary

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-06**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-148 AND SITE PLAN REVIEW NO. 07-142 FOR DEVELOPMENT ON LOT 4 OF THE CRUMMER SITE SUBDIVISION PROJECT, CONSISTING OF A 7,852 SQUARE FOOT, TWO-STORY SINGLE-FAMILY RESIDENCE WITH A 994 SQUARE FOOT BASEMENT, 881 SQUARE FOOT GARAGE, 149 SQUARE FOOT CABANA, 631 SQUARE FEET OF COVERED LOGGIA SPACE THAT PROJECTS MORE THAN SIX FEET; OUTDOOR FIREPLACE WITH TRELLIS, SWIMMING POOL, SPA AND POOL EQUIPMENT, DECKING, HARDSCAPE, ROOF-TOP MECHANICAL EQUIPMENT, WATER FEATURES, FENCING, GRADING, MOTOR COURT, SEPTIC TANK, AND LANDSCAPING, INCLUDING A SITE PLAN REVIEW FOR CONSTRUCTION IN EXCESS OF 18 FEET IN HEIGHT, LOCATED AT 24150 PACIFIC COAST HIGHWAY, IN THE PLANNED DEVELOPMENT ZONING DESIGNATION (PCH PROJECT OWNER)

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

Section 1. Recitals.

A. On September 30 2008, the City published a Notice of Preparation and Initial Study (IS) for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The IS determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.

B. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.

C. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed the Planning Department that the project could resume.

D. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

E. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30-day circulation period ran from May 10, 2012 through June 11, 2012.

F. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

G. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds. The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

H. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR (DEIR) to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearinghouse # 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

I. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit Application was posted on the subject property.

J. On April 23, 2013, the Environmental Review Board (ERB) / Subdivision Review Committee (SRC) reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

K. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR (FEIR). The FEIR responds to the comments received on the DEIR and proposes text revisions to the DEIR.

L. On November 7, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site.

M. On December 13, 2013, the Final EIR was made available on this date.

N. On December 20, 2013, an errata to the FEIR was made available. Response to Comments on the DEIR was circulated to all of those who submitted comments as well as to interested parties.

O. On January 6, 2014, a second errata to the Final EIR was made available.

P. At its January 6, 2014 meeting, the Planning Commission approved City of Malibu Planning Commission Resolution No. 14-02 in which it found that (i) the Final EIR for the project is adequate, complete and has been prepared in accordance with CEQA, (ii) it has reviewed and considered the Final EIR in reaching its decision, (iii) the Final EIR reflects the City's independent judgment and analysis, (iv) the Final EIR analyzed a reasonable range of alternatives, and (v) there are no significant, unmitigatable environmental impacts that result from the project. In Resolution No. 14-02, the Planning Commission adopted Findings of Fact attached thereto as Exhibit A and a Mitigation Monitoring and Reporting Program attached thereto as Exhibit B.

Q. On April 24, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 500 feet radius of the project site.

R. On April 25, 2014, story poles were re-installed to reflect the updated development plans for Lot 3. The placement of the story poles was re-certified by a professional land surveyor in May 2014.

S. On May 19, 2014, 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.

A. The Final EIR has been presented to the Planning Commission. All procedures have been duly followed as required by law. The Planning Commission has reviewed and considered the information contained in the Final EIR and the record as a whole in conjunction with its deliberations, in accordance with the California Environmental Quality Act (CEQA) Guidelines and Procedures of the State of California and the City of Malibu. The Final EIR reflects the City's independent judgment and analysis. The City Council certified the Final EIR, adopted the Findings of Fact, and approved the MMRP on February 24, 2014 (Resolution No. 14-11).

B. CEQA requires decision makers to adopt a mitigation monitoring and reporting program (MMRP) for those mitigation measures identified in the Final EIR that would mitigate or avoid each significant effect identified in the EIR, and to incorporate the MMRP including all mitigation measures as conditions of project approval. The Final EIR includes an analysis of the extent to which the proposed project's direct and indirect impacts will commit nonrenewable resources to uses that future generations will probably be unable to reverse.

C. CEQA requires that the responses to comments in the Final EIR demonstrate good faith and a well-reasoned analysis and may not be conclusive. In response to several comments received, portions of the DEIR have been revised. Although new material has been added to the DEIR through preparation of the FEIR, this new material provides clarification to points and information already included in the DEIR and is not considered to be significant new information or a substantial change to the DEIR that would necessitate recirculation.

D. CEQA Guidelines [California Code of Regulations Section 15003(c) and (I)] note that state courts have identified that the EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. CEQA does not require technical perfection in an EIR, but rather adequacy, completeness and a good-faith effort at full disclosure.

E. The Final EIR includes an additional clarifying narrative and clarifying exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and exhibits in the Final EIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required.

F. There are no significant, unavoidable adverse environmental impacts caused by the project. As detailed in the Final EIR, the development of the Reduced Project Alternative would not result in potentially significant adverse impacts in the following environmental subject areas:

Aesthetics, Greenhouse Gas Emissions, Land Use, Noise, Recreation, Agricultural Resources, Mineral Resources, Population and Housing, Public Services and Utilities and Service Systems. The EIR provides substantial evidence that the remaining environmental subject areas (Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials and Hydrology and Water Quality and Transportation and Traffic) are less than significant with the implementation of mitigation measures. The proposed development on Lot 4 was reviewed by Planning Department Staff and was found to be consistent with the Reduced Project Alternative. Impacts would be less than significant with the implementation of certain, specified mitigation measures.

G. In compliance with Public Resources Code Section 12081 and CEQA Guidelines Section 15093, the Planning Commission has determined that no Statement of Overriding Considerations is required as there are no unmitigable environmental impacts that result from the proposed project.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 07-148 and SPR No. 07-142 for a 7,852 square foot, two-story single-family residence with a 994 square foot basement, 881 square foot garage, 149 square foot cabana, 631 square feet of loggia space that projects more than six feet, outdoor fireplace with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, including a site plan review for construction in excess of 18 feet (proposed 24 feet for a flat roof and 28 feet for a pitched roof), located at 24150 PCH.

The proposed project has been reviewed by the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department, and the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP's zoning, grading and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The project, as conditioned conforms to the LCP in that it meets all residential development standards set forth in the underlying Planned Development (PD) Zoning District.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is not located between the first public road and the sea and will not impact public access or recreation because the project site is not along the shoreline. The project will not result in significant impacts on public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

Finding A3. The project is the least environmentally damaging alternative.

An FEIR (EIR No. 09-001) was prepared in accordance to the California Environmentally Quality Act (CEQA) and presented to the Planning Commission for consideration. The proposed single-family residence and associated development is consistent with the Reduced Project Alternative reviewed under EIR 09-001. The development of Lot 4 (consistent with the Reduced Project Alternative) would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no feasible alternatives that would further reduce any impacts on the environment. The project allows for a 7,852 square foot, two-story single-family residence with a 994 square foot basement, 881 square foot garage, 149 square foot cabana, 631 square feet of loggia space that projects more than six feet, outdoor fireplace with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, all of which are permitted uses within the PD zoning classification of the subject property.

An in-depth discussion of the alternatives considered when developing the plans for VTTM No. 07-033 is included in Resolution No. 14-02. This finding detailed the reasons for siting the proposed single-family residence and associated development on Lot 4.

The following alternatives were considered.

1. No Project, No Development Alternative - Under this alternative, the project site would remain unchanged. The project site would not be subdivided, and therefore, no development, including the proposed single-family residence would be constructed and Malibu Bluffs Park would not be expanded. Under this alternative, the project site would continue in its existing vacant land use.
2. One-Story Homes with Recreational Facilities Alternative – Under this alternative, the height of the structures on Lot 4 would be reduced from 28 feet to 18 feet, resulting in a larger building footprint. Compared to the project as originally proposed, the single-story alternative would almost double the building footprints for each of the five homes and would slightly increase impacts in a variety of environmental categories, including construction air quality, geotechnical, and construction noise. The increased fuel modification zones have the potential to cause a new significant impact.
3. Originally Proposed Project – Under this alternative, the maximum height of the single-family residence on Lot 4 would be 28 feet for pitched roof and 24 feet for a flat roof, same as the Reduced Project Alternative, however, the total development square footage (TDSF) was 1,621 square feet larger than the Reduced Project Alternative. In addition, the originally proposed landscaping

included more landscaping than the Reduced Project Alternative. The originally proposed project would result in a slight increase of impacts to aesthetics and visual resources and therefore, not the least environmentally damaging alternative.

4. Reduced Project Alternative (Proposed Project) – Under this alternative, the TDSF on Lot 4 would be reduced from 11,172 square feet to 9,513 square feet. This Alternative also involves modifications to the proposed landscape plan by not planting some landscaping on the originally proposed landscaping plan in order to provide more gaps, removing some of the taller plants and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. The FEIR further concludes that the Reduced Project Alternative would slightly reduce impacts in a variety of environmental categories, including visual resources, construction air quality, biological resources, cultural resources, geotechnical, and construction noise. However, these impacts would be substantially similar to those under the proposed project and they would remain less than significant. This alternative would also be environmentally similar to the originally proposed project in the area of operational air quality, cultural resources, greenhouse gas emissions, fire hazards, hydrology and water quality, land use, operational noise, recreation, and traffic.

Based on the site reconnaissance, visual analysis submitted by the applicant, photos, review of the landscape plan and architectural plans, and the nature of the surrounding area, the proposed residence and associated development located on Lot 4 of the Crummer Site (consistent with the Reduced Project Alternative) will have no significant impacts to aesthetics of visual resources. The proposed project (which is the Reduced Project Alternative together with the additional modifications to the residence on Lot 4, landscaping plans for Lot 4, and grading plans for Lot 4) is the least environmentally damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

According to the LCP ESHA Overlay Map, the project site is not designated as ESHA; however ESHA is located immediately to the southwest of the subject property in State Park land. There are two drainage channels located on the subject property; however, there is no resource dependent riparian vegetation present. The DEIR was reviewed by the Environmental Review Board (ERB). The ERB had several recommendations for the proposed project; all feasible recommendations have been incorporated to the project as conditions of approval in this Resolution. The project conforms to the recommendations of the ERB.

B. Site Plan Review for Structure Height in Excess of 18 feet (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review for construction in excess of the City's base 18 feet in height up to 24 feet for a flat roof and 28 feet for a pitched roof. Four additional findings are required pursuant to Malibu Municipal Code (M.M.C.) Section 17.62.040 and M.M.C Section 17.62.060. The proposed residence is a maximum of 28 feet in height. Based on the evidence contained within the record, the required findings for SPR No. 07-142 are made as follows. As used herein, "project" means the Reduced

Project Alternative for Lot 4 included in the Final EIR together with the additional modifications to the residence on Lot 4, the landscaping plans for Lot 4, and the grading plans for Lot 4 that are included in the plans dated May 2, 2014.

Finding B1. The project is consistent with policies and provisions of the Malibu LCP.

The proposed single-family residence and associated development on Lot 4 has been reviewed for compliance with all relevant policies and provisions of the LCP. Based on site visits, inspections, and review of the visual analysis, it has been determined that the project is consistent with all LCP policies and provisions. On February 24, 2014, the City Council also adopted Ordinance No. 379, which amended the LCP Local Implementation Plan and included Zoning Text Amendment No. 12-001, which amended the Municipal Code applicable to the project site. The proposed single-family residence and associated development on Lot 3 has been reviewed for compliance with all relevant policies and provisions of the LCP, as amended by the City Council. The project has been reviewed for all relevant policies and provisions of the LCP by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department, and the LACFD. Based on staff review, site visits, inspections, and review of the visual analysis in the record, it has been determined that the project is consistent with all LCP policies and provisions, including the Local Implementation Plan. The findings made in connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B2. The project does not adversely affect neighborhood character.

The project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional. Development within approximately one-half of a mile from the project site includes single-family residential development on Malibu Road; the Malibu Knolls (229 homes) and Malibu Country Estates (97 homes) subdivisions; two condominium developments totaling 152 units; office buildings, including the HRL Research complex (approximately 225,000 square feet); Malibu City Hall and Los Angeles County offices; two wastewater treatment plants; Pepperdine University; Bluffs Park and the Malibu Colony Plaza Shopping Center. Thus, the project, when assessed within the context of the extensive and diverse surrounding residential and commercial uses, including single family residential development, condominium developments, office buildings, civic buildings, Pepperdine University and retail centers, would be compatible with development within the vicinity of the project and would not adversely affect the neighborhood character.

The uses immediately adjacent to the project site include (i) to the east, a site designated for single family residences known as the Towing Site, (ii) to the south, single family residences, and (iii) to the west, recreational uses in Bluffs Park. When compared to the existing development surrounding the project site, the development proposed for the property is a relatively low density and less intense use and is compatible with the surrounding uses.

Story poles were placed on Lot 4 to demonstrate the project's potential for aesthetic changes to the site relative to neighboring properties in April 2012 and again in April 2014. A professional land surveyor subsequently verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. While the proposed development on Lot 4 may be larger in square footage than some homes in the vicinity, the parcel is

3.12 acres, substantially larger than most residential properties in the vicinity. Residential homes within the vicinity are beachfront homes along Malibu Road and single-family homes located on parcels ranging from .5 acre to one acre on the inland side of Malibu Road. The mass, scale and height of the structures proposed in the project would not adversely affect neighborhood character, as demonstrated by the story poles and the detailed analysis of visual impacts contained in the EIR, which included the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson. The Visual Simulations report included 78 visual simulations of the originally proposed project, the one-story alternative and the reduced project alternative, including numerous views of Lot 4 from 26 different public and private viewpoints, including the site of the proposed Rancho Malibu hotel, private property within Malibu Country Estates, PCH, the beach near Malibu Colony Road, Bluffs Park, Malibu Road, Malibu Canyon Road, Malibu Knolls, Pepperdine University, Surfrider Beach, Malibu Colony Beach, Malibu Pier, Adamson House, Legacy Park and Malibu Library. The Visual Simulations report concluded that the project would not substantially degrade the visual character of the site or introduce any aesthetic elements incompatible with the project area. Therefore, the project, as proposed and conditioned, does not adversely affect neighborhood character.

Finding B3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed development on Lot 4 has been sited and designed to minimize impacts on scenic areas from scenic highways and public viewing areas through measures including, but not limited to, siting development in the least visible portion of the site, reducing the size of the second story, breaking up the mass of the residence, designing the residence to blend into the natural setting, restricting the building maximum size, minimizing grading, and incorporating landscape elements. The Final EIR concluded that the project would not obstruct or otherwise substantially impact scenic views or resources or block any significant scenic resources from public view sheds.

Based on story poles and visual simulations, development on the proposed project site would be visible from several public scenic areas, including two Land Use Plan (LUP) designated scenic roads (Malibu Canyon Road and PCH), Malibu Bluffs Park, Legacy Park and public beaches located within the vicinity. A substantial number of photos of the site with the story poles in place are evidence in the record.

PCH and Malibu Canyon Road are designated scenic roads, however, the LUP does not consider commercial areas along PCH east of Malibu Canyon as scenic areas. A berm shields the proposed development on Lot 4 from view if standing on PCH directly adjacent to Lot 4 because PCH is slightly below the elevation of Lot 4. The project would be visible to people travelling west on PCH and from Legacy Park and may alter the skyline of project site's bluff from certain portions of PCH because it would partially obstruct views of the sky, but it would not obstruct views of the ocean to the south and mountains to the north.

Development on Lot 4 would be visible from various public view points. However, based on story poles and the September 2013 Visual Simulations report, the structures proposed under the project would not obscure a noticeable portion of the ocean view, and would not otherwise significantly alter the views from these view points and would not block any significant scenic resources from public view sheds.

As discussed previously in Finding A3, the project includes a 1,621 square foot reduction of TDSF, including a 257 square foot reduction of the second floor compared to the originally proposed project and the second story element is located at the "center" of the house to create view corridors on either side of the second story. These changes are intended to reduce the impact to visual resources. The project also involves modifications to the proposed landscape plan by removing the quantity of plant materials to create more gaps, removing some of the taller plants and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. This reduction would be accomplished by the following modifications to Lot 4:

- Reduction of the square footage on the second floor from 3,409 square feet to 3,193 square feet;
- Reduction of the total square footage of the residence from 11,172 square feet to 9,513 square feet;
- Removed five (5) olive trees along entry drive to widen the view corridor from Rancho Malibu property;
- Removed two (2) Mexican Cypresses and adjusted the location of a third on the east side of the house. This adjustment aligns with the removed street trees and olive trees to create a continuous view corridor down the driveway to the ocean;
- Adjusted the location of the remaining olive trees along the driveway to better screen the house;
- Added two (2) strawberry trees in front of the house to be consistent with the change in location of the house and new footprint; and
- Adjusted location of various trees on east side of the house to coordinate with revised architecture.

In addition, conditions of approval have been included to minimize the project's impact on public views over the project site; especially from PCH and other view points in the Civic Center area. These features include:

- a. Incorporation of colors and materials that blend into the surrounding environment;
- b. The use of non-glare materials and non-reflective windows;
- c. The development has been set back from the edge of the slope above the road grade of PCH;
- d. Planting of landscaping to screen the residential development onsite;
- e. Use of low wattage lighting to minimize nighttime light impacts; and
- f. The undergrounding of utility lines which are currently above ground.

With the incorporation of these project features and conditions of approval, the project provides maximum feasible protection to significant public views over the subject site. Although the story poles are visible from several public scenic areas, the project is not anticipated to substantially impact scenic views or resources because the project and landscaping would blend into the surrounding natural environment and would not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from public scenic areas. In addition, the modified landscaping plan of the project, particularly when compared to the originally proposed project, shields the residences somewhat more, which result in a somewhat less prominent appearance than the originally proposed project. Therefore, the project provides maximum feasible protection to significant public views.

Finding B4. The proposed project complies with all applicable requirements of state and local law.

The EIR for the project contains a detailed analysis of the proposed project's consistency with the all applicable federal, state and local laws and regulations regarding the development of the project site. The EIR concluded that the project is consistent with and will meet all of the applicable laws and regulations. The proposed project has received LCP conformance review by the Planning Department, the City Biologist, City Environmental Health Administrator, City Geologist, the City Public Works Department and the LACFD. Prior to issuance of building permits, the project must have final approval by the City Environmental Sustainability Department. The proposed project complies with all applicable requirements of state and local law.

Finding B5. The project is consistent with the City's general plan and local coastal program.

According to the General Plan, the "PD designation provides for a mix of residential and recreational development on the Crummer Trust property [the project site] located east of Malibu Bluffs State park and south of Pacific Coast Highway." The proposed development of Lot 41 with a single-family residence and related ancillary development is consistent with the PD designation as defined in the General Plan. Table 5.9-1 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu General Plan, and the analysis concluded that the project is consistent with all applicable policies of the General Plan.

On February 24, 2014, the City Council adopted Resolution No. 14-13 to amend the Local Coastal Program Land Use Plan (the "LUP") to specifically provide that the "PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway." The City Council found that the amendment of the LUP would not result in impacts on public access to the beach, marine resources, scenic views, or environmentally sensitive habitat areas. On February 24, 2014, the City Council adopted Ordinance No. 379 to amend the Local Coastal Program Local Implementation Plan (the "LIP") to specifically provide for the development of five single-family residences and 1.74 acres of recreational area on the project site. The LIP amendment establishes the permitted uses, lot development criteria, and property development and design standards for the project site. The proposed development of Lot 4 with a single-family residence and related ancillary development is consistent with the LUP and LIP, as amended, and complies with the LIP development standards. In addition, Table 5.9-3 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu Local Coastal Program, and the analysis concluded that the project is consistent with all applicable policies of the Local Coastal Program. The findings made in connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in MMC Section 17.40.040(A)(17).

In April 2012, story poles were installed on the project site reflecting the proposed project. The story poles were installed again in April 2014 to show the revised Lot 4 design consistent with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. The EIR includes

the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson, which depicts the project, including structures and landscaping at maturity, from 26 viewpoints, including the privately owned residential areas Malibu Country Estates and Malibu Knolls. The View Simulation report concluded that the project would not block any significant scenic resources from these private residential areas.

Pursuant to M.M.C. Section 17.40.040(A)(17), a primary view corridor may be assessed from principal residences within a 1,000 foot radius of the proposed structure or addition. Primary views are defined as "visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines." Using GIS, staff conducted a 1,000 foot radius buffer search and determined that the only residential units located north of the project site with a protected primary view corridor are condominiums and townhouses along Civic Center Way and DeVille Way. Based on aerial photographs and site inspections, the primary views of the residential units along Civic Center Way and DeVille Way are unaffected by the proposed project because the project site is at a higher elevation and the proposed project does not obstruct views of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys or ravines. While the project would be visible against the sky, sky views are not protected as primary views and the view of the sky is only minimally obstructed. While the project would obstruct views of the sky, sky views are not protected as primary views, and views of the sky would be only minimally obstructed. No primary view determinations were requested from residents in condominiums or townhouse units along Civic Center Way and DeVille Way. Furthermore, the proposed project is consistent with the Reduced Project Alternative, which minimizes this obstruction by reducing the height and bulk of the project.

During the planning process, the Planning Department has received comments from some residents of the Malibu Country Estates and Malibu Knolls neighborhoods regarding potential view obstruction. The September 2013 visual simulations included viewpoints within both neighborhoods. The residences within the Malibu Country Estates and Malibu Knolls neighborhoods are located beyond the 1,000 foot radius of the proposed project, and therefore, the project site is not within the protected primary view corridor of these neighborhoods. Based on evaluation and site inspections, the proposed development on Lot 4, as represented by the story poles and as shown in the visual simulations, would not result in obstruction of visually impressive scenes of the Pacific Ocean, offshore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

Finding B7: The project will not have a significant adverse impact on natural resources and makes suitable provisions for the preservation of natural hydrology, native plant materials, wooded areas, visually significant rock outcroppings, rough terrain, coastal bluffs and similar natural features.

The analysis of biological resources in the EIR for the project concluded that the proposed development would not result in the loss of sensitive habitat. No wetlands or sensitive natural communities would be impacted by the project. Glenn Lukos Associates determined that there are no streams associated with the project site that would be subject to Army Corps or California Department of Fish and Wildlife jurisdiction. No riparian habitat occurs on the project site. None of the plant communities identified as occurring on the project site are listed as sensitive communities by the California Department of Fish and Wildlife or the US Fish and Wildlife Service. Therefore, no significant impacts to sensitive plant communities would occur as a result of the proposed project's implementation. The project would also not impact any visually significant rock outcroppings,

coastal bluffs, and similar natural features. Therefore, the project will not have a significant adverse impact on natural resources.

Finding B8: The project does not affect solar access.

The proposed development on Lot 4 consists of a two-story residence on a 3.12 acre lot. Development will be required to be set back from the property lines in accordance with the Planned Development standards, which would ensure that solar access would be maintained on surrounding properties, given the 28 foot height of the residence. Therefore, the project does not affect solar access.

C. Environmentally Sensitive Habitat Area Overlay(LIP Chapter 4)

The project site is not designated as ESHA on the LCP ESHA Overlay Map. In addition, biological Resource Studies prepared by Impact Sciences, Inc. in 2009 and Updated Reports prepared by Glenn Lukos Associates in 2012 and 2013 did not identify any biological resources that meet the definition of ESHA pursuant to LIP Chapter 4. Furthermore, the FEIR concludes the biological resources on the project site are not rare or especially valuable; do not contribute to the viability of plant and wildlife species designated as threatened or endangered under state or federal law; do not contribute to the viability of any fully protected species or species of special concern; do not contribute to the viability of other rare species such as those listed by the California Native Plant Society; nor are they easily damaged by human activities. The onsite channels are not designated Special Biological Significance or Marine Protected Area. Therefore, the onsite resources are determined to not qualify as ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

D. Native Tree Protection Ordinance (LIP Chapter 5)

The provisions of the Native Tree Protection Chapter only apply to those areas containing one or more native Oak, California Black Walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, four and one-half feet from the ground. According to a Protected Tree Report prepared by Impact Sciences, Inc. in January 2009, the project site contains six southern California black walnut trees meet the City's definition of a Protected Tree. The locations of these southern California walnut trees are all outside of the project's grading limit and will be avoided, therefore, the Chapter 5 findings are not applicable.

E. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, or provide views to or is visible from any scenic area, scenic road or public viewing area. Development on Lot 4 would be visible from PCH, and Malibu Canyon Road, designated as scenic roadways per the LCP. In addition, other public scenic areas within the vicinity include Malibu Bluffs Park immediately adjacent, Malibu Lagoon, approximately one-half mile to the east. Amarillo Beach, approximately 300 feet south of the project site, and Legacy Park, approximately one-half mile east of the project site. The required findings in Chapter 6 are made below.

Finding E1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Lot 4 is located between Malibu Road and PCH. In April 2012, story poles were installed on the project site reflecting the originally proposed design of Lot 4. The story poles were installed again in April 2014 to show the configuration and height of the proposed project in conformance with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. Due to comments received during the 45-days public comment period, a Reduced Project Alternative was analyzed in the FEIR. The project consists of a reduction of 1,621 square feet of TDSF. The project also includes a revised landscaping plan reflecting deletion of and relocation of numerous trees.

While on the beach, views of the ocean are oriented to the south, away from the proposed project and therefore, the project does not result in scenic impacts to views from the beach. The proposed project will both be visible from Malibu Canyon Road and PCH; however, extensive view simulations were prepared, including all proposed structures and mature landscaping as viewed from 26 different viewpoints, including Malibu Canyon Road looking south toward the project site, PCH and Cross Creek Road looking west toward the project site and on PCH, west of entrance to Bluffs Park. The visual simulations, included as Appendix A of the FEIR, show that the Reduced Project Alternative and landscaping blend into the surrounding natural environment and do not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from a public scenic area. The project's changes in project bulk and siting is consistent with the Reduced Project Alternative and will ensure the project will have no significant adverse scenic or visual impacts due to the project design and location on the site.

As conditioned, the proposed project will have no significant adverse scenic or visual impact.

Finding E2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated in Finding E1, CDP No. 07-148 and SPR No. 07-142, as conditioned, will have no significant adverse scenic or visual impact. Additionally, the landscaping planned and conditions of approval regarding colors and materials for future development will also serve to improve the visual quality of the site.

Finding E3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project is the least environmentally damaging feasible alternative.

Finding E4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

The proposed project does not pose any significant adverse impacts on scenic and visual resources. As discussed in Finding A3, the proposed project (Reduced Project Alternative), as conditioned and with the incorporation of mitigation measures, will result in a less than significant impact on scenic

and visual resources. Further, as discussed above, the No Development / Existing Use Alternative was rejected from further analysis because it is unreasonable to assume that the applicant will never develop this site and it will remain in its current condition. The No Project and Foreseeable Development Alternative would not lessen any of the environmental effects of the proposed project.

Finding E5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Findings A3 and E1, the proposed project as conditioned will have no adverse scenic and visual impacts. With the incorporation of mitigation measures outlined in the MMRP have been mitigated to a less than significant level.

F. Transfer of Development Credits (LIP Chapter 7)

LIP Chapter 7 applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 4, as conditioned.

G. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The required findings of LIP Chapter 9 are made as follows:

Finding G1. The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The applicant submitted the following documents/data, which may be found on file with the City.

- Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., December 5, 2007.
- Revised Addendum No. 1, Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., October 29, 2008.
- Responses to the City of Malibu Geotechnical Review Sheet Dated March 20, 2008 - Leighton and Associates, Inc., September 21, 2009a.
- Geotechnical Evaluation of Proposed OWTS - Leighton and Associates, Inc., September 21, 2009b.
- Phase I Environmental Site Assessment - Leighton and Associates, Inc., October 28, 2011.
- Response to City of Malibu Comments on "Hydrogeological/Treated Water Mounding Report" - Earth Consultants International, Inc., March 7, 2012.
- Responses to City of Malibu Geotechnical Review Dated January 12, 2010 - Leighton and

Associates, Inc., March 7, 2012.

- Response to City of Malibu Environmental Health Review Sheet Dated December 21, 2009 - Earth Consultants International, Inc., March 7, 2012
- Response to City Of Malibu Geotechnical Review Dated May 7, 2012 - Leighton and Associates Inc., May 16, 2012
- 5 Geotechnical Reports, one for each individual residential lot - Leighton and Associates, Inc., May 16, 2012
- Response to City of Malibu Environmental Health Review Sheet Dated April 16, 2012 - Earth Consultants International, Inc., May 22, 2012.
- Geotechnical Responses to Comments on DEIR – Leighton and Associates, Inc., July 1, 2013
- City of Malibu Geology Review Sheets - City of Malibu 2008 through 2012

In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues. Based on extensive review of the above referenced information, it has been determined that:

- The project site is not located within an Alquist-Priolo Earthquake Fault Zone therefore, it is unlikely that the project site will be impacted by active faulting or ground rupture.
- The Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone.
- The site is not within a California Seismic Hazard Zone for potential liquefaction hazard.
- Preliminary slope stability analysis indicate that slopes in the eastern and southern portion of the site meet the minimum required factors of safety for pseudo-static stability; however, structural setbacks are required to establish buildings within areas of the site that meet the minimum required factor of safety in other areas.
- The project site is outside of the potential tsunami inundation zone.
- The property is not located within FEMA's 100 year flood zone.
- The project site is in the vicinity of extreme fire hazard areas.

The City Geologist, City Public Works Department and the LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslides and Slope Instability Hazards

During field investigations and reconnaissance, no signs of deep-seated landslide features were observed onsite, only isolated erosion, rilling, and gullies were noted along the lower slopes. Immediately to the south of the site along Malibu Road is the historical Amarillo Beach landslide. This landslide is documented as a complex of rotational landslides affecting the south-facing coastal cliffs and the area underlying the Malibu Road and the adjacent beachfront properties. Movement within the Malibu Coast Fault Zone, weathering, erosion, undercutting by wave action, and the presence of groundwater have been described as contributing factors for slope instability for the area. Significant movement of the Amarillo Beach landslide complex would most likely adversely affect the offsite residential structures along Malibu Road. Significant movement of the feature could cause headward movement of the headscarp region of the Amarillo Beach landslide complex.

The State Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone, where "previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water condition indicate a potential for permanent ground displacements." The western and southern portions of the project site contain steep downward slopes. The height and steepness of the slopes are such that they may be susceptible to seismically induced slope failure or landsliding.

The 2007 Leighton and Associates, Inc. reports established a geotechnical setback zones for structures on the project site in order to avoid slope instability hazards. Similar to the proposed project, the reduced project alternative includes structures located within the structural setback zones; however, the City Geologist has conditionally approved the location of the proposed project with specific stabilization recommendations. Structures that are planned southerly of the geotechnical setback line are required to use deepen foundations that derive support below the geotechnical setback line. Based on the findings summarized in all referenced Leighton and Associates, Inc. reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton and Associates, Inc. determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site. The project will incorporate all recommendations contained in the above cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant prior to permit issuance.

Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone (VHFHSZ), a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The site has been affected by wildfires in the past. Most recently, an October 2007 wildfire severely burned the northern, eastern, southern, and southwestern perimeters of the project site. A preliminary fuel modification plan has been prepared and approved for the proposed project. The preliminary fuel modification plan was prepared in accordance with the County of Los Angeles Fire Department Fuel Modification Plan Guidelines and identifies specific zones within a property that are subject to fuel modification. The long-term maintenance of the fuel modification zones will be addressed in the proposed project's CC&Rs and will be maintained by the homeowners' association (HOA). The LACFD has reviewed and approved the Preliminary Fuel Modification Plan, and the Final Fuel Modification Plan for the proposed project will need to be approved at the time of VTTM recordation.

Construction of the proposed structures would utilize appropriate building materials (i.e., ignition-resistant materials) and design features to complement the provided fuel modification. The design will also incorporate alternative fuel modification measures where fuel modification cannot be fully accommodated onsite, such as noncombustible firewalls and landscaping techniques that include irrigated, fire-resistant plant species.

In addition to the approved Preliminary Fuel Modification Plan, a supplementary Fire Protection Plan was prepared to evaluate the project's vulnerability to fires with regard to emergency access to the site, the adequacy of fire hydrants available to serve the site, and the design of the proposed structures. The Fire Protection Plan includes recommendations for the design of the road, gate, and

driveways that would be created by the proposed project. These recommendations address the following planning and design elements:

- Fuel modification zones and permitted vegetation
- Roadway access, gates, and driveways
- Ignition-resistant structural requirements
- Interior and exterior fire protection systems

Nonetheless, a condition of approval has been included in this Resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Finding G2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding G1, the proposed project, as conditioned and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards due to project modifications, landscaping or other conditions.

Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As stated in Finding A3, the proposed project is the least environmentally damaging alternative.

Finding G4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in Finding G1, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity of the proposed project.

Finding G5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The sensitive resource protection policies contained in the LCP are not applicable to the proposed project because it does not impact ESHA or ESHA buffer. As stated in Finding G1, the proposed project, as designed, conditioned, and approved by the City Geologist, City Biologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on sensitive resources as enumerated by the LCP.

H. Shoreline and Bluff Development Ordinance (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is seaward of Malibu Road. The required findings in LIP Section 10.3 are made as follows.

Finding H1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

Pursuant to LIP Section 10.4, "all new development located on a bluff top shall be set back from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure." The required setback is 100 feet from the bluff edge, however, this distance may be reduced to 50 feet if the City geotechnical staff determines that the proposed development will not be endangered by erosion or slope instability with a lesser setback. The project site contains descending slopes along the north, east, and south portion of the site. Slope stability analyses and erosion rate estimates were performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer.

The December 2007 Leighton and Associates, Inc., report established a geotechnical setback line away from the slope delineating areas with factor of safety of 1.5 or greater. Furthermore, the October 2008 Leighton and Associates, Inc. report determined that the average historic rate of bluff retreat is 0.12 feet per year. To account for future extreme conditions, such as future El Niño storm events, Leighton and Associates, Inc. assumed a long-term bluff retreat rate of 0.2 feet per year. Based on a 0.2 bluff retreat rate, the current top of bluff is estimated to erode 20 feet over the course of 100 years. The study also concluded that the bluff retreat line is less restrictive than the 1.5 geotechnical setback line.

The proposed residence and all accessory structures are located landward of both the 100 year bluff retreat line and the 50 foot setback line. All structures on Lot 4 are located a minimum of 115 feet from the top of bluff.

Fencing, which does not require any structural foundations, extends into the 50 foot setback area. Pursuant to LIP Section 10.4, "ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge." The project is not anticipated to result in any new significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding H2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding H4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The project does not include a shoreline protective device; therefore, this finding is not applicable.

I. Archaeological / Cultural Resources (LIP Chapter 11)

To adequately assess the project site, Phase 1 archaeology studies were completed in 2007 and 2013; a paleontology records search was also completed. No archaeological or paleontological resources were identified on-site. However, because project construction activities could possibly disturb previously unidentified archaeological resources, mitigation measures have been included for the project to require a qualified archaeologist and a Native American Monitor of Chumash heritage to monitor all ground-disturbing activities, including but not limited to all grading, excavation and site preparation.

J. Public Access (LIP Chapter 12)

In accordance with LIP Section 12.5(B)(2), the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Lateral and Vertical Public Access - The project is not located on or adjacent to a shoreline; therefore, no condition for lateral or vertical access is required by the LCP.

Bluff-top Public Access - The project is located on a bluff-top property; however, no potential project-related or cumulative impact on bluff-top access is anticipated because the site does not have potential to offer bluff-top access. The project site is accessible by way of private property and is not accessible to the public. Furthermore, due to the topography of the project site, public safety concerns may arise if bluff-top access was provided.

Trail Public Access - The project site does not include any existing or planned trails as indicated on the City Trails Master Plan or the LCP Parklands Map; therefore, no condition for trail access is required by the LCP.

Recreational Public Access - The project site is located adjacent to Malibu Bluffs Park and Lot 7

which is proposed to be dedicated to the City for public recreational uses. The proposed private street providing access to the single-family homes would include sufficient turnaround area in the event that vehicles intending to go to Malibu Bluffs Park inadvertently turn into the private residential road. No condition for recreational access is required by the LCP.

K. Land Division (LIP Chapter 15)

LIP Chapter 15 applies to land division applications. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 4, as conditioned.

L. Onsite Wastewater Treatment System Standards (LIP Chapter 18)

LIP Section 18.7 includes specific siting, design and performance requirements. New discharges from onsite wastewater disposal systems are prohibited within the Malibu Civic Center area under Los Angeles RWQCB Resolution R4-2009-007 issued in November 2009. The proposed project is one of a few projects excepted from the prohibition because those projects had already progressed far enough through the entitlement process. Under the terms of the prohibition, the proposed project must be connected to a certified wastewater treatment facility by 2019. In addition, as a condition of approval, the applicant / property owner or successor is required to obtain a permit for the alternative onsite wastewater treatment system (AOWTS) from the RWQCB and legally establish a HOA governing document that obligates the collection of assessments, specifies how the AOWTS will be operated and maintained.

The project includes an OWTS consisting of six septic tanks, a 2,000 gallon septic tank for each of the single-family residences on Lots 1 through 5 and a 1,500 gallon septic tank for the guard house on Lot 6, a treatment plant located on Lot 6 and seepage pits located on Lot 7, all of which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. All wastewater would be routed to a 35,000-gallon, four-compartment equalization/recirculation/polishing/dosing tank connected with treatment units. Treatment would be performed in two stages. Three Advantex AX100 treatment units would be used for Stage I treatment, and three additional Advantex AX100 treatment units would be used for nitrogen reduction (secondary nitrification). After treatment, disinfection of the effluent would occur by liquid chlorination and the effluent then would be dechlorinated prior to discharge to the seepage pits. The seepage pits would be six feet in diameter and range from 61 to 65 feet deep. Soil conditions at the proposed seepage pit locations allow for a separation between groundwater and the bottom of the seepage pits, ranging from 17 to 22 feet.

Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 07-148 and Site Plan Review No. 07-142, subject to the following conditions. In approving the coastal development permit and the site plan review,

the Planning Commission has relied on the findings made in Planning Commission Resolution No. 14-02, which are incorporated herein.

Section 5. Conditions of Approval.

1. The applicants and property owners, and their successors in interest, shall indemnify, defend and hold harmless the City of Malibu and its elected and appointed officials, officers, employees and agents from and against any and all claims, actions, proceedings, liabilities and costs brought against the City and its elected and appointed officials, officers, employees and agents relating to the City's actions concerning this project, including but not limited to any proceeding under CEQA. This indemnification shall include (without limitation) damages, fees, and/or costs awarded against the City, cost of suit, attorney's fees, and 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 the property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project and the City's costs, fees, and damages that it incurs in enforcing the indemnification provisions set forth in this section.
2. Approval of this application is to allow for the project described herein. The approved project is limit to:
 - a. 7,852 square foot, two-story single-family residence;
 - b. 994 square foot basement;
 - c. 881 square foot garage;
 - d. 149 square foot cabana;
 - e. 631 square feet of loggia space that projects more than six feet;
 - f. outdoor fireplace with trellis;
 - g. swimming pool, spa and pool equipment;
 - h. decking;
 - i. hardscape;
 - j. roof-top mechanical equipment;
 - k. water features;
 - l. fencing;
 - m. grading;
 - n. motor court;
 - o. landscaping; and
 - p. a septic tank
3. Subsequent submittals for this project shall be in substantial compliance with site plans on-file with the Planning Department, dated **May 2, 2014**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of the Planning Commission's resolution and prior to issuance of

any development permits.

5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
7. The coastal development permit shall be null and void if the project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized prior to expiration of the three-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Water District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required. However, no changes to the square footages described above in Condition No. 2 shall be permitted without Planning Commission approval of a coastal development permit.
11. Coastal Development Permit No. 07-148 and Site Plan Review 07-142 shall not become effective unless and until the following legislative act (LCPA No. 12-001) is certified and in effect.
12. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
13. Prior to issuance of the Certificate of Occupancy, the property owner shall provide a copy of a valid Operating Permit pursuant to Malibu Municipal Code Section 15.14.030 or an Operating Permit application fee receipt, unless the project does not include an OWTS and ties into the City wastewater treatment system.

Cultural Resources

14. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
15. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
16. A Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's standard conditions of approval. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

Walls and Fencing

17. The applicant shall include an elevation of the proposed electronic driveway gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.
18. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed 6 feet in height or 12 feet in height for a combination of two or more walls.

Colors and Materials

19. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
 - a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to

public views to the maximum extent feasible.

- c. All windows shall be comprised of non-glare glass.
- 20. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.
 - 21. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

Lighting

- 22. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
- 23. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
 - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited;
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
- 24. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot candle.

Swimming Pools / Spas / Water Features

- 25. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in Malibu Municipal Code Chapter 8.24 (Noise).
- 26. All pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.

27. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
28. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool/spa is prohibited unless it is discharged to a sanitary sewer system. Provide information on the plans regarding the type of sanitation proposed for pools.
 - a. Ozonization systems are an acceptable alternative to chlorine. The release of clear water from ozonization system is permitted to the street or sewer;
 - b. Salt water sanitation is an acceptable alternative, but the discharge of salt water is prohibited to the street and sewer;
29. Highly chlorinated water from pools or spa shall be discharged to a public sewer or may be trucked to a publicly owned treatment works (POTW) for discharge.
30. The discharge of chlorinated pool water shall be prohibited.
31. The discharge of non-chlorinated pool water into streets, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters shall be prohibited.
32. Pursuant to Malibu Municipal Code Section 9.20.040(B), all ponds, decorative fountains and water features shall require a water re-circulating/recycling system.

Biology/Landscaping

33. The Maximum Applied Water Allowance (MAWA) for Lot 4 totals 1,615,786 gallons per year. The Estimated Applied Water Use (EAWU) totals 1,111,182 gpy, thus meeting the Landscape Water Conservation Ordinance Requirements.
34. With the exception of the newly proposed water line no new development, planting, or irrigation is permitted within public easements. Any new structure, plant or irrigation system occurring in the public easement shall be removed at the owner's expense.
35. Prior to Final Plan Check Approval, if your property is serviced by the Los Angeles County Waterworks District, please provide landscape water use approval from that department.
36. Invasive plant species, as determined by the City of Malibu, are prohibited.
37. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth). The vegetation shall also be maintained so that the residential structures are screened to the maximum extent feasible. On-site trees shall be maintained so that they shall not exceed 35 feet in height.
38. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within the side or rear yard setback shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback

serving the same function as a fence or wall shall be maintained at or below 42 inches in height.

39. The use of building materials treated with toxic compounds such as copper arsenate is prohibited.
40. Prior to final landscape inspection, provide a signed copy of the Certificate of Completion, certifying the irrigation installation and operational efficiency is consistent with the approved plans.
41. New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values.
42. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.
43. Grading shall be scheduled only during the dry season from April 1 - October 31. If it becomes necessary to conduct grading activities from November 1 - March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
44. Grading/excavation/grubbing or any other site preparation activities that has the potential to remove or encroach into existing vegetation (including the pipeline project) scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 300 feet (500 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site. Nesting bird survey reports are valid for no more than 5 days.
45. Construction fencing shall be installed within five (5) feet of the limits of grading adjacent to native habitat prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.
46. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. All lighting fixtures shall be rated dark skies compliant. Prior to issuance of a Building Permit, the applicant shall submit a photometric plan for review and approval by the Planning Director. The photometric plan shall also demonstrate compliance with any dark skies ordinance or any other applicable lighting standards adopted by the City prior to issuance of a building permit for any structure on the site.

47. No lighting for aesthetic purposes such as up-lighting of landscaping, is permitted.
48. Necessary boundary fencing of any single area exceeding one half (1/2) acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred.
49. The upper reaches of the water pipeline are proposed close proximity of an ESHA area on the northwest side of Malibu Canyon Road. As designed, no impacts to ESHA would occur. In the event of any changes of design or construction methodologies that have the potential to extend beyond the identified easement/right-of-way, the City Biologist shall be notified immediately and before any work is done outside the easement/right-of-way.
50. Upon completion of landscape planting in the proposed common areas, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
51. All biological conditions outlined in the final approved Environmental Impact Report (EIR) and individual lot development reviews shall be adhered to. In the event of any conflicting conditions, the more restrictive shall apply.

Environmental Review Board

52. The applicant/property owner or its successor shall prepare a drainage plan, demonstrating that drainage is collected in drainage facilities with non-erosive devices.
53. The drafting hydrant for swimming pools above 5,000 gallons shall be located in an area easily accessible to the LACFD. The locations of the drafting hydrant shall be approved by the LACFD.
54. Irrigation of steep slopes shall be avoided, if possible.

Geology

55. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
56. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading and drainage. Any substantial changes may require amendment of the CDP or a new coastal development permit.
57. Engineered structures such as retaining walls, footings for small structures and significant cut and fill grading, will require the preparation of a geotechnical report that provides recommendations for the design of these structures and grading procedures in accordance with the City's Geotechnical Guidelines and Building Codes.

58. The project geotechnical consultants should review the referenced plans. The project engineering geologist and a registered geotechnical engineer or civil engineer practicing in geotechnical engineering in the state of California should be retained to perform geotechnical investigations for the proposed improvements discussed above and prepare a report(s) providing recommendations for the structural improvements and grading, as applicable. City geotechnical staff shall review the report(s) for conformance to the City's geotechnical guidelines and Building/Grading Codes during the building/grading plan check phase.

Public Works

59. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
60. Geology and geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The applicant's consulting engineer shall sign the final plans prior to the issuance of permits.
61. The Total Grading Yardage Verification Certificates shall be copied onto the coversheet of the Grading Plans submitted for the project. No alternative formats or substitute may be accepted.
62. Grading permits shall not be issued between November 1 and March 31 each year. Projects approved for a grading permit shall not receive grading permit unless the project can be rough-graded before November 1.
63. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
64. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
65. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the Waste Discharger Identification (WDID) number prior to the issuance of grading or building permits.
66. Storm drainage improvements are required to mitigate increase runoff generated by property development. The applicant/property owner or its successor shall have the choice of one method specified within the City's LIP.
67. The applicant shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template.
68. Prior to final approval of the Public Works Department, the applicant shall submit a digital drawing of the project's storm drainage and post-construction BMPs.

69. A Grading and Drainage Plan is required, and shall be submitted to the City Public Works Department for review and approval, prior to the issuance of grading permits for the project. The following elements shall be included in this plan:
- a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.
70. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the rainy season). The following elements shall be included:
- a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
 - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
71. A Storm Water Pollution Prevention Plan (SWPP) shall be provided prior to the issuance of grading permits. This plan shall include:
- a. Dust Control for the management of fugitive dust during extended periods without rain;
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
 - d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent discharge of runoff through the waste.
72. A Water Quality Mitigation Plan (WQMP) is required for this project (also known as Standard Urban Stormwater Management Plan or SUSMP). The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The following elements shall be included within the WQMP:
- a. Site Design Best Management Practices (BMPs);
 - b. Source Control BMPs;
 - c. Treatment Control BMPs;
 - d. Drainage improvements;
 - e. Methods for on-site percolation, site re-vegetation and analysis for off-site project impacts;

- f. Measures to treat and infiltrate runoff from impervious areas;
 - g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
 - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
 - i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at time of submittal for the review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted to the Public Works Department's approval of the building plans for the project.
73. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion Goal.
74. Prior to grading permit issuance, final grading and drainage plans incorporating construction-phase erosion control and storm water pollution prevention, as well as post-construction storm water management must be approved by the City Public Works Department.

Environmental Health

75. Prior to final City Environmental Health Administrator approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
76. The applicant/property owner or its successor shall provide complete engineering design drawings, calculations, construction specification, and an operation and maintenance manual to the City Environmental Sustainability Department. Describe all AOWTS components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of systems for onsite wastewater treatment and disposal. Electronically monitored flow meters shall be flowing daily through the wastewater system. The final AOWTS design shall provide sufficient capacity for onsite treatment and disposal of all project wastewater discharges in accordance with the requirements of the MPC, LCP/LIP and RWQCB. In addition, the wastewater treatment process shall be reviewed and approved by the City's wastewater engineering consultant (currently Tetra Tech, Inc.) prior to Environmental Health final approval.

77. The applicant/property owner or its successor shall building plans, wastewater plans, and all necessary supporting forms, and reports, to the RWQCB, 320 W. 4th St., Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). Waste Discharge Requirements (WDRs) for this project have not yet been issued by the RWQCB. A copy of applicable WDRs issued by the RWQCB must be included with your Plan Check submittal. The City's Plan Check wastewater engineering review will be performed relative to the treatment objectives expressed in the WDRs. Please note that while the wastewater system renovation project has been approved in-concept for the Coastal Development Permit, the final design of the treatment train may need to be substantially modified from what has been shown in the Conformance Review wastewater engineering preliminary design documents.
78. Prior to receiving Environmental Health final approval, the project owner shall legally establish a homeowners' association governing document that obligates the collection of assessments, specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation of the homeowner's association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.
79. An operations and maintenance manual specified by the AOWTS designer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.
80. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted.
81. City of Public Works Department final approval shall be submitted. The City of Malibu Public Works reviewer shall review the AOWTS design to determine conformance with Public Works Department requirements.
82. City of Malibu Geologist, Geotechnical Engineer, and Hydrogeologist final approvals shall be submitted.
83. The applicant/property owner or its successor shall submit an application the Environmental Sustainability Department for an OWTS operating permit. An operating permit fee in accordance with the fee schedule in effect at the time of submittal shall be submitted with the application.
84. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42-inches tall.

Fire Safety

85. The applicant/property owner or its successor shall provide water mains, fire hydrants and fire flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.
86. The required fire flow for public fire hydrants at this location is 1,375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 hydrant flowing simultaneously may be used to achieve the required fire flow.
87. Fire hydrant requirements are as follows: Install 3 private on-site fire hydrants
88. All hydrants shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approved equal. All onsite hydrants shall be installed a minimum of 25' feet from a structure or protected by two-hour rated firewall, location as per map on file with the office.
89. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
90. Additional water system requirements will be required when this land is further subdivided and/or during the building permits.
91. Per the County of Los Angeles Waterworks District No. 29, the Fire Flow Availability form dated March 30, 2012 indicated adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrant shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approve equal and meet the required fire flow requirements as noted above.
92. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
93. Emergency access for firefighter pedestrian use shall be extended to all exterior walls or all proposed structure within the subdivision. Additional walking access shall be reviewed and approved by the Fire Prevention Engineering prior to Building Permit issuance.
94. The applicant/property owner or its successor shall submit three copies of the final map to LACFD, Land Development for review and approval recordation.
95. The project may require interior fire sprinklers.
96. The project requires LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.
97. Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.
98. Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.

99. Where driveways shall be indicated on the final maps as "Private Driveway and Fire lane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.
100. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
101. The applicant/property owner or its successor shall provide Fire Department or City approved street signs and building access numbers prior to occupancy.

Trash Storage Areas

102. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
103. Trash container areas must be screened or walled to prevent off-site transport of trash, other than by approved haulers.

Utilities

104. Power, telephone and cable television service shall be placed underground. The applicant / property owner or its successor shall coordinate with the proper utilities providers to properly relocate any existing facilities within the project site, if necessary.
105. Any utilities that are in conflict with the development shall be relocated at the developer's expense.

Water Service

106. The applicant shall be required to comply with the requirements of the Los Angeles County Waterworks District No. 29, as stated in the Will Serve Letter dated December 26, 2012.
107. All lots shall be served by adequately sized water system facilities, which shall include fire hydrants of the size, type and location as determined by the Fire Chief.
108. The water mains shall be of sufficient size to accommodate the total domestic and fire flow required for the land division. Domestic flows required are to be determined by the City Engineer. Fire flows required are to be determined by the Fire Chief.
109. Plans and specifications for the water system facilities shall be submitted for approval to the water company serving this land division. The applicant/property owners or its successor shall submit an agreement and other evidence, satisfactory to the City Engineer indicating that the applicant/property owner or its successor has entered into a contract with the servicing water purveyor guaranteeing payment and installation of the water improvements.

110. Prior to the filing of the final vesting tract map, there shall also be filed with the City Engineer, a statement from the water purveyor indicating the applicant/property owner or its successor compliance with the Fire Chief's fire flow requirements.

Site Specific Conditions

111. The property owner/applicant or their successor shall implement all mitigation measures specified in Environmental Impact Report No. 09-001 pursuant to the final Mitigation Monitoring and Reporting Program dated December 2013 (Exhibit B of Resolution No. 14-02).
112. The property owner/applicant or their successor shall obtain an encroachment permit from the City Public Works Department prior to commencement of any work within the Winter Mesa Canyon right of way.
113. The property owner/applicant or their successor shall obtain an encroachment permit from Caltrans prior to commencement of any work within the Pacific Coast Highway public right-of-way.

Deed Restrictions

114. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or a bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
115. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
116. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 21-23. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
117. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction for each of the five residential parcels reflecting that each property owner is responsible for maintaining the access road in a manner that guarantees adequate access for emergency vehicle access and adequate ingress/egress for the properties served thereby.

Prior to the Issuance of Certificate of Occupancy

118. Prior to issuance of the Certificate of Occupancy, the applicant shall provide the Planning Department with a copy of the recorded Covenants, Conditions and Restrictions (CC&Rs) for the property. The CC&Rs shall be reviewed by the City Attorney prior to recordation and must include all applicable provisions required as mitigation measures in the Mitigation Monitoring and Reporting Program.
119. Prior to the issuance of the Certificate of Occupancy, the applicant/property owners of its successor shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
120. Prior to final sign off by the Planning Department, the City Biologist shall inspect the project site and determine that all planting conditions to protect natural resources are in compliance with the plans as approved and conditioned.

Section 6. Severability.

If any part, provision, or section of this Resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this Resolution are severable.

Section 7. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of May 2014.


MIKKE PIERSON, Planning Commission Chair

ATTEST:


PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), 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.

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-06 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of May 2014, by the following vote:

AYES:	3	Commissioners: Brotman, Jennings, and Stack
NOES:	2	Commissioners: Pierson and Mazza
ABSTAIN:	0	
ABSENT:	0	



PATRICIA SALAZAR, Recording Secretary

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-07**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-149 AND SITE PLAN REVIEW NO. 07-143 FOR DEVELOPMENT ON LOT 5 OF THE CRUMMER SITE SUBDIVISION PROJECT, CONSISTING OF A 8,738 SQUARE FOOT, TWO-STORY SINGLE-FAMILY RESIDENCE WITH A 1,752 SQUARE FOOT BASEMENT, 885 SQUARE FOOT GARAGE, 479 SQUARE FOOT SECOND UNIT, 188 SQUARE FOOT CABANA, 700 SQUARE FEET OF COVERED LOGGIA SPACE THAT PROJECTS MORE THAN SIX FEET; TRELLIS, SWIMMING POOL, SPA AND POOL EQUIPMENT, DECKING, HARDSCAPE, ROOF-TOP MECHANICAL EQUIPMENT, WATER FEATURES, FENCING, GRADING, MOTOR COURT, SEPTIC TANK, AND LANDSCAPING, INCLUDING A SITE PLAN REVIEW FOR CONSTRUCTION IN EXCESS OF 18 FEET IN HEIGHT, LOCATED AT 24174 PACIFIC COAST HIGHWAY, IN THE PLANNED DEVELOPMENT ZONING DESIGNATION (PCH PROJECT OWNER)

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

Section 1. Recitals.

A. On September 30 2008, the City published a Notice of Preparation and Initial Study for the project. The 30-day circulation period was extended for two weeks and ran from September 30, 2008 through November 7, 2008. The Initial Study determined that an EIR would be the appropriate type of environmental document to address potential environmental impacts resulting from proposed project implementation.

B. On October 2, 2008, the City held a public scoping meeting regarding the preparation of the EIR.

C. From 2009 through 2010, the project was placed on hold at the applicant's request. In January 2012, the applicant informed the Planning Department that the project could resume.

D. On April 16, 2012, story poles were placed on the project site to demonstrate the location, height, mass and bulk of the five proposed single-family residences and accessory structures. The placement of the story poles was certified by a professional land surveyor.

E. On May 10, 2012, a Notice of Preparation and Initial Study (2012 Initial Study) for the project was published to reestablish baseline conditions due to the lapse in time. The 30-day circulation period ran from May 10, 2012 through June 11, 2012.

F. On June 7, 2012, due to the lapse in time, the City held a second public scoping meeting regarding the preparation of the EIR.

G. On March 20, 2013, story poles were repaired and re-installed due to damage from the winds. The placement of the story poles was re-certified by a professional land surveyor on April 3, 2013.

H. On April 3, 2013, the City and the Governor's Office of Planning and Research distributed the Draft EIR (DEIR) to interested parties and responsible agencies for a 45-day public review period, April 3, 2013 through May 20, 2013 (State Clearinghouse # 2008091155). The City received written responses to the NOP from the following agencies: Department of Fish and Wildlife, the Native American Heritage Commission, the Metropolitan Transportation Authority, County of Los Angeles Department of Public Works and the LACFD Land Development Unit.

I. On April 5, 2013, due to the lapse in time, a second Notice of Coastal Development Permit Application was posted on the subject property.

J. On April 23, 2013, the Environmental Review Board (ERB) / Subdivision Review Committee (SRC) reviewed the proposed project and made recommendations. All feasible recommendations have been incorporated into the final project.

K. From June 2013 through November 2013, the EIR consultant worked on responding to comments received during the 45-day public review period and prepared a Final EIR (FEIR). The FEIR responds to the comments received on the DEIR and proposes text revisions to the DEIR.

L. On November 7, 2013, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 1,000 feet radius of the project site.

M. On December 13, 2013, the Final EIR was made available on this date.

N. On December 20, 2013, an errata to the FEIR was made available. Response to Comments on the DEIR was circulated to all of those who submitted comments as well as to interested parties.

O. On January 6, 2014, a second errata to the Final EIR was made available.

P. At its January 6, 2014 meeting, the Planning Commission approved City of Malibu Planning Commission Resolution No. 14-02 in which it found that (i) the Final EIR for the project is adequate, complete and has been prepared in accordance with CEQA, (ii) it has reviewed and considered the Final EIR in reaching its decision, (iii) the Final EIR reflects the City's independent judgment and analysis, (iv) the Final EIR analyzed a reasonable range of alternatives, and (v) there are no significant, unmitigatable environmental impacts that result from the project. In Resolution No. 14-02, the Planning Commission adopted Findings of Fact attached thereto as Exhibit A and a Mitigation Monitoring and Reporting Program attached thereto as Exhibit B.

Q. On April 24, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and mailed to owners and occupants within 500 feet radius of the project site.

R. On April 25, 2014, story poles were re-installed to reflect the updated development plans for Lot 3. The placement of the story poles was re-certified by a professional land surveyor in May 2014.

S. On May 19, 2014, 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.

A. The Final EIR has been presented to the Planning Commission. All procedures have been duly followed as required by law. The Planning Commission has reviewed and considered the information contained in the Final EIR and the record as a whole in conjunction with its deliberations, in accordance with the California Environmental Quality Act (CEQA) Guidelines and Procedures of the State of California and the City of Malibu. The Final EIR reflects the City's independent judgment and analysis. The City Council certified the Final EIR, adopted the Findings of Fact, and approved the MMRP on February 24, 2014 (Resolution No. 14-11).

B. CEQA requires decision makers to adopt a mitigation monitoring and reporting program (MMRP) for those mitigation measures identified in the Final EIR that would mitigate or avoid each significant effect identified in the EIR, and to incorporate the MMRP including all mitigation measures as conditions of project approval. The Final EIR includes an analysis of the extent to which the proposed project's direct and indirect impacts will commit nonrenewable resources to uses that future generations will probably be unable to reverse.

C. CEQA requires that the responses to comments in the Final EIR demonstrate good faith and a well-reasoned analysis and may not be conclusive. In response to several comments received, portions of the DEIR have been revised. Although new material has been added to the DEIR through preparation of the FEIR, this new material provides clarification to points and information already included in the DEIR and is not considered to be significant new information or a substantial change to the DEIR that would necessitate recirculation.

D. CEQA Guidelines [California Code of Regulations Section 15003(c) and (I)] note that state courts have identified that the EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. CEQA does not require technical perfection in an EIR, but rather adequacy, completeness and a good-faith effort at full disclosure.

E. The Final EIR includes an additional clarifying narrative and clarifying exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and exhibits in the Final EIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required.

F. There are no significant, unavoidable adverse environmental impacts caused by the project. As detailed in the Final EIR, the development of the Reduced Project Alternative would not

result in potentially significant adverse impacts in the following environmental subject areas: Aesthetics, Greenhouse Gas Emissions, Land Use, Noise, Recreation, Agricultural Resources, Mineral Resources, Population and Housing, Public Services and Utilities and Service Systems. The EIR provides substantial evidence that the remaining environmental subject areas (Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials and Hydrology and Water Quality and Transportation and Traffic) are less than significant with the implementation of mitigation measures. The proposed development on Lot 5 was reviewed by Planning Department Staff and was found to be consistent with the Reduced Project Alternative. Impacts would be less than significant with the implementation of certain, specified mitigation measures.

G. In compliance with Public Resources Code Section 12081 and CEQA Guidelines Section 15093, the Planning Commission has determined that no Statement of Overriding Considerations is required as there are no unmitigable environmental impacts that result from the proposed project.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 07-149 and SPR No. 07-143 for a 8,738 square foot, two-story single-family residence with a 1,752 square foot basement, 885 square foot garage, 479 square foot second unit, 188 square foot cabana, 700 square feet of loggia space that projects more than six feet, trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, including a site plan review for construction in excess of 18 feet (proposed 24 feet for a flat roof and 28 feet for a pitched roof), located at 24174 PCH.

The proposed project has been reviewed by the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department, and the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP's zoning, grading and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The project, as conditioned conforms to the LCP in that it meets all residential development standards set forth in the underlying Planning Development (PD) Zoning

District.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is not located between the first public road and the sea and will not impact public access or recreation because the project site is not along the shoreline. The project will not result in significant impacts on public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

Finding A3. The project is the least environmentally damaging alternative.

A FEIR (EIR No. 09-001) was prepared in accordance to the California Environmentally Quality Act (CEQA) and presented to the Planning Commission for consideration. The proposed single-family residence and associated development is consistent with the Reduced Project Alternative reviewed under EIR 09-001. The development of Lot 5 (consistent with the Reduced Project Alternative) would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no feasible alternatives that would further reduce any impacts on the environment. The project allows for a 8,738 square foot, two-story single-family residence with a 1,752square foot basement, 885 square foot garage, 188 square foot cabana, 700 square feet of loggia space that projects more than six feet, outdoor fireplace with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, grading, motor court, landscaping and a septic tank, all of which are permitted uses within the PD zoning classification of the subject property.

An in-depth discussion of the alternatives considered when developing the plans for VTTM No. 07-033 is included in Resolution No. 14-02. This finding detailed the reasons for siting the proposed single-family residence and associated development on Lot 5.

The following alternatives were considered.

1. No Project, No Development Alternative - Under this alternative, the project site would remain unchanged. The project site would not be subdivided, and therefore, no development, including the proposed single-family residence would be constructed and Malibu Bluffs Park would not be expanded. Under this alternative, the project site would continue in its existing vacant land use.
2. One-Story Homes with Recreational Facilities Alternative – Under this alternative, the height of the structures on Lot 5 would be reduced from 28 feet to 18 feet, resulting in a larger building footprint. Compared to the project as originally proposed, the single-story alternative would almost double the building footprints for each of the five homes and would slightly increase impacts in a variety of environmental categories, including construction air quality, geotechnical, and construction noise. The increased fuel modification zones have the potential to cause a new significant impact.
3. Originally Proposed Project – Under this alternative, the maximum height of the single-family residence on Lot 5 would be 28 feet for a pitched roof and 24 feet for a flat roof, same as the Reduced Project Alternative, however, in a slightly different location, as described in the Reduced Project

Alternative below. In addition, the originally proposed landscaping included more landscaping than the Reduced Project Alternative. The originally proposed project would result in a slight increase of impacts to aesthetics and visual resources and therefore, not the least environmentally damaging alternative.

4. Reduced Project Alternative (Proposed Project) – Under this alternative, due to considerations to neighbors to the south, the pool cabana has been relocated from the western side of the pool to the eastern side. The residence has been relocated further away from the bluff edge and shifted approximately 6½ feet to the east, and the roof height has been reduced by 4 feet, 4 inches by changing approximately 26 linear feet of the southwestern portion of the roof from flat to pitched roof. This Alternative also involves modifications to the proposed landscape plan by not planting some landscaping on the originally proposed landscaping plan in order to provide more gaps, removing some of the taller plants and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. The FEIR further concludes that the Reduced Project Alternative would slightly reduce impacts in a variety of environmental categories, including visual resources, construction air quality, biological resources, cultural resources, geotechnical, and construction noise. However, these impacts would be substantially similar to those under the proposed project and they would remain less than significant. This alternative would also be environmentally similar to the originally proposed project in the area of operational air quality, cultural resources, greenhouse gas emissions, fire hazards, hydrology and water quality, land use, operational noise, recreation, and traffic.

Based on the site reconnaissance, visual analysis submitted by the applicant, photos, review of the landscape plan and architectural plans, and the nature of the surrounding area, the proposed residence and associated development located on Lot 5 of the Crummer Site (consistent with the Reduced Project Alternative) will have no significant impacts to aesthetics of visual resources. The proposed project (which is the Reduced Project Alternative together with the additional modifications to the residence on Lot 5, landscaping plans for Lot 5, and grading plans for Lot 5) is the least environmentally damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

According to the LCP ESHA Overlay Map, the project site is not designated as ESHA; however ESHA is located immediately to the southwest of the subject property in State Park land. There are two drainage channels located on the subject property; however, there is no resource dependent riparian vegetation present. The DEIR was reviewed by the Environmental Review Board (ERB). The ERB had several recommendations for the proposed project; all feasible recommendations have been incorporated to the project as conditions of approval in this Resolution. The project conforms to the recommendations of the ERB.

B. Site Plan Review for Structure Height in Excess of 18 feet (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of

a site plan review for construction in excess of the City's base 18 feet in height up to 24 feet for a flat roof and 28 feet for a pitched roof. Four additional findings are required pursuant to Malibu Municipal Code (M.M.C.) Section 17.62.040 and M.M.C Section 17.62.060. The proposed residence is a maximum of 28 feet in height. Based on the evidence contained within the record, the required findings for SPR No. 07-143 are made as follows. As used herein, "project" means the Reduced Project Alternative for Lot 4 included in the Final EIR together with the additional modifications to the residence on Lot 4, the landscaping plans for Lot 4, and the grading plans for Lot 4 that are included in the plans dated May 2, 2014.

Finding B1. The project is consistent with policies and provisions of the Malibu LCP.

The proposed single-family residence and associated development on Lot 5 has been reviewed for compliance with all relevant policies and provisions of the LCP. Based on site visits, inspections, and review of the visual analysis, it has been determined that the project is consistent with all LCP policies and provisions. On February 24, 2014, the Malibu City Council approved LCPA No. 12-001, which amended the LCP with respect to the Planned Development Designation for the project site. On February 24, 2014, the City Council also adopted Ordinance No. 379, which amended the LCP Local Implementation Plan and included Zoning Text Amendment No. 12-001, which amended the Municipal Code applicable to the project site. The proposed single-family residence and associated development on Lot 5 has been reviewed for compliance with all relevant policies and provisions of the LCP, as amended by the City Council. The project has been reviewed for all relevant policies and provisions of the LCP by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department, and the LACFD. Based on staff review, site visits, inspections, and review of the visual analysis in the record, it has been determined that the project is consistent with all LCP policies and provisions, including the Local Implementation Plan. The findings made in connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B2. The project does not adversely affect neighborhood character.

The project area is characterized by a mix of uses, including residential, recreational, commercial, and institutional. Development within approximately one-half of a mile from the project site includes single-family residential development on Malibu Road; the Malibu Knolls (229 homes) and Malibu Country Estates (97 homes) subdivisions; two condominium developments totaling 152 units; office buildings, including the HRL Research complex (approximately 225,000 square feet); Malibu City Hall and Los Angeles County offices; two wastewater treatment plants; Pepperdine University; Bluffs Park and the Malibu Colony Plaza Shopping Center. Thus, the project, when assessed within the context of the extensive and diverse surrounding residential and commercial uses, including single family residential development, condominium developments, office buildings, civic buildings, Pepperdine University and retail centers, would be compatible with development within the vicinity of the project and would not adversely affect the neighborhood character.

The uses immediately adjacent to the project site include (i) to the east, a site designated for single family residences known as the Towing Site, (ii) to the south, single family residences, and (iii) to the west, recreational uses in Bluffs Park. When compared to the existing development surrounding the project site, the development proposed for the property is a relatively low density and less intense use

and is compatible with the surrounding uses.

Story poles were placed on Lot 5 to demonstrate the project's potential for aesthetic changes to the site relative to neighboring properties in April 2012 and again in April 2014. Planning Department staff conducted a site visit to inspect the story poles after installation. A professional land surveyor subsequently verified the accuracy of the location and height of the story poles and their conformance to the exhibit prepared by the architect and approved by the City. While the proposed development on Lot 5 may be larger in square footage than some homes in the vicinity, the parcel is 5.78 acres, substantially larger than most residential properties in the vicinity. Residential homes within the vicinity are beachfront homes along Malibu Road and single-family homes located on parcels ranging from .5 acre to one acre on the inland side of Malibu Road. The residential development on the adjacent Towing Site will be similar in size and architectural character to the proposed project. The mass, scale and height of the structures proposed in the project would not adversely affect neighborhood character, as demonstrated by the story poles and the detailed analysis of visual impacts contained in the EIR, which included the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson. The Visual Simulations report included 78 visual simulations of the originally proposed project, the one-story alternative and the reduced project alternative, including numerous views of Lot 5 from 26 different public and private viewpoints, including the site of the proposed Rancho Malibu hotel, private property within Malibu Country Estates, PCH, the beach near Malibu Colony Road, Bluffs Park, Malibu Road, Malibu Canyon Road, Malibu Knolls, Pepperdine University, Surfrider Beach, Malibu Colony Beach, Malibu Pier, Adamson House, Legacy Park and Malibu Library. The Visual Simulations report concluded that the project would not substantially degrade the visual character of the site or introduce any aesthetic elements incompatible with the project area. Therefore, the project, as proposed and conditioned, does not adversely affect neighborhood character.

Finding B3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed development on Lot 5 has been sited and designed to minimize impacts on scenic areas from scenic highways and public viewing areas through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of the residence, designing the residence to blend into the natural setting, restricting the building maximum size, minimizing grading, and incorporating landscape elements. The Final EIR concluded that the project would not obstruct or otherwise substantially impact scenic views or resources or block any significant scenic resources from public view sheds.

Based on story poles and visual simulations, development on the proposed project site would be visible from several public scenic areas, including two Land Use Plan (LUP) designated scenic roads (Malibu Canyon Road and PCH), Malibu Bluffs Park, Legacy Park and public beaches located within the vicinity. A substantial number of photos of the site with the story poles in place are evidence in the record.

PCH and Malibu Canyon Road are designated scenic roads, however, the LUP does not consider commercial areas along PCH east of Malibu Canyon as scenic areas. A berm shields the proposed development on Lot 5 from view if standing on PCH directly adjacent to Lot 5 because PCH is slightly below the elevation of Lot 5. The project would be visible to people travelling west on PCH

and from Legacy Park and may alter the skyline of project site's bluff from certain portions of PCH because it would partially obstruct views of the sky, but it would not obstruct views of the ocean to the south and mountains to the north.

Development on Lot 5 would be visible from various public view points. However, based on story poles and the September 2013 Visual Simulations report, the project would not obscure a noticeable portion of the ocean view, and would not otherwise significantly alter the views from these view points and would not block any significant scenic resources from public view sheds.

As discussed previously in Finding A3, the project includes the relocation of a pool cabana from the western side of the pool to the eastern side, relocation of the main residence away from the bluff edge and shifted approximately 6½ feet to the east, and the roof height has been reduced by 4 feet, 4 inches by changing approximately 26 linear feet of the southwestern portion of the roof from flat to pitched roof to provide maximum feasible protection to visual resources. The project also involves modifications to the proposed landscape plan by removing the quantity of plant materials to create more gaps, removing some of the taller plants and relocating some of the plant materials to coordinate with the changes to the location and size of the homes. These modifications were designed with the intention of reducing impacts of the project on visual resources. This reduction would be accomplished by the following modifications to Lot 5:

- Relocation of the pool cabana from the western side of the pool to the eastern side;
- Movement of the residence further north and approximately 6 ½ feet to the east;
- Roof lines and plate heights at southwest corner have been modified to reduce the visual impact of 2nd story.
- The eave line of the 27' wide stair element has been lowered by 4'6" from 25' to 20'-6" from grade.
- The flat parapet wall (25' high) has been replaced with a sloping tile roof;
- Added one (1) coral tree and adjusted the location of another on west side of the house to be consistent with the change in location of the house and new footprint;
- Relocated Firewheel trees on west side of the house to coordinate with changes in the location of the house and revised architecture;
- Adjusted location of Coast Live Oak tree to west of the house in area between Bluffs Park ball field and driveway to coordinate with changes in the location of the house and revised architecture; and
- Removed four (4) toyon shrubs along south side of driveway to open views to the ocean.

In addition, conditions of approval have been included to minimize the project's impact on public views over the project site; especially from PCH and other view points in the Civic Center area. These features include:

- a. Incorporation of colors and materials that blend into the surrounding environment;
- b. The use of non-glare materials and non-reflective windows;
- c. The development has been set back from the edge of the slope above the road grade of PCH;
- d. Planting of landscaping to screen the residential development onsite;
- e. Use of low wattage lighting to minimize nighttime light impacts; and
- f. The undergrounding of utility lines which are currently above ground.

With the incorporation of these project features and conditions of approval, the project provides

maximum feasible protection to significant public views over the subject site. Although the story poles are visible from several public scenic areas, the project is not anticipated to substantially impact scenic views or resources because the project and landscaping would blend into the surrounding natural environment and would not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from public scenic areas. In addition, the modified landscaping plan of the project, particularly when compared to the originally proposed project, shields the residences somewhat more, which result in a somewhat less prominent appearance than the originally proposed project. Therefore, the project provides maximum feasible protection to significant public views.

Finding B4. The proposed project complies with all applicable requirements of state and local law.

The EIR for the project contains a detailed analysis of the proposed project's consistency with the all applicable federal, state and local laws and regulations regarding the development of the project site. The EIR concluded that the project is consistent with and will meet all of the applicable laws and regulations. The proposed project has received LCP conformance review by the Planning Department, the City Biologist, City Environmental Health Administrator, City Geologist, the City Public Works Department and the LACFD. Prior to issuance of building permits, the project must have final approval by the City Environmental Sustainability Department. The proposed project complies with all applicable requirements of state and local law.

Finding B5. The project is consistent with the City's general plan and local coastal program.

According to the General Plan, the "PD designation provides for a mix of residential and recreational development on the Crummer Trust property [the subject project site] located east of Malibu Bluffs State park and south of Pacific Coast Highway." The proposed development of Lot 5 with a single-family residence and related ancillary development is consistent with the PD designation as defined in the General Plan. Table 5.9-1 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu General Plan, and the analysis concluded that the project is consistent with all applicable policies of the General Plan.

On February 24, 2014, the City Council adopted Resolution No. 14-13 to amend the Local Coastal Program Land Use Plan (the "LUP") to specifically provide that the "PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway." The City Council found that the amendment of the LUP would not result in impacts on public access to the beach, marine resources, scenic views, or environmentally sensitive habitat areas. On February 24, 2014, the City Council adopted Ordinance No. 379 to amend the Local Coastal Program Local Implementation Plan (the "LIP") to specifically provide for the development of five single-family residences and 1.74 acres of recreational area on the project site. The LIP amendment establishes the permitted uses, lot development criteria, and property development and design standards for the project site. The proposed development of Lot 5 with a single-family residence and related ancillary development is consistent with the LUP and LIP, as amended, and complies with the LIP development standards. In addition, Table 5.9-3 in the EIR for the project contains a detailed analysis of the proposed project's consistency with the Malibu Local Coastal Program, and the analysis concluded that the project is consistent with all applicable policies of the Local Coastal Program. The findings made in connection with the Coastal Development Permit regarding consistency with specific Local Coastal Program policies are also incorporated herein.

Finding B6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in MMC Section 17.40.040(A)(17).

In April 2012, story poles were installed on the project site reflecting the proposed project. The story poles were installed again in April 2014 to show the revised Lot 5 design consistent with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. The EIR includes the report entitled "Malibu Coast Estate: Visual Simulations Supplemental Report September 30, 2013" by S.A. Johnson, which depicts the project, including structures and landscaping at maturity, from 26 viewpoints, including the privately owned residential areas Malibu Country Estates and Malibu Knolls. The View Simulation report concluded that the project would not block any significant scenic resources from these private residential areas.

Pursuant to M.M.C. Section 17.40.040(A)(17), a primary view corridor may be assessed from principal residences within a 1,000 foot radius of the proposed structure or addition. Primary views are defined as "visually impressive scenes of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines." Using GIS, staff conducted a 1,000 foot radius buffer search and determined that the only residential units located north of the project site with a protected primary view corridor are condominiums and townhouses along Civic Center Way and DeVille Way. Based on aerial photographs and site inspections, the primary views of the residential units along Civic Center Way and DeVille Way are unaffected by the proposed project because the project site is at a higher elevation and the proposed project does not obstruct views of the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys or ravines. While the project would be visible against the sky, sky views are not protected as primary views and the view of the sky is only minimally obstructed. While the project would obstruct views of the sky, sky views are not protected as primary views, and views of the sky would be only minimally obstructed. No primary view determinations were requested from residents in condominiums or townhouse units along Civic Center Way and DeVille Way. Furthermore, the proposed project is consistent with the Reduced Project Alternative, which minimizes this obstruction by reducing the height and bulk of the project.

During the planning process, the Planning Department has received comments from some residents of the Malibu Country Estates and Malibu Knolls neighborhoods regarding potential view obstruction. The September 2013 visual simulations included viewpoints within both neighborhoods. The residences within the Malibu Country Estates and Malibu Knolls neighborhoods are located beyond the 1,000 foot radius of the proposed project, and therefore, the project site is not within the protected primary view corridor of these neighborhoods. Based on evaluation and site inspections, the proposed development on Lot 5, as represented by the story poles and as shown in the visual simulations, would not result in obstruction of visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

Finding B7: The project will not have a significant adverse impact on natural resources and makes suitable provisions for the preservation of natural hydrology, native plant materials, wooded areas, visually significant rock outcroppings, rough terrain, coastal bluffs and similar natural features.

The analysis of biological resources in the EIR for the project concluded that the proposed development would not result in the loss of sensitive habitat. No wetlands or sensitive natural communities would be impacted by the project. Glenn Lukos Associates determined that there are no streams associated with the project site that would be subject to Army Corps or California Department of Fish and Wildlife jurisdiction. No riparian habitat occurs on the project site. None of the plant communities identified as occurring on the project site are listed as sensitive communities by the California Department of Fish and Wildlife or the US Fish and Wildlife Service. Therefore, no significant impacts to sensitive plant communities would occur as a result of the proposed project's implementation. The project would also not impact any visually significant rock outcroppings, coastal bluffs, and similar natural features. Therefore, the project will not have a significant adverse impact on natural resources.

Finding B8: The project does not affect solar access.

The proposed development on Lot 4 consists of a two-story residence on a 3.12 acre lot. Development will be required to be set back from the property lines in accordance with the Planned Development standards, which would ensure that solar access would be maintained on surrounding properties, given the 28 foot height of the residence. Therefore, the project does not affect solar access.

C. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)

The project site is not designated as ESHA on the LCP ESHA Overlay Map. In addition, biological Resource Studies prepared by Impact Sciences, Inc. in 2009 and Updated Reports prepared by Glenn Lukos Associates in 2012 and 2013 did not identify any biological resources that meet the definition of ESHA pursuant to LIP Chapter 4. Furthermore, the FEIR concludes the biological resources on the project site are not rare or especially valuable; do not contribute to the viability of plant and wildlife species designated as threatened or endangered under state or federal law; do not contribute to the viability of any fully protected species or species of special concern; do not contribute to the viability of other rare species such as those listed by the California Native Plant Society; nor are they easily damaged by human activities. The onsite channels are not designated Special Biological Significance or Marine Protected Area. Therefore, the onsite resources are determined to not qualify as ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

D. Native Tree Protection Ordinance (LIP Chapter 5)

The provisions of the Native Tree Protection Chapter only apply to those areas containing one or more native Oak, California Black Walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, four and one-half feet from the ground. According to a Protected Tree Report prepared by Impact Sciences, Inc. in January 2009, the project site contains six southern California black walnut trees meet the City's definition of a Protected Tree. The locations of these southern California walnut trees are all outside of the project's grading limit and will be avoided, therefore, the Chapter 5 findings are not applicable.

E. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, or provide views to or is visible from any scenic area, scenic road or public viewing area. Development on Lot 5 would be visible from PCH, and Malibu Canyon Road, designated as scenic roadways per the LCP. In addition, other public scenic areas within the vicinity include Malibu Bluffs Park immediately adjacent, Malibu Lagoon, approximately one-half mile to the east. Amarillo Beach, approximately 300 feet south of the project site, and Legacy Park, approximately one-half mile east of the project site. The required findings in Chapter 6 are made below.

Finding E1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Lot 5 is located between Malibu Road and PCH. In April 2012, story poles were installed on the project site reflecting the originally proposed design of Lot 4. The story poles were installed again in April 2014 to show the configuration and height of the proposed project in conformance with the Reduced Project Alternative. The story poles were certified by a professional land surveyor. Due to comments received during the 45-days public comment period, a Reduced Project Alternative was analyzed in the FEIR. The project consists of a reduction of 182 square feet of TDSF. The project also includes a revised landscaping plan deletion of the removal and relocation of numerous trees.

While on the beach, views of the ocean are oriented to the south, away from the proposed project and therefore, the project does not result in scenic impacts to views from the beach. The proposed project will both be visible from Malibu Canyon Road and PCH; however, extensive view simulations were prepared, including all proposed structures and mature landscaping as viewed from 26 different viewpoints, including Malibu Canyon Road looking south toward the project site, PCH and Cross Creek Road looking west toward the project site and on PCH, west of entrance to Bluffs Park. The visual simulations, included as Appendix A of the FEIR, show that the Reduced Project Alternative and landscaping blend into the surrounding natural environment and do not obstruct visually impressive scenes of the Pacific Ocean or Santa Monica Mountains from a public scenic area. The project's changes in project bulk and siting is consistent with the Reduced Project Alternative and will ensure the project will have no significant adverse scenic or visual impacts due to the project design and location on the site.

As conditioned, the proposed project will have no significant adverse scenic or visual impact.

Finding E2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated in Finding E1, CDP No. 07-149 and SPR No. 07-143, as conditioned, will have no significant adverse scenic or visual impact. Additionally, the landscaping planned and conditions of approval regarding colors and materials for future development will also serve to improve the visual quality of the site.

Finding E3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the Reduced Project Alternative is the least environmentally damaging feasible alternative.

Finding E4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

The proposed project does not pose any significant adverse impacts on scenic and visual resources. As discussed in Finding A3, the proposed project (Reduced Project Alternative), as conditioned and with the incorporation of mitigation measures, will result in a less than significant impact on scenic and visual resources. Further, as discussed above, the No Development / Existing Use Alternative was rejected from further analysis because it is unreasonable to assume that the applicant will never develop this site and it will remain in its current condition. The No Project, and Foreseeable Development Alternative would not lessen any of the environmental effects of the proposed project.

Finding E5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Findings A3 and E1, the proposed project as conditioned will have no adverse scenic and visual impacts. With the incorporation of mitigation measures outlined in the MMRP have been mitigated to a less than significant level.

F. Transfer of Development Credits (LIP Chapter 7)

LIP Chapter 7 applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 5, as conditioned.

G. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The required findings of LIP Chapter 9 are made as follows:

Finding G1. The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). The applicant submitted the following documents/data, which may be found on file with the City.

- Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., December 5, 2007.
- Revised Addendum No. 1, Feasibility-Level Grading Plan Review - Leighton and Associates, Inc., October 29, 2008.

- Responses to the City of Malibu Geotechnical Review Sheet Dated March 20, 2008 - Leighton and Associates, Inc., September 21, 2009a.
- Geotechnical Evaluation of Proposed OWTS - Leighton and Associates, Inc., September 21, 2009b.
- Phase I Environmental Site Assessment - Leighton and Associates, Inc., October 28, 2011.
- Response to City of Malibu Comments on "Hydrogeological/Treated Water Mounding Report" - Earth Consultants International, Inc., March 7, 2012.
- Responses to City of Malibu Geotechnical Review Dated January 12, 2010 - Leighton and Associates, Inc., March 7, 2012.
- Response to City of Malibu Environmental Health Review Sheet Dated December 21, 2009 - Earth Consultants International, Inc., March 7, 2012
- Response to City Of Malibu Geotechnical Review Dated May 7, 2012 - Leighton and Associates Inc., May 16, 2012
- 5 Geotechnical Reports, one for each individual residential lot - Leighton and Associates, Inc., May 16, 2012
- Response to City of Malibu Environmental Health Review Sheet Dated April 16, 2012 - Earth Consultants International, Inc., May 22, 2012.
- Geotechnical Responses to Comments on DEIR – Leighton and Associates, Inc., July 1, 2013
- City of Malibu Geology Review Sheets - City of Malibu 2008 through 2012

In these reports, site-specific conditions were evaluated and recommendations were provided to address any pertinent issues. Based on extensive review of the above referenced information, it has been determined that:

- The project site is not located within an Alquist-Priolo Earthquake Fault Zone therefore, it is unlikely that the project site will be impacted by active faulting or ground rupture.
- The Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone.
- The site is not within a California Seismic Hazard Zone for potential liquefaction hazard.
- Preliminary slope stability analysis indicate that slopes in the eastern and southern portion of the site meet the minimum required factors of safety for pseudo-static stability; however, structural setbacks are required to establish buildings within areas of the site that meet the minimum required factor of safety in other areas.
- The project site is outside of the potential tsunami inundation zone.
- The property is not located within FEMA's 100 year flood zone.
- The project site is in the vicinity of extreme fire hazard areas.

The City Geologist, City Public Works Department and the LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslides and Slope Instability Hazards

During field investigations and reconnaissance, no signs of deep-seated landslide features were observed onsite, only isolated erosion, rilling, and gullies were noted along the lower slopes.

Immediately to the south of the site along Malibu Road is the historical Amarillo Beach landslide. This landslide is documented as a complex of rotational landslides affecting the south-facing coastal cliffs and the area underlying the Malibu Road and the adjacent beachfront properties. Movement within the Malibu Coast Fault Zone, weathering, erosion, undercutting by wave action, and the presence of groundwater have been described as contributing factors for slope instability for the area. Significant movement of the Amarillo Beach landslide complex would most likely adversely affect the offsite residential structures along Malibu Road. Significant movement of the feature could cause headward movement of the headscarp region of the Amarillo Beach landslide complex.

The State Seismic Hazards Zones map identifies the slopes on the eastern and southern boundaries of the project site as an earthquake-induced landslide hazard zone, where "previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water condition indicate a potential for permanent ground displacements." The western and southern portions of the project site contain steep downward slopes. The height and steepness of the slopes are such that they may be susceptible to seismically induced slope failure or landsliding.

The 2007 Leighton and Associates, Inc. reports established a geotechnical setback zones for structures on the project site in order to avoid slope instability hazards. Similar to the proposed project, the reduced project alternative includes structures located within the structural setback zones; however, the City Geologist has conditionally approved the location of the proposed project with specific stabilization recommendations. Structures that are planned southerly of the geotechnical setback line are required to use deepen foundations that derive support below the geotechnical setback line. Based on the findings summarized in all referenced Leighton and Associates, Inc. reports, the proposed development would be safe from hazards posed by landslides, settlement, or slippage provided that the recommendations in the reports are implemented. Moreover, Leighton and Associates, Inc. determined that the proposed development would not adversely impact the geotechnical stability of property outside of the project site. The project will incorporate all recommendations contained in the above cited geotechnical reports and all foundation plans will be reviewed by the geotechnical consultant prior to permit issuance.

Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone (VHFHSZ), a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The site has been affected by wildfires in the past. Most recently, an October 2007 wildfire severely burned the northern, eastern, southern, and southwestern perimeters of the project site. A preliminary fuel modification plan has been prepared and approved for the proposed project. The preliminary fuel modification plan was prepared in accordance with the County of Los Angeles Fire Department Fuel Modification Plan Guidelines and identifies specific zones within a property that are subject to fuel modification. The long-term maintenance of the fuel modification zones will be addressed in the proposed project's CC&Rs and will be maintained by the homeowners' association (HOA). The LACFD has reviewed and approved the Preliminary Fuel Modification Plan, and the Final Fuel Modification Plan for the proposed project will need to be approved at the time of VTTM recordation.

Construction of the proposed structures would utilize appropriate building materials (i.e., ignition-resistant materials) and design features to complement the provided fuel modification. The design

will also incorporate alternative fuel modification measures where fuel modification cannot be fully accommodated onsite, such as noncombustible firewalls and landscaping techniques that include irrigated, fire-resistant plant species.

In addition to the approved Preliminary Fuel Modification Plan, a supplementary Fire Protection Plan was prepared to evaluate the project's vulnerability to fires with regard to emergency access to the site, the adequacy of fire hydrants available to serve the site, and the design of the proposed structures. The Fire Protection Plan includes recommendations for the design of the road, gate, and driveways that would be created by the proposed project. These recommendations address the following planning and design elements:

- Fuel modification zones and permitted vegetation
- Roadway access, gates, and driveways
- Ignition-resistant structural requirements
- Interior and exterior fire protection systems

Nonetheless, a condition of approval has been included in this Resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Finding G2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding G1, the proposed project, as conditioned and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards due to project modifications, landscaping or other conditions.

Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As stated in Finding A3, the proposed project is the least environmentally damaging alternative.

Finding G4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in Finding G1, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity of the proposed project.

Finding G5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The sensitive resource protection policies contained in the LCP are not applicable to the proposed project because it does not impact ESHA or ESHA buffer. As stated in Finding G1, the proposed project, as designed, conditioned, and approved by the City Geologist, City Biologist, City Public Works Department and the LACFD, will not have any significant adverse impacts on sensitive resources as enumerated by the LCP.

H. Shoreline and Bluff Development Ordinance (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is seaward of Malibu Road. The required findings in LIP Section 10.3 are made as follows.

Finding H1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

Pursuant to LIP Section 10.4, "all new development located on a bluff top shall be set back from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure." The required setback is 100 feet from the bluff edge, however, this distance may be reduced to 50 feet if the City geotechnical staff determines that the proposed development will not be endangered by erosion or slope instability with a lesser setback. The project site contains descending slopes along the north, east, and south portion of the site. Slope stability analyses and erosion rate estimates were performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer.

The December 2007 Leighton and Associates, Inc., report established a geotechnical setback line away from the slope delineating areas with factor of safety of 1.5 or greater. Furthermore, the October 2008 Leighton and Associates, Inc. report determined that the average historic rate of bluff retreat is 0.12 feet per year. To account for future extreme conditions, such as future El Niño storm events, Leighton and Associates, Inc. assumed a long-term bluff retreat rate of 0.2 feet per year. Based on a 0.2 bluff retreat rate, the current top of bluff is estimated to erode 20 feet over the course of 100 years. The study also concluded that the bluff retreat line is less restrictive than the 1.5 geotechnical setback line.

The proposed residence and all accessory structures are located landward of both the 100 year bluff retreat line and the 50 foot setback line. All structures on Lot 5 are located a minimum of 85 feet from the top of bluff.

Fencing, which does not require any structural foundations, extends into the 50 foot setback area. Pursuant to LIP Section 10.4, "ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge." The project is not anticipated to result in any new significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding H2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding H4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding H1, the project, as conditionally approved by the City Geologist, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding H5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The project does not include a shoreline protective device; therefore, this finding is not applicable.

I. Archaeological / Cultural Resources (LIP Chapter 11)

To adequately assess the project site, Phase 1 archaeology studies were completed in 2007 and 2013; a paleontology records search was also completed. No archaeological or paleontological resources were identified on-site. However, because project construction activities could possibly disturb previously unidentified archaeological resources, mitigation measures have been included for the project to require a qualified archaeologist and a Native American Monitor of Chumash heritage to monitor all ground-disturbing activities, including but not limited to all grading, excavation and site preparation.

J. Public Access (LIP Chapter 12)

In accordance with LIP Section 12.5(B)(2), the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Lateral and Vertical Public Access - The project is not located on or adjacent to a shoreline; therefore, no condition for lateral or vertical access is required by the LCP.

Bluff-top Public Access - The project is located on a bluff-top property; however, no potential project-related or cumulative impact on bluff-top access is anticipated because the site does not have potential to offer bluff-top access. The project site is accessible by way of private property and is not

accessible to the public. Furthermore, due to the topography of the project site, public safety concerns may arise if bluff-top access was provided.

Trail Public Access - The project site does not include any existing or planned trails as indicated on the City Trails Master Plan or the LCP Parklands Map; therefore, no condition for trail access is required by the LCP.

Recreational Public Access - The project site is located adjacent to Malibu Bluffs Park and Lot 7 which is proposed to be dedicated to the City for public recreational uses. The proposed private street providing access to the single-family homes would include sufficient turnaround area in the event that vehicles intending to go to Malibu Bluffs Park inadvertently turn into the private residential road. No condition for recreational access is required by the LCP.

K. Land Division (LIP Chapter 15)

LIP Chapter 15 applies to land division applications. The land division portion of the project (CDP No. 07-144 and VTTM No. 07-033) was analyzed in Planning Commission Resolution No. 14-02. The project scope discussed in this Resolution is for development on Lot 5, as conditioned.

L. Onsite Wastewater Treatment System Standards (LIP Chapter 18)

LIP Section 18.7 includes specific siting, design and performance requirements. New discharges from onsite wastewater disposal systems are prohibited within the Malibu Civic Center area under Los Angeles RWQCB Resolution R4-2009-007 issued in November 2009. The proposed project is one of a few projects excepted from the prohibition because those projects had already progressed far enough through the entitlement process. Under the terms of the prohibition, the proposed project must be connected to a certified wastewater treatment facility by 2019. In addition, as a condition of approval, the applicant / property owner or successor is required to obtain a permit for the alternative onsite wastewater treatment system (AOWTS) from the RWQCB and legally establish a HOA governing document that obligates the collection of assessments, specifies how the AOWTS will be operated and maintained.

The project includes an OWTs consisting of six septic tanks, a 2,000 gallon septic tank for each of the single-family residences on Lots 1 through 5 and a 1,500 gallon septic tank for the guard house on Lot 6, a treatment plant located on Lot 6 and seepage pits located on Lot 7, all of which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. All wastewater would be routed to a 35,000-gallon, four-compartment equalization/recirculation/polishing/dosing tank connected with treatment units. Treatment would be performed in two stages. Three Advantex AX100 treatment units would be used for Stage I treatment, and three additional Advantex AX100 treatment units would be used for nitrogen reduction (secondary nitrification). After treatment, disinfection of the effluent would occur by liquid chlorination and the effluent then would be dechlorinated prior to discharge to the seepage pits. The seepage pits would be six feet in diameter and range from 61 to 65 feet deep. Soil conditions at the proposed seepage pit locations allow for a separation between groundwater and the bottom of the seepage pits, ranging from 17 to 22 feet.

Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 07-149 and Site Plan Review No. 07-143, subject to the following conditions. In approving the coastal development permit and the site plan review, the Planning Commission has relied on the findings made in Planning Commission Resolution No. 14-02, which are incorporated herein.

Section 5. Conditions of Approval.

1. The applicants and property owners, and their successors in interest, shall indemnify, defend and hold harmless the City of Malibu and its elected and appointed officials, officers, employees and agents from and against any and all claims, actions, proceedings, liabilities and costs brought against the City and its elected and appointed officials, officers, employees and agents relating to the City's actions concerning this project, including but not limited to any proceeding under CEQA. This indemnification shall include (without limitation) damages, fees, and/or costs awarded against the City, cost of suit, attorney's fees, and 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 the property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project and the City's costs, fees, and damages that it incurs in enforcing the indemnification provisions set forth in this section.
2. Approval of this application is to allow for the project described herein. The scope of work approved includes:
 - a. 8,738 square foot, two-story single-family residence;
 - b. 1,752 square foot basement;
 - c. 885 square foot garage;
 - d. 479 square foot second unit;
 - e. 188 square foot cabana;
 - f. 700 square feet of loggia space that projects more than six feet;
 - g. trellis;
 - h. swimming pool, spa and pool equipment;
 - i. decking;
 - j. hardscape;
 - k. roof-top mechanical equipment;
 - l. water features;
 - m. fencing;
 - n. grading;
 - o. motor court;
 - p. landscaping; and
 - q. a septic tank

3. Subsequent submittals for this project shall be in substantial compliance with site plans on-file with the Planning Department, dated **May 2, 2014**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of the Planning Commission's resolution and prior to issuance of any development permits.
5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
7. The coastal development permit shall be null and void if the project has not commenced within three (3) years after issuance of the permit. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized prior to expiration of the three-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Water District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required. However, no changes to the square footages described above in Condition No. 2 shall be permitted without Planning Commission approval of a coastal development permit.
11. Coastal Development Permit No. 07-149 and Site Plan Review 07-143 shall not become effective unless and until the following legislative act (LCPA No. 12-001) is certified and in effect.

12. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
13. Prior to issuance of the first Certificate of Occupancy, the property owner shall provide a copy of a valid Operating Permit pursuant to Malibu Municipal Code Section 15.14.030 or an Operating Permit application fee receipt, unless the project does not include an OWTS and ties into the City wastewater treatment system.

Cultural Resources

14. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
15. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
16. A Native American Monitor of Chumash descent shall be retained to monitor all ground-disturbing activities, including but not limited to all grading, excavation, and site preparation. Any artifacts recovered shall be curated at the South Central Coastal Information Center at California State University, Fullerton, the designated repository for Los Angeles, Ventura, and Orange Counties. The extent and duration of the archaeological monitoring program shall be determined in accordance with the proposed grading or demolition plans. If human remains are uncovered, the Los Angeles Coroner, Native American Heritage Commission, local Native American representatives, and archaeological monitor shall determine the nature of further studies, as warranted and in accordance with Public Resources Code 5097.98 and the City's standard conditions of approval. This mitigation measure shall also apply to trenching for utilities, geological testing, and any other ground-disturbing activities associated with the proposed project.

Walls and Fencing

17. The applicant shall include an elevation of the proposed electronic driveway gate on the architectural plans that are submitted for building plan check. The gate and all fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.
18. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall

shall exceed 6 feet in height or 12 feet in height for a combination of two or more walls.

Colors and Materials

19. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
 - a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
20. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.
21. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

Lighting

22. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
23. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
 - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited;
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
24. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject

properties shall not produce an illumination level greater than one foot candle.

Swimming Pools / Spas / Water Features

25. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in Malibu Municipal Code Chapter 8.24 (Noise).
26. All pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
27. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
28. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool/spa is prohibited unless it is discharged to a sanitary sewer system. Provide information on the plans regarding the type of sanitation proposed for pools.
 - a. Ozonization systems are an acceptable alternative to chlorine. The release of clear water from ozonization system is permitted to the street or sewer;
 - b. Salt water sanitation is an acceptable alternative, but the discharge of salt water is prohibited to the street and sewer;
29. Highly chlorinated water from pools or spa shall be discharged to a public sewer or may be trucked to a publicly owned treatment works (POTW) for discharge.
30. The discharge of chlorinated pool water shall be prohibited.
31. The discharge of non-chlorinated pool water into streets, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters shall be prohibited.
32. Pursuant to Malibu Municipal Code Section 9.20.040(B), all ponds, decorative fountains and water features shall require a water re-circulating/recycling system.

Biology/Landscaping

33. The Maximum Applied Water Allowance (MAWA) for Lot 5 totals 752,695 gallons per year. The Estimated Applied Water Use (EAWU) totals 508,694 gpy, thus meeting the Landscape Water Conservation Ordinance Requirements.
34. With the exception of the newly proposed water line no new development, planting, or irrigation is permitted within public easements. Any new structure, plant or irrigation system occurring in the public easement shall be removed at the owner's expense.
35. Prior to Final Plan Check Approval, if your property is serviced by the Los Angeles County Waterworks District, please provide landscape water use approval from that department.
36. Invasive plant species, as determined by the City of Malibu, are prohibited.

37. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth). The vegetation shall also be maintained so that the residential structures are screened to maximum extent feasible. On-site trees shall be maintained so that they shall not exceed 35 feet in height.
38. Vegetation forming a view impermeable condition (hedge), serving the same function as a fence or wall, occurring within the side or rear yard setback shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.
39. The use of building materials treated with toxic compounds such as copper arsenate is prohibited.
40. Prior to final landscape inspection, provide a signed copy of the Certificate of Completion, certifying the irrigation installation and operational efficiency is consistent with the approved plans.
41. New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values.
42. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.
43. Grading shall be scheduled only during the dry season from April 1 - October 31. If it becomes necessary to conduct grading activities from November 1 - March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
44. Grading/excavation/grubbing or any other site preparation activities that has the potential to remove or encroach into existing vegetation (including the pipeline project) scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 300 feet (500 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site. Nesting bird survey reports are valid for no more than 5 days.
45. Construction fencing shall be installed within five (5) feet of the limits of grading adjacent to native habitat prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.

46. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. All lighting fixtures shall be rated dark skies compliant. Prior to issuance of a Building Permit, the applicant shall submit a photometric plan for review and approval by the Planning Director. The photometric plan shall also demonstrate compliance with any dark skies ordinance or any other applicable lighting standards adopted by the City prior to issuance of a building permit for any structure on the site.
47. No lighting for aesthetic purposes such as up-lighting of landscaping, is permitted.
48. Necessary boundary fencing of any single area exceeding one half (1/2) acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred.
49. The upper reaches of the water pipeline are proposed close proximity of an ESHA area on the northwest side of Malibu Canyon Road. As designed, no impacts to ESHA would occur. In the event of any changes of design or construction methodologies that have the potential to extend beyond the identified easement/right-of-way, the City Biologist shall be notified immediately and before any work is done outside the easement/right-of-way.
50. Upon completion of landscape planting in the proposed common areas, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
51. All biological conditions outlined in the final approved Environmental Impact Report (EIR) and individual lot development reviews shall be adhered to. In the event of any conflicting conditions, the more restrictive shall apply.

Environmental Review Board

52. The applicant/property owner or its successor shall prepare a drainage plan, demonstrating that drainage is collected in drainage facilities with non-erosive devices.
53. The drafting hydrant for swimming pools above 5,000 gallons shall be located in an area easily accessible to the LACFD. The locations of the drafting hydrant shall be approved by the LACFD.
54. Irrigation of steep slopes shall be avoided, if possible.

Geology

55. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a

grading permit.

56. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading and drainage. Any substantial changes may require amendment of the CDP or a new coastal development permit.
57. Engineered structures such as retaining walls, footings for small structures and significant cut and fill grading, will require the preparation of a geotechnical report that provides recommendations for the design of these structures and grading procedures in accordance with the City's Geotechnical Guidelines and Building Codes.
58. The project geotechnical consultants should review the referenced plans. The project engineering geologist and a registered geotechnical engineer or civil engineer practicing in geotechnical engineering in the state of California should be retained to perform geotechnical investigations for the proposed improvements discussed above and prepare a report(s) providing recommendations for the structural improvements and grading, as applicable. City geotechnical staff shall review the report(s) for conformance to the City's geotechnical guidelines and Building/Grading Codes during the building/grading plan check phase.

Public Works

59. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
60. Geology and geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The applicant's consulting engineer shall sign the final plans prior to the issuance of permits.
61. The Total Grading Yardage Verification Certificates shall be copied onto the coversheet of the Grading Plans submitted for the project. No alternative formats or substitute may be accepted.
62. Grading permits shall not be issued between November 1 and March 31 each year. Projects approved for a grading permit shall not receive grading permit unless the project can be rough-graded before November 1.
63. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
64. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
65. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the Waste Discharger Identification (WDID) number prior to the issuance of grading or building permits.

66. Storm drainage improvements are required to mitigate increase runoff generated by property development. The applicant/property owner or its successor shall have the choice of one method specified within the City's LIP.
67. The applicant shall label all City/County storm drain inlets within 250 feet from each property line per the City of Malibu's standard label template.
68. Prior to final approval of the Public Works Department, the applicant shall submit a digital drawing of the project's storm drainage and post-construction BMPs.
69. A Grading and Drainage Plan is required, and shall be submitted to the City Public Works Department for review and approval, prior to the issuance of grading permits for the project. The following elements shall be included in this plan:
 - a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.
70. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the rainy season). The following elements shall be included:
 - a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
 - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
71. A Storm Water Pollution Prevention Plan (SWPP) shall be provided prior to the issuance of grading permits. This plan shall include:
 - a. Dust Control for the management of fugitive dust during extended periods without rain;
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
 - d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent discharge of runoff through the waste.
72. A Water Quality Mitigation Plan (WQMP) is required for this project (also known as

Standard Urban Stormwater Management Plan or SUSMP). The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The following elements shall be included within the WQMP:

- a. Site Design Best Management Practices (BMPs);
- b. Source Control BMPs;
- c. Treatment Control BMPs;
- d. Drainage improvements;
- e. Methods for on-site percolation, site re-vegetation and analysis for off-site project impacts;
- f. Measures to treat and infiltrate runoff from impervious areas;
- g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
- h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
- i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at time of submittal for the review of the WQMP shall be paid prior to the start of the technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted to the Public Works Department's approval of the building plans for the project.

73. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion Goal.
74. Prior to grading permit issuance, final grading and drainage plans incorporating construction-phase erosion control and storm water pollution prevention, as well as post-construction storm water management must be approved by the City Public Works Department.

Environmental Health

75. Prior to final City Environmental Health Administrator approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).

76. The applicant/property owner or its successor shall provide complete engineering design drawings, calculations, construction specification, and an operation and maintenance manual to the City Environmental Sustainability Department. Describe all AOWTS components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of systems for onsite wastewater treatment and disposal. Electronically monitored flow meters shall be flowing daily through the wastewater system. The final AOWTS design shall provide sufficient capacity for onsite treatment and disposal of all project wastewater discharges in accordance with the requirements of the MPC, LCP/LIP and RWQCB. In addition, the wastewater treatment process shall be reviewed and approved by the City's wastewater engineering consultant (currently Tetra Tech, Inc.) prior to Environmental Health final approval.
77. The applicant/property owner or its successor shall building plans, wastewater plans, and all necessary supporting forms, and reports, to the RWQCB, 320 W. 4th St., Los Angeles, CA 90013, (213) 576-6600, to assure compliance with the California Water Quality Control Plan, Los Angeles Region (Basin Plan). Waste Discharge Requirements (WDRs) for this project have not yet been issued by the RWQCB. A copy of applicable WDRs issued by the RWQCB must be included with your Plan Check submittal. The City's Plan Check wastewater engineering review will be performed relative to the treatment objectives expressed in the WDRs. Please note that while the wastewater system renovation project has been approved in-concept for the Coastal Development Permit, the final design of the treatment train may need to be substantially modified from what has been shown in the Conformance Review wastewater engineering preliminary design documents.
78. Prior to receiving Environmental Health final approval, the project owner shall legally establish a homeowners' association governing document that obligates the collection of assessments, specifies how the AOWTS shall be operated and maintained, creates the ongoing obligation of the homeowner's association to comply with all permitting requirements, references all applicable LCP/LIP requirements with respect to package wastewater treatment plants, and establishes a financial assurance mechanism acceptable to the City of Malibu. The CC&R's shall be reviewed and approved by City Attorney's office and then submitted to the Environmental Health Administrator.
79. An operations and maintenance manual specified by the AOWTS designer shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.
80. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted.
81. City of Public Works Department final approval shall be submitted. The City of Malibu Public Works reviewer shall review the AOWTS design to determine conformance with Public Works Department requirements.
82. City of Malibu Geologist, Geotechnical Engineer, and Hydrogeologist final approvals shall be submitted.

83. The applicant/property owner or its successor shall submit an application the Environmental Sustainability Department for an OWTs operating permit. An operating permit fee in accordance with the fee schedule in effect at the time of submittal shall be submitted with the application.
84. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42-inches tall.

Fire Safety

85. The applicant/property owner or its successor shall provide water mains, fire hydrants and fire flows as required by the County of Los Angeles Fire Department, for all land shown on map which shall be recorded.
86. The required fire flow for public fire hydrants at this location is 1,375 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 hydrant flowing simultaneously may be used to achieve the required fire flow.
87. Fire hydrant requirements are as follows: Install 3 private on-site fire hydrants
88. All hydrants shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approved equal. All onsite hydrants shall be installed a minimum of 25' feet from a structure or protected by two-hour rated firewall, location as per map on file with the office.
89. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
90. Additional water system requirements will be required when this land is further subdivided and/or during the building permits.
91. Per the County of Los Angeles Waterworks District No. 29, the Fire Flow Availability form dated March 30, 2012 indicated adequate flow from the existing public fire hydrant on Winter Mesa Drive. All required fire hydrant shall measure 6" x 4" x 2.5" brass or bronze, conforming to current AWWA standard C503 or approve equal and meet the required fire flow requirements as noted above.
92. All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval.
93. Emergency access for firefighter pedestrian use shall be extended to all exterior walls or all proposed structure within the subdivision. Additional walking access shall be reviewed and approved by the Fire Prevention Engineering prior to Building Permit issuance.
94. The applicant/property owner or its successor shall submit three copies of the final map to LACFD, Land Development for review and approval recordation.

95. The project may require interior fire sprinklers.
96. The project requires LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.
97. Access shall comply with Section 503 of the Fire Code, which requires all weather access. All weather access may require paving.
98. Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.
99. Where driveways shall be indicated on the final maps as "Private Driveway and Fire lane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code. All required fire hydrants shall be installed, tested and accepted prior to construction.
100. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
101. The applicant/property owner or its successor shall provide Fire Department or City approved street signs and building access numbers prior to occupancy.

Trash Storage Areas

102. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
103. Trash container areas must be screened or walled to prevent off-site transport of trash, other than by approved haulers.

Utilities

104. Power, telephone and cable television service shall be placed underground. The applicant / property owner or its successor shall coordinate with the proper utilities providers to properly relocate any existing facilities within the project site, if necessary.
105. Any utilities that are in conflict with the development shall be relocated at the developer's expense.

Water Service

106. The applicant shall be required to comply with the requirements of the Los Angeles County Waterworks District No. 29, as stated in the Will Serve Letter dated December 26, 2012.
107. All lots shall be served by adequately sized water system facilities, which shall include fire hydrants of the size, type and location as determined by the Fire Chief.

108. The water mains shall be of sufficient size to accommodate the total domestic and fire flow required for the land division. Domestic flows required are to be determined by the City Engineer. Fire flows required are to be determined by the Fire Chief.
109. Plans and specifications for the water system facilities shall be submitted for approval to the water company serving this land division. The applicant/property owners or its successor shall submit an agreement and other evidence, satisfactory to the City Engineer indicating that the applicant/property owner or its successor has entered into a contract with the servicing water purveyor guaranteeing payment and installation of the water improvements.
110. Prior to the filing of the final vesting tract map, there shall also be filed with the City Engineer, a statement from the water purveyor indicating the applicant/property owner or its successor compliance with the Fire Chief's fire flow requirements.

Site Specific Conditions

111. The property owner/applicant or their successor shall implement all mitigation measures specified in Environmental Impact Report No. 09-001 pursuant to the final Mitigation Monitoring and Reporting Program dated December 2013 (Exhibit B of Resolution No. 14-02).
112. The property owner/applicant or their successor shall obtain an encroachment permit from the City Public Works Department prior to commencement of any work within the Winter Mesa Canyon right of way.
113. The property owner/applicant or their successor shall obtain an encroachment permit from Caltrans prior to commencement of any work within the Pacific Coast Highway public right-of-way.
114. Prior to the issuance of building permits, the applicant shall submit a revised site plan for Lot 5 clearly showing the relocation of all Lot 5 structures at least 20 feet to the north and 23 feet to the west.

Deed Restrictions

115. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or a bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
116. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design,

construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.

117. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 21 - 23. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.
118. Prior to issuance of the Certificate of Occupancy, the applicant shall be required to execute and record a deed restriction for each of the five residential parcels reflecting that each property owner is responsible for maintaining the access road in a manner that guarantees adequate access for emergency vehicle access and adequate ingress/egress for the properties served thereby.

Prior to the Issuance of Certificate of Occupancy

119. Prior to issuance of the Certificate of Occupancy, the applicant shall provide the Planning Department with a copy of the recorded Covenants, Conditions and Restrictions (CC&Rs) for the property. The CC&Rs shall be reviewed by the City Attorney prior to recordation and must include all applicable provisions required as mitigation measures in the Mitigation Monitoring and Reporting Program.
120. Prior to the issuance of the Certificate of Occupancy, the applicant/property owners of its successor shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
121. Prior to final sign off by the Planning Department, the City Biologist shall inspect the project site and determine that all planting conditions to protect natural resources are in compliance with the plans as approved and conditioned.

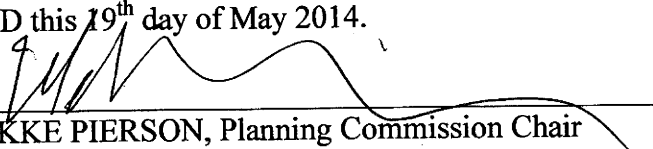
Section 6. Severability.

If any part, provision, or section of this Resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this Resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

Section 7. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of May 2014.


MIKKE PIERSON, Planning Commission Chair

ATTEST:


PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), 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.

COASTAL COMMISSION APPEAL - An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-07 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of May 2014, by the following vote:

AYES:	3	Commissioners: Brotman, Jennings, and Stack
NOES:	2	Commissioners: Pierson and Mazza
ABSTAIN:	0	
ABSENT:	0	


PATRICIA SALAZAR, Recording Secretary

ESCROW AGREEMENT

This Escrow Agreement (this “**Agreement**”) is entered into as of January __, 2015 by PCH Project Owner, LLC, a Delaware limited liability corporation (“**PCH**”) and the California Coastal Commission, a California state agency (the “**Commission**”). Each of PCH and the Commission is referred to herein as a “**Party**” and together they are referred to as the “**Parties**”.

RECITALS

A. PCH is the owner of an approximately 24-acre vacant parcel in the City of Malibu, California (the “**City**”), adjacent to Malibu Bluffs Park, commonly referred to as the “Crummer Trust” parcel and located at 21420 Pacific Coast Highway (APNs 4458-018-018, 4458-018-019, 4458-018-002) (the “**Property**”).

B. PCH has applied to the City to develop five single-family residences and ancillary facilities (the “**Project**”) on the Property. On February 24, 2014, the Malibu City Council took the following actions with respect to the Project: (i) adopted Resolution 14-11 certifying a Final Environmental Impact Report for the Project, (ii) adopted Resolution 14-12, approving a Vesting Tentative Tract Map No. 070038 (“**VTTM**”) and a Coastal Development Permit (“**CDP 07-144**”) for the subdivision of the Property, (iii) adopted Resolution 14-13, approving a Local Coastal Program Amendment (“**LCPA**”) deleting LUP Policy 2.78 and amending land use designations (collectively, “**LCPA 12-001**”), and (iv) adopted Ordinance No. 379, approving LCPA 12-001, amending the Local Implementation Plan to specify the type, density, uses, and development standards for the Property, and amending the Malibu Municipal Code to establish the Malibu Coast Estate Planned Development District on the Property.

C. On May 19, 2014, the Malibu Planning Commission conditionally approved Coastal Development Permits for five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 07-145, 07-146, 07-148 and 07-149 (together with CDP 07-144 and such CDPs may be amended in a manner acceptable to PCH in its sole and absolute discretion, the “**City CDPs**”).

D. The City submitted LCPA 12-001 (also referred to as “**LCPA 4-MAL-14-0408-1**”) to the Commission on April 21, 2014. On June 6, 2014, the Executive Director of the Commission determined that the City’s LCP amendment submittal was in proper order and legally adequate to comply with the requirements of Coastal Act Section 30510(b).

E. The Commission staff recommended that the Commission adopt certain modifications to LCPA 12-001, which modifications are shown on Exhibit 2 attached hereto (the “**Suggested Modifications**”).

F. In connection with LCPA 12-001, PCH has proposed to (i) make an in lieu payment of Two Million Dollars (\$2,000,000.00) (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the California Department of State Parks and Recreation (“**State Parks**”) in the general area, (ii) deliver a dedication substantially in the form of Exhibit 4 attached hereto (the “**Dedication**”) an open space conservation easement to the Mountains and Recreation Conservancy Authority

("MRCA") on behalf of the people of the State of California over an approximately 6.23 acre area including all of the bluff slopes and approximately 2 acres of the canyon area of the Property as depicted on Exhibit 5 attached hereto, for the purpose of habitat protection (the "**Conservation Easement**"), and (iii) provide MRCA with a payment of Twenty Five Thousand Dollars (\$25,000) as an endowment to monitor the Conservation Easement (the "**Easement Endowment**"). In addition, PCH shall work cooperatively with the MRCA to minimize fuel modification and identify habitat restoration opportunities within the 6.23 acre easement area. PCH and the Commission desire to establish and utilize an escrow so that, upon the fulfillment of all conditions stated in this Agreement, the In Lieu Payment, the Dedication and the Easement Endowment shall be implemented in a self-executing manner.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Deposit of the In-Lieu Payment.** No later than two (2) business days prior to the Commission hearing on LCPA 12-001, presently scheduled for February 11, 2015, PCH shall provide proof to the Commission that PCH has deposited the In Lieu Payment and the Easement Endowment into a deposit account with Chicago Title Company ("**Escrow Agent**"), which Escrow Agent is acceptable to both PCH and the Commission. Escrow Agent will establish an interest bearing escrow account for the In Lieu Payment. PCH and the Commission acknowledge and agree that the additional escrow instructions ("**Escrow Instructions**") attached hereto as Exhibit 1 are incorporated herein. PCH and the Commission shall execute such supplemental instructions and other documents and instruments as requested by Escrow Agent in connection with establishing the escrow. Escrow Agent's fees and costs shall be divided equally between the Parties.

2. **Deposit of Declaration of Covenants and Dedication.** In order to provide further assurances to the Commission regarding the eventual payment of the In Lieu Payment in the event that PCH delivers the Termination Notice (as defined in Section 5 below), PCH has executed that certain Declaration of Covenants in the form of Exhibit 3 attached hereto (the "**Declaration of Covenants**") and deposited it with Escrow Agent to be handled in accordance with this Agreement. In addition, PCH has deposited the Dedication with Escrow Agent to be handled in accordance with this Agreement. Neither the Declaration of Covenants nor the Dedication shall be delivered or otherwise effective until it is recorded in the Official Records of Los Angeles County in accordance with this Agreement.

3. **Conditions Precedent to Disbursement of In Lieu Payment.** Pursuant to this Agreement, Escrow Agent shall release the In Lieu Payment to State Parks only upon the occurrence of the following: (i) written confirmation from the Commission staff to Escrow Agent, and (ii) written confirmation from PCH to Escrow Agent, in each case confirming that all of the following conditions precedent have been satisfied (the Parties' duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met):

- a. The Commission has approved and certified LCPA 12-001 (including the Suggested Modifications);
- b. If the Commission has modified or otherwise adopted changes to LCPA 12-001 (other than the Suggested Modifications) (such modifications or changes being the “**Commission Modifications**”), PCH has determined, in its sole and absolute discretion, that such modifications or changes are acceptable to allow the Project to continue and has communicated its determination in writing to the Commission;
- c. If PCH has notified the Commission of PCH’s lack of objection to the Commission Modifications in the manner specified in subsection 3(b) above, and the City Council of the City has subsequently (i) accepted and agreed to the Commission Modifications to LCPA 12-001 as required and approved pursuant to the Commission’s certification of LCPA 12-001, and (ii) has taken whatever formal legal action is required to incorporate the Commission Modifications to LCPA 12-001 into the City’s Local Coastal Plan;
- d. The Executive Director of the Commission has determined that the City’s actions described in Subsection (c) above are legally adequate to satisfy the Commission’s certification of LCPA 12-001, the Executive Director has reported such determination to the Commission, the Commission has not objected to such determination, notice of certification of LCPA 12-001 has been filed with the Secretary of the Resources Agency for posting, (i) together with the expiration of any applicable appeals period and the statutes of limitation period for lawsuits and any other legal challenges to LCPA 12-001 without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been commenced, or (ii) any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (A) such adjudication or resolution has upheld, in its entirety, the validity of LCPA 12-001, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of LCPA 12-001 (as modified), but such actions are acceptable to PCH in its sole and absolute discretion such that the LCPA 12-001 is final, valid and in full force and effect (the “**Final Certified LCPA**”);
- e. Following the foregoing actions of the City Council of the City and the Commission as set forth in in Subsections 3(a), (b), (c) and (d) above, the City has issued Notices of Final Action as to the City CDPs, without modification unless PCH has notified the Commission in writing of its determination, in its sole and absolute discretion, that such modifications are acceptable for the continuance of the Project; and
- f. Either (i) the applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits and any other legal challenges to the City CDPs, the Final Environmental Impact Report and the other City approvals have expired without any Legal Challenges having been commenced, or (ii) any and all Legal

Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (A) such adjudication or resolution has upheld, in their entirety, the validity of the City CDPs, the Final Environmental Impact Report and the other City approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the City CDPs, the Final Environmental Impact Report and the other City approvals, but such actions are acceptable to PCH in its sole and absolute discretion and PCH has indicated such in writing.

Upon the satisfaction of the foregoing conditions precedent and the written confirmation by PCH and the Commission delivered to Escrow Agent, Escrow Agent shall (i) disburse the In Lieu Payment to State Parks in accordance with instructions to be delivered to Escrow Agent by the Commission, (ii) disburse the interest earned on the In Lieu Payment to PCH in accordance with instructions to be delivered to Escrow Agent by PCH, (iii) record the Dedication in the Official Records of the County of Los Angeles, (iv) disburse the Easement Endowment in accordance with the agreement between PCH and MRCA, and (v) return the Declaration of Covenants to PCH.

4. **Recordation of the Declaration of Covenants.** If the conditions precedent set forth in Subsections 3(a), (b), (c) and (d) above are satisfied and the Final Certified LCPA is in effect, but PCH terminates this agreement in accordance with Section 5 below due to the failure of the conditions precedent set forth in Subsections 3(e) or (f) above, and the Commission and PCH have delivered written confirmation (the Parties' duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met), Escrow Agent shall concurrently (i) cause the Declaration of Covenants to be recorded in the Official Records of the County of Los Angeles, (ii) provide conformed copies of the Declaration of Covenants to PCH and the Commission evidencing such recordation, (iii) return the Dedication to PCH, and (iv) disburse the In Lieu Payment and Easement Endowment and all interest earned thereon to PCH.

5. **Termination of this Agreement.** PCH shall have the right (but not the obligation) to elect to terminate this Agreement by delivering written notice (the "**Termination Notice**") to the Commission and Escrow Agent, which election shall be in PCH's sole and absolute discretion, if at any time (i) any of the conditions precedent enumerated in Subsections 3(a), (b), (c), (d), or (e) fail to occur, or (ii) a Legal Challenge has been commenced and PCH determines in its sole and absolute discretion that it does not wish to defend against or otherwise participate in such Legal Challenge. Upon delivery of the Termination Notice to the Commission and Escrow Agent, Escrow Agent shall take the following actions: (1) promptly disburse the In Lieu Payment and all interest earned thereon to PCH, (2) promptly disburse the Easement Endowment and all interest earned thereon to PCH, (3) if the Declaration of Covenants has not been recorded, return the Declaration of Covenants to PCH, and (4) if the Dedication has not been recorded, return the Dedication to PCH. Upon Escrow Agent taking such actions, the rights and obligations of the Parties hereunder shall terminate. However, nothing in this Agreement shall limit or interfere with the exercise of discretion by the Commission or the City in acting on LCPA 12-001 or the City CDPs. Similarly, except as agreed to in Section 1 and 2 above and the satisfaction of the conditions precedent to the delivery of the In Lieu Payment, nothing in this Agreement shall limit or interfere with the right of PCH to preserve its legal position that the inclusion of an in-lieu fee mitigation requirement in LCPA 12-001 or as a

condition of the CDP 07-144 or the City CDPs would be contrary to applicable state and federal constitutional and statutory law.

6. **Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties. Neither Party may assign this Agreement to any other person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

7. **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision in the future.

8. **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of California.

9. **Conflict in Agreements.** In the event of a conflict between the general escrow instructions and the terms of this agreement, the terms of this agreement shall take priority.

10. **Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Exhibits attached hereto are incorporated herein by this reference for all purposes.

11. **Time.** Time is of the essence in the performance of this Agreement.

12. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange by facsimile or email counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in Section 15 below.

13. **Further Assurances.** In addition to the acts recited herein and contemplated to be performed, executed and/or delivered by either Party, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

14. **No Third Party Beneficiary.** The provisions of this Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or any of the documents to be executed and delivered in connection herewith.

15. **Notices.** All notices, consents, requests, reports, demands or other communications hereunder shall be in writing and may be given personally, by registered or certified mail, by email or by Federal Express (or other reputable overnight delivery service) as follows:

If to PCH:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, California 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, California 90071
Attn: Cary Kleinman, Justin Guichard and Jared Lazarus

Paul Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, California 90071
Attn: Alan W. Weakland

If to the Commission:

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attention: Deanna Christensen

with a copy to:

Attention:

If to Escrow Agent:

Chicago Title Company
725 S. Figueroa Street, Suite 200
Los Angeles, CA 90017
213-612-4161

joan.hawkins@ctt.com
Attention: Joan Hawkins, Commercial Escrow Officer

or to such other address or such other person as the addressee party shall have last designated by notice to the other party. All notices shall be deemed to have been given when received. All notices given by telecopy shall be followed by the delivery of a hard copy of such notice, provided that such notice shall be deemed to have been given when received by telecopy.

16. **Attorneys' Fees.** In the event that any Party shall bring an action to enforce its rights under this Agreement, or relating to the interpretation hereof, whether for declaratory or other relief, the prevailing Party in any such proceeding shall be entitled to recover from the other Party reasonable attorneys' fees and all costs, expenses and disbursements that the prevailing Party incurred in connection with such proceeding and any appeal thereof (including, but not limited to, reasonable attorneys' fees and costs).

[Signatures on next page]

SIGNATURE PAGE TO ESCROW AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written below.

“PCH”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: _____
Richard Ackerman
Authorized Signatory

“Commission”

California Coastal Commission,
a California state agency

By: _____
Name: _____
Title: _____

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attn: Deanna Christensen

ABOVE SPACE RESERVED FOR RECORDER'S USE ONLY

DECLARATION OF COVENANTS

This Declaration of Covenants (this “**Declaration**”), is made as of _____, 201__, by **PCH PROJECT OWNER LLC**, a Delaware limited liability company (“**Owner**”) for the benefit of the **CALIFORNIA COASTAL COMMISSION**, a California state agency (together with its successors and assigns, the “**CCC**”).

RECITALS

A. Owner owns certain real property located in the City of Malibu, State of California, which real property is more fully described and shown in the attached Exhibit A (the “**Real Property**”).

B. The term “**Owner**” as used herein means Owner and each of Owner’s successors in interest, including heirs, successors and assigns, and including all successors-in-interest to all or any portion of the Real Property, including portions or parcels resulting from the subdivision of the Real Property.

C. The City of Malibu (the “**City**”) has approved and submitted to the CCC its Local Coastal Plan Amendment 12-001 also referred to as “LCPA 4-MAL-14—408-1 (the “**LCPA**”) for approval and certification which, *inter alia*, allows the Real Property to be improved with five single-family residences totaling 49,611 square feet and 1.74 acres of park and open space (collectively the “**Residential Entitlement**”).

D. On May 19, 2014, the City of Malibu Planning Commission conditionally approved Coastal Development Permits and granted other approvals for the development of five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 14-03, 14-04, 14-05, 14-06, and 14-07 (collectively, the “**City CDPs**”) for the Real Property.

E. On _____, 2015, the CCC approved the LCPA with certain suggested modifications. Subsequently, the City Council of the City accepted and approved the LCPA with

such modifications and the LCPA became final, valid and in full force and effect (the “**Final Certified LCPA**”).

F. In connection with the CCC approval of the LCPA, Owner has agreed to make an in lieu payment of Two Million Dollars (\$2,000,000.00) under certain conditions (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the California Department of State Parks and Recreation (“**State Parks**”) in the general area.

G. In connection with the In Lieu Payment, Owner has agreed to execute and record this Covenant to assure CCC that the In Lieu Payment will be made under certain conditions specified herein.

H. Owner desires to enter into and record this Declaration to ensure that all subsequent owners of any portion of the Real Property will acquire such interests with full knowledge of and subject to the obligations set forth in this Declaration.

I. Owner, as declarant under this Declaration, declares that the Real Property is, and shall be, held, conveyed, hypothecated, encumbered, licensed, leased, rented, used and occupied subject to the following covenants. All of the covenants, conditions and restrictions set forth in this Declaration shall run with the land, and shall be binding upon the Real Property and the Owner and all parties having or acquiring any right, title or interest in the Real Property, or any portion thereof, and shall inure to the benefit of CCC and the successors and assigns of CCC.

J. This Declaration shall not have any legal effect until it has been recorded in the Official Records of the County of Los Angeles.

ARTICLE I

COVENANTS REGARDING THE ENTITLEMENT OF THE REAL PROPERTY

1. **Owner’s Obligation.** If, at any time, the Real Property receives valid Final Entitlements for the development and use of the Real Property for a proposed residential development, including, without limitation, the Residential Entitlement, then Owner shall pay to State Parks Two Million Dollars (\$2,000,000), within fifteen (15) business days after the Final Entitlements are achieved (the “**Obligation**”) (which amount shall be increased annually on July 1 of each year in accordance with increases in the Consumer Price Index (CPI) California – All Urban Consumers, with July 2015 used as the base year) . As used herein, “**Final Entitlements**” means the Final Certified LCPA, issuance of the requisite Coastal Development Permits, site plan approval, tract map approval, certification of the Final Environmental Impact Report and all other governmental approvals required for the development and construction of the residential units and all related roads, utilities and other infrastructure (the “**Entitlements**”), together with the expiration of all applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits and any other legal challenges to such Entitlements without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been commenced, or (ii) any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either

(A) such adjudication or resolution has upheld, in their entirety, the validity of such Entitlements and any other City or the CCC approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the Entitlements and the other City and the CCC approvals, but such actions are acceptable to Owner in its sole and absolute discretion.

2. **Collection of Obligation, Liens.**

A. **Right to Enforce.** CCC may enforce the Owner's Obligation to pay the amounts provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or CCC may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 2.C enforce the lien rights created or pursue any other lawful remedy. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien rights.

B. **Creation of Lien.** If Owner fails to satisfy the Obligation to pay within the time period stated in Section 1 above, together with the late charge described in Civil Code Section 5650(b), interest at the rate permitted in such Section, and all costs that are incurred by CCC or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against Real Property upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to Owner as provided in Civil Code Section 5675(e).

C. **Notice of Default; Foreclosure.** CCC or its authorized representative may record a notice of default and may cause the Real Property with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, and as provided in Civil Code Sections 5700 through 5715. However, as a condition precedent to the holding of any such sale under Section 2924c appropriate publication shall be made. In connection with any sale under Section 2924c CCC is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

D. **Termination of this Declaration.** This Declaration shall automatically terminate and be of no further force or effect, if (i) the payment of the In Lieu Payment is made by Owner to State Parks, or (ii) at any time the Final Certified LCPA is repealed or modified so as to not permit residential development on the Real Property in accordance with the Residential Entitlements. Concurrently with the occurrence of either of the foregoing events, CCC shall execute and deliver to Owner one or more instruments or documents in recordable form as requested by Owner to terminate this Declaration and to release Owner for any liability in connection with this Declaration.

3. **Sale of Property.** If, at any time after the recordation of this Declaration in the Official Records of the County of Los Angeles, Owner sells the Real Property or any portion thereof to an unaffiliated third party purchaser in an arms' length transaction, CCC shall have the right (but not the obligation) to deliver written notice to Owner declaring the Obligation to be

due and payable, in which event Owner shall pay the Obligation to CCC concurrently with the closing of the sale of the Real Property.

ARTICLE II

MISCELLANEOUS

1. **General Provisions.** Except as set forth in Article IV and unless specifically otherwise provided to the contrary in this Declaration, all notices, requests, demands, or other communications required under this Declaration (collectively, “**Notices**”) shall be in writing and delivered (a) personally; (b) by certified mail, return receipt requested and postage prepaid; or (c) by overnight courier (such as UPS, FedEx, or Airborne Express) (any such notice shall be deemed delivered one (1) business day following deposit with such an overnight courier). The initial addressees for any notices to Owner and to CCC shall be as set forth below. All notices given in accordance with the terms hereof shall be deemed given when received as provided above, or upon refusal of delivery.

2. **Notices to Owner.** Notices to Owner pursuant to this Declaration shall be directed as follows:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, CA 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, CA 90071
Attn: Cary Kleinman, Justin Guichard and Jared Lazarus

Paul, Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Attn: Alan W. Weakland

or to such other address as Owner provides in writing CCC at the address(es) set forth in Section 3, below.

3. **Notices to CCC.** Notices to CCC pursuant to this Declaration shall be directed as follows:

South Central Coast District
California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001
Attention: Deanna Christensen

4. **Change of Address(es)**. The addresses above may be changed by providing the new address to the other notice recipients in accordance with Section 1.

5. **Applicable Law**. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

6. **Counterparts**. This Declaration may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one (1) and the same agreement.

7. **Exhibits**. All of the exhibits to this Declaration are hereby incorporated as though fully set forth herein.

8. **Liberal Construction**. The provisions of this Declaration shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

9. **Attorneys' Fees and Costs**. If any party shall bring an action or proceeding (including, without limitation, any cross-complaint, counter-claim, third party claim or arbitration proceeding) against any party by reason of the alleged breach or violation of any provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including but not limited to its reasonable attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award.

10. **Headings**. The headings used in this Declaration are for convenience and reference only and the words contained herein shall not be held to expand, modify, or aid in the interpretation, construction or meaning of this Declaration.

11. **Incorporation of this Declaration into Deeds**. Any deed or other instrument by which all or any portion of the Real Property is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration and any instrument of conveyance shall be deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

12. **Successors and Assigns**. The provisions of this Declaration shall be binding upon all persons acquiring an interest in the Real Property, whether it be fee, easement, leasehold or otherwise, and each of their successors and assigns, and shall be for the benefit of CCC. The Obligations of Owner hereunder are personal to CCC and may not be assigned to any person or entity without Owner's prior written consent, which may be granted or withheld in its sole and absolute discretion.

13. **Severability**. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected

thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

14. **Time of Essence**. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

[Signatures on next page]

IN WITNESS WHEREOF, Owner has executed this Declaration, as of the date first written above.

“Owner”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: _____
Richard Ackerman
Authorized Signatory