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# Th15a

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## STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE & DE NOVO

**Appeal Number:** A-4-MAL-17-0046

**Applicant:** City of Malibu

**Local Government:** City of Malibu

**Local Decision:** Approval with Conditions

**Appellants:** Commissioners Dana Bochco and Mark Vargas

**Project Location:** 22878.5 to 23000.5 Pacific Coast Highway, within the public right-of-way on both sides of the highway, Malibu, Los Angeles County

**Project Description:** Appeal of Local Coastal Development Permit 17-057, to implement a 30-minute parking restriction between the hours of 2:00 a.m. and 4:00 a.m. daily, and posting of parking restriction signs.

**Staff Recommendation:** Determine that a substantial issue exists and deny a permit for the proposed project.

NOTE: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General, or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo hearing will occur following the substantial issue vote or at a future Commission meeting, during which time the Commission will take public testimony.

## SUMMARY OF STAFF RECOMMENDATION

The City approved project would restrict public parking on both sides of Pacific Coast Highway in the vicinity of Surfrider Beach, adjacent to the Malibu Pier. The proposed 30-minute parking restriction between 2:00 a.m. and 4:00 a.m. would apply to approximately 767 feet of the ocean side of the public highway and 973 feet of the inland side. (**Exhibit 1**). The intent of the City-approved permit is to prevent private vehicle owners and one specific commercial business (the Malibu Surf Shack; **Exhibit 2**) from parking their vehicles on the public highway overnight. The City argues that the restriction will encourage parking turnover, which will benefit coastal visitors because there will be more parking available during other hours.

The area where the restricted parking hours are proposed is directly in front of the most popular visitor serving portion of Surfrider Beach and is one of the few areas in Malibu where the public can park and access the beach at nighttime. The Surfrider Beach parking lot (directly seaward of the area in question), Adamson House State Park parking lot (located upcoast of the pier), and Malibu Lagoon parking lot (located upcoast of Malibu Creek and Lagoon) are gated and closed to the public at night. The City's findings reference nighttime visitors who may "exit their cars and walk along PCH and enjoy views"; however, 30 minutes does not provide adequate time for members of the public to access the beach, enjoy a moonlight walk along the sand, observe a grunion run, or go swimming or surfing. If the City's 30-minute nighttime parking restriction were implemented, the nearest unrestricted on-street parking upcoast would be on the other side of the Malibu Pier and downcoast would be along a section of the highway lined with private homes and limited public beach access. Beachgoers would have to walk approximately ¼ mile along the highway from these on-street parking areas before reaching the visitor serving portion of Surfrider Beach on the east side of the Malibu Pier.

The project is located between the first public road (Pacific Coast Highway) and the sea and also within 300 feet of the inland extent of the beach in an area regulated by the policies of the City of Malibu certified LCP. The Land Use Plan and Implementation Plan components of the LCP include policies and provisions which state that "restrictions on public parking...including imposition of maximum parking time periods...shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety." The City did not make adequate findings to support the approved parking restriction and such findings cannot be made because the restriction is not related to any public safety need. In fact, the restriction could adversely affect public safety because it would encourage shuffling and re-parking of vehicles, and additional foot traffic along Pacific Coast Highway, during the middle of the night when visibility is reduced and vehicle speeds may be higher. Additionally, because of the site's location, the City is required to make findings that the proposed development is consistent with the public access policies the Coastal Act. The City's argument that the restriction will provide more parking for coastal visitors is not supported by any evidence and the plain language of the restriction will reduce public access at nighttime, which is inconsistent with the public access policies of the certified LCP and the Coastal Act.

Finally, the City lacks written authorization for the proposed restriction from the California Department of Transportation (Caltrans), the agency that maintains and operates Pacific Coast Highway. The proposed restriction would create inconsistency in parking rules along the public right-of-way and could inspire other local governments to restrict access in a similar manner. The

City is in the final phase of a comprehensive parking study, in coordination with Caltrans and a consultant, which may result in a plan to relocate some substandard width public parking spaces on the inland side of Pacific Coast Highway consistent with public safety needs. The loss of those parking spaces may be offset by the establishment of new public parking areas, elimination of unnecessary red curbs and curbcuts, elimination of confusing signage, and greater consistency in parking regulations. Additionally, bicycle lanes and bus stops may be more clearly defined, consistent with public safety needs and public access enhancements. That plan may propose changes to the subject area of Pacific Coast Highway adjacent to Surfrider Beach and will require Coastal Commission approval through an LCP amendment. Such changes could serve the same objectives the City has identified through the subject application – preventing large recreational vehicles and commercial vehicles from parking on the highway for extended periods and opening up parking opportunities for coastal visitors. New regulations could be crafted to allow a certain number of visitor serving commercial operations that rely on highway parking (e.g. surf and beach equipment rentals, food trucks) in certain areas at certain times. The City could also change its enforcement strategy to promote turnover of recreational vehicles and enhance access for smaller vehicles by providing new parking areas or extended hours in popular areas that are currently restricted.

Therefore, Commission Staff recommends that the Commission find that a substantial issue exists with respect to the grounds upon which the appeal has been filed. The motion to carry out the staff recommendation is on page 7. Commission Staff also recommends that the Commission deny the coastal development permit after the de novo hearing on the matter because the proposed project is not consistent with the public access and recreation policies of the certified City of Malibu LCP and the Coastal Act. The motion to carry out the staff recommendation for the de novo portion of the appeal is on page 13.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Streetview

Exhibit 3 – Local CDP 17-057 and Local Appeal 17-005

Exhibit 4 – Coastal Commission Appeal

## **I. APPEAL JURISDICTION AND PROCEDURES**

### **A. APPEAL PROCEDURES**

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

#### **Appeal Areas**

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603(a)). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603(a)(4)). Finally, developments that constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603(a)(5)).

In this case, the project site is located between the sea and the first public road paralleling the sea (**Exhibit 1**) and also within 300 feet of the inland extent of the beach. As such, the City's coastal development permit for the subject project is appealable to the Commission.

#### **Grounds for Appeal**

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act. (Coastal Act Section 30603(b)(1)).

#### **Substantial Issue Determination and De Novo Permit Hearing**

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing can be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea or within 300 feet of the inland extent of a beach, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the policies set forth in the certified LCP regarding public access and recreation, nor with the public access policies of Chapter 3 of the Coastal Act.

**B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

On June 5, 2017, the Malibu Planning Commission held a public hearing on the proposed project, to implement a 30-minute parking restriction between the hours of 2:00 a.m. and 4:00 a.m. daily, and posting of parking restriction signs at the site. At the conclusion of the public hearing, the Planning Commission approved Local Coastal Development Permit 17-057 through Resolution No. 17-34.

Sean and Leslie Weber appealed the Planning Commission’s decision to the Malibu City Council on June 15, 2017. On August 14, 2017, the Malibu City Council heard Appeal No. 17-005 and upheld the Planning Commission-approved Coastal Development Permit through Resolution No. 17-33.

The Coastal Commission’s South Central Coast District Office received the Notice of Final Action for the local coastal development permit on August 17, 2017. Coastal Commissioners Dana Bochco and Mark Vargas filed an appeal of the local coastal development permit on August 31, during the Commission’s 10 working day appeal period (**Exhibit 4**). No other appeals were filed.

## II. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

### **Motion:**

*I move that the Commission determine that Appeal No. A-4-MAL-17-0046 raises No **Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of the majority of the Commissioners present.

### **Resolution:**

*The Commission hereby finds that Appeal No. A-4-MAL-17-0046 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

## III. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

### **A. PROJECT LOCATION AND DESCRIPTION**

The subject location is a portion of both sides of Pacific Coast Highway in Malibu, Los Angeles County (**Exhibit 1**). The public highway is owned by the California Department of Transportation and provides lateral vehicle, bicycle, and pedestrian access along the coast. Additionally, unrestricted free public parking along both sides of the highway is utilized by coastal visitors. Along a portion of both sides of the highway bordered by the Malibu Pier to the east, a commercial district to the north, and the Pacific Ocean to the south, the City of Malibu proposes to implement a 30-minute parking restriction between the hours of 2:00 a.m. and 4:00 a.m. daily, and to post up to 14 parking restriction signs. The restriction would affect approximately 37 currently unrestricted free public parking spaces from 22878.5 to 23000.5 Pacific Coast Highway.

### **B. LOCAL COASTAL PROGRAM CERTIFICATION**

Malibu is a coastal and mountainous city in northern Los Angeles County that incorporated in 1991. In 2002, the Coastal Commission certified the City's LCP. The City's LCP is comprised of a Land Use Plan and Local Implementation Plan, which, along with the public access policies of the Coastal Act, are the standard of review for the subject appeal.

### **C. APPELLANTS' CONTENTIONS**

The appeal of the local government decision is based on: a) the proposal to restrict public access to a significant coastal resource; b) the inconsistency of the decision with the relevant policies of the LCP and the Coastal Act; c) the failure to analyze project alternatives; and d) the precedential value of the proposed restriction of access. The appellants contend that the local government's decision would restrict access to an important coastal resource. The appellants further contend that the

certified LCP for the City of Malibu specifically prohibits such restrictions to public access. Additionally, the appellants note that the local government’s findings and resolution did not adequately analyze alternatives to the restricted hours, alternative maximum time limits, or the no project alternative. The appellants argue that the local government’s approved permit would set a precedent for future restrictions on parking in Malibu and elsewhere in California on Caltrans’ right-of-way, which would have a cumulative effect of reducing public access to the coast.

**D. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulation simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission had been guided by the following factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a substantial issue exists with respect to whether the local government action conforms to the public access and recreation policies of the certified LCP and the Coastal Act for the reasons set forth below.

**E. SUBSTANTIAL ISSUE ANALYSIS**

The appellants contend that the project, as approved by the City, does not conform to the following public access policies of the City’s certified LCP and the Coastal Act.

**Land Use Plan Policy 2.27**

*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.*

Land Use Plan Policy 7.12

*Restrictions on or elimination of existing on-street public parking on Pacific Coast Highway and adjacent side-streets shall not be permitted unless a comparable number of replacement parking spaces are provided in the immediate vicinity and it is demonstrated that such restrictions or elimination will not adversely impact public access to the shoreline.*

Implementation Plan Section 3.14.1 (D)

*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.*

Coastal Act Section 30210

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30211

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

The City of Malibu has approved a coastal development permit that would restrict public access to a public beach at nighttime. The stated intent of the City-approved permit is to prevent private vehicle owners and one specific commercial business (the Malibu Surf Shack) from parking their vehicles and oversized trailers on the public highway overnight and to encourage parking turnover. This is in direct contradiction to LUP Policy 2.27, which states that such restrictions, specifically including imposition of maximum parking time periods, shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. The City did not make findings that the restriction was needed to protect public safety. The local coastal development permit findings approved by the Planning Commission made no mention of the parking restriction's relationship to public safety. Following a local appeal, the City Council staff report (**Exhibit 3**; page 6) acknowledged that "the Planning Commission agenda report does not claim that parking in the area is a public safety issue." Aside from that reference, the City Council staff report found that it is safe for the public to cross Pacific Coast Highway while carrying surf and kayak equipment, but made no public safety findings related to the parking restriction. Additionally, even if it was found that a parking restriction was needed to protect public safety, the City's findings did not analyze any alternatives to the project.

The City-approved permit is also inconsistent with Land Use Plan Policy 7.12 because it imposes a restriction on parking without providing new parking spaces in the immediate vicinity, as explicitly called for by the policy. The City’s findings indicated that the restriction would enhance public access at other hours because it would encourage vehicle turnover, but did not provide any evidence that the nighttime restriction would not adversely impact public access to the shoreline. In fact, the City’s staff report and description of site visits indicated that there is currently ample free public parking available in the subject area at nighttime, when the access restriction is proposed. During the daytime, and especially on weekends, the public parking in the subject area is in high demand, but the subject restriction will have no effect on daytime parking.

Implementation Plan Section 3.14.1 (D) is similar to Land Use Plan Policy 2.27 – and in plain conflict with the City-approved restriction. The section states that “restrictions on public parking, which would impede or restrict public access to beaches... shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.” The City approved restriction would restrict public access to the shoreline and the ocean at nighttime and the City did not make any findings indicating it was addressing a public safety need. Additionally, the City’s findings did not analyze any alternatives, despite being urged to do so by Coastal Commission staff, a local business owner, and multiple residents.

The City’s action is inconsistent with Coastal Act Sections 30210 and 30211 for similar reasons. The restriction of allowable parking time to 30 minutes during the night will not maximize access for all the people. As referenced by the appellants, 30 minutes does not provide adequate time for members of the public to access the beach, enjoy a moonlight walk along the sand, observe a grunion run, or go swimming or surfing. Coastal Act Section 30210 also requires that maximum access “shall be conspicuously posted;” however, in this instance the City proposes to conspicuously post up to 14 signs that would restrict access. The posting of these signs and the enforcement of the restriction would constitute development and would interfere with the public’s right of access to the sea, which would not be consistent with Coastal Act Section 30211.

There are no policies in the City’s certified LCP that allow the restriction of public parking along a public right-of-way, where public parking has historically been unrestricted, and where there is no public safety need. In fact, the LCP specifically states that maximum public access shall be provided, consistent with Coastal Act policies. Thus, the local government’s decision that the development is consistent with its LCP and the relevant provisions of the Coastal Act lacks factual and legal support.

The City argues in its findings that the restriction will encourage parking turnover, which will benefit coastal visitors because there will be more parking available during other hours (**Exhibit 3**; see staff report pages 1, 2, 13, and 14). However, the City provides no evidence that the nighttime restriction will free up parking for coastal visitors during the day. Based on the City’s observations, there is abundant free unoccupied street parking at nighttime and scarce parking during the day. These observations suggest that coastal visitors and employees of nearby commercial businesses are arriving at the subject area in the morning and parking throughout the day, and the majority park elsewhere at nighttime. This pattern can be observed at popular beaches and public recreation areas throughout California. Restricting or prohibiting overnight parking along the roadway will not change the supply or the demand for parking during the daytime.

The City, County, and State governments, as well as multiple private parking lot operators have addressed the daytime demand for coastal access to Surfrider Beach, the Malibu Pier, and other nearby amenities by providing other areas to park during the daytime, as well as bus access which stops directly in front of Surfrider Beach and Malibu Lagoon State Beach (Los Angeles Metro Bus Route 534). Coastal visitors who are unable to park at one of the 37 free unrestricted parking spaces subject to this appeal have other options during the daytime. However, as referenced in the City's findings, the Surfrider Beach parking lot (managed by the Los Angeles County Department of Beaches and Harbors directly seaward of the area in question), Adamson House State Park parking lot (managed by California State Parks upcoast of the pier), and Malibu Lagoon parking lot (another popular beach managed by California State Parks) are gated and closed to the public at night. Additionally, Metro Bus Route 534 does not run late at night. For some coastal visitors to enjoy access to Surfrider Beach at nighttime, driving and parking along Pacific Coast Highway in the area where the restricted parking hours are proposed may be the only option.

The City-approved permit would restrict this coastal access option at nighttime and would not provide any alternatives for coastal visitors who wish to recreate at night. Surfrider Beach is a popular visitor serving destination and is one of the few areas in Malibu where the public can park and access the beach at nighttime. Because of work schedules and other constraints, not everyone can visit the beach during the day. The Coastal Act and the certified Malibu LCP protect the public's right to access the beach at all times, not only during daylight hours. If the City's 30-minute nighttime parking restriction were implemented, the nearest unrestricted on-street parking upcoast would be on the other side of the Malibu Pier and downcoast would be along a section of the highway lined with private homes and limited public beach access. Beachgoers would have to walk approximately ¼ mile along the highway from these on-street parking areas before reaching the visitor serving portion of Surfrider Beach on the east side of the Malibu Pier.

Coastal access and parking restrictions along a State highway are statewide issues. Visitors travel long distances to access the Malibu section of California coast, which is famous for its beaches and surf breaks. Public transportation is limited (one route) during the day, and non-existent at night. Often, personal vehicles are the only option for people to access this relatively remote section of the coast. The Chapter 3 public access polices of the Coastal Act state that maximum access shall be provided for *all* the people, that development shall not interfere with the public's ability to access the coast, and that lower cost facilities, including parking, shall be protected. It is fundamentally important to protect public parking supplies that support coastal access, especially in areas with limited public parking, such as the subject area.

Allowing the City to proceed with the development would set a precedent for restricting access in popular coastal areas. Pacific Coast Highway has historically been managed by the California Department of Transportation, not by local governments, and unrestricted free public parking along the public highway is the predominant management approach throughout the state. The restriction of public parking in this one section of Malibu could be a precedent for the City's approval of restrictions in other areas. Additionally, it could inspire other local governments to restrict access in a similar manner, which could cause a statewide reduction in public access to the coast. Accordingly, the appellants' contentions raise concerns about the future interpretation of LCP and Coastal Act compliance. Therefore, the appeal is both precedential and raises issues of statewide significance.

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For these reasons, the Commission finds that the appellants' contentions raise a substantial issue with regard to the approved project's consistency with the policies and provisions of the City of Malibu's certified LCP and the public access policies of the Coastal Act.

#### **IV. MOTION AND RESOLUTION – DE NOVO**

**Motion:**

*I move that the Commission **approve** Coastal Development Permit No. A-4-MAL-17-0046 for the development proposed by the applicant.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:**

*The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the City of Malibu’s LCP or the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

#### **V. FINDINGS AND DECLARATIONS – DE NOVO**

**A. PROJECT LOCATION AND DESCRIPTION**

The findings included in Section III, Subsection A of this staff report are hereby incorporated by reference.

**B. PUBLIC ACCESS AND RECREATION**

As a de novo matter, the standard of review for the proposed development is the City of Malibu certified LCP. Since the proposed project is located between the first public road and the sea and within 300 feet of the inland extent of the beach, Coastal Act Section 30604(c) applies and any development approved by the Commission must also conform with the public access and recreation policies of Chapter 3 of the Coastal Act.

Policies of the certified Local Coastal Program and the public access policies of the Coastal Act are hereby incorporated from Section III, Subsection E above. The following recreation policies of the Coastal Act also apply:

Coastal Act Section 30220

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Coastal Act Section 30223

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

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Protecting public access to the coast is one of the highest charges of the Coastal Act. The subject site is a public highway in a highly visited coastal area. Recreational activities in this area include swimming, surfing, kayaking, fishing, bicycling, hiking, whale watching, star gazing, meditation, picnicking, bird watching, and exercise. The 37 parking spaces which would be restricted by the City of Malibu's proposed enforcement and signage are significant because they provide direct physical access to coastal dependent recreational opportunities at nighttime when other parking and transportation options are not available.

The City's proposal would restrict public access to a public beach at nighttime. This is in direct contradiction to LUP Policy 2.27 which states that such restrictions, specifically including imposition of maximum parking time periods, shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. The proposed restriction is not needed to protect public safety. In fact the restriction could adversely affect public safety because it would encourage shuffling and re-parking of vehicles, and additional foot traffic along Pacific Coast Highway, during the middle of the night when visibility is reduced and vehicle speeds may be higher.

The City's proposal is also inconsistent with Land Use Plan Policy 7.12 because it would impose a restriction on parking without providing new parking spaces in the immediate vicinity, as explicitly called for by the policy. The City states that the restriction will enhance public access at other hours because it will encourage vehicle turnover, but there is no evidence that vehicle turnover is needed at nighttime. The City's staff report and description of site visits indicated that there is currently ample free public parking available in the subject area at nighttime, when the access restriction is proposed. During the daytime, and especially on weekends, the public parking in the subject area is in high demand, but the subject restriction will have no effect on daytime parking.

Implementation Plan Section 3.14.1 (D) is similar to Land Use Plan Policy 2.27 – and in plain conflict with the City-approved restriction. The section states that “restrictions on public parking, which would impede or restrict public access to beaches... shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.” The parking restriction would restrict public access to the shoreline and the ocean at nighttime and does not address any public safety need. Additionally, the City has not provided any written alternatives analysis, despite being urged to do so throughout the application process by Coastal Commission staff, a local business owner, and multiple residents.

The proposed parking restriction is inconsistent with Coastal Act Sections 30210 and 30211 for similar reasons. The restriction of allowable parking time to 30 minutes during the night (between 2 a.m. and 4 a.m.) will not maximize access for all the people. As referenced by the appellants, 30 minutes does not provide adequate time for members of the public to access the beach, enjoy a moonlight walk along the sand, observe a grunion run, or go swimming or surfing. Coastal Act Section 30210 also requires that maximum access “shall be conspicuously posted;” however, in this instance the City proposes to conspicuously post up to 14 signs that would restrict access. The posting of these signs and the enforcement of the restriction would constitute development and would interfere with the public's right of access to the sea, which would not be consistent with Coastal Act Section 30211.

There are no policies in the City's certified LCP that allow the restriction of public parking along a public right-of-way, where public parking has historically been unrestricted, and where there is no demonstrated public safety need. In fact, the LCP specifically states that maximum public access shall be provided, consistent with Coastal Act policies. Thus, as proposed, the development is not consistent with the LCP or the relevant provisions of the Coastal Act.

The City's proposed restriction is intended to prevent private vehicle owners and one specific commercial business (the Malibu Surf Shack; **Exhibit 2**) from parking their vehicles and oversized trailers on the public highway overnight. The City argues that the restriction will encourage parking turnover, which will benefit coastal visitors because there will be more parking available during other hours (**Exhibit 3**; see staff report pages 1, 2, 13, and 14). However, the City provides no evidence that the nighttime restriction will free up parking for coastal visitors during the day. Based on the City's observations, there is abundant free unoccupied street parking at nighttime and scarce parking during the day. These observations suggest that coastal visitors and employees of nearby commercial businesses are arriving at the subject area in the morning and parking throughout the day, and the majority park elsewhere at nighttime. This pattern can be observed at popular beaches and public recreation areas throughout California. Restricting or prohibiting overnight parking along the roadway will not change the supply or the demand for parking during the daytime.

The City, County, and State governments, as well as multiple private parking lot operators have addressed the daytime demand for coastal access to Surfrider Beach, the Malibu Pier, and other nearby amenities by providing other areas to park during the daytime, as well as bus access which stops directly in front of Surfrider Beach and Malibu Lagoon State Beach (Los Angeles Metro Bus Route 534). Coastal visitors who are unable to park at one of the 37 free unrestricted parking spaces subject to this appeal have other options during the daytime. However, as referenced in the City's findings, the Surfrider Beach parking lot (managed by the Los Angeles County Department of Beaches and Harbors directly seaward of the area in question), Adamson House State Park parking lot (managed by California State Parks upcoast of the pier), and Malibu Lagoon parking lot (another popular beach managed by California State Parks) are gated and closed to the public at night. Additionally, Metro Bus Route 534 does not run late at night. For some coastal visitors to enjoy access to Surfrider Beach at nighttime, driving and parking along Pacific Coast Highway in the area where the restricted parking hours are proposed may be the only option.

The City's proposal to restrict this coastal access option at nighttime would not provide any alternatives for coastal visitors who wish to recreate at night. Surfrider Beach is a popular visitor serving destination and is one of the few areas in Malibu where the public can park and access the beach at nighttime. Because of work schedules and other constraints, not everyone can visit the beach during the day. The Coastal Act and the certified Malibu LCP protect the public's right to access the beach at all times, not only during daylight hours. If the City's 30-minute nighttime parking restriction were implemented, the nearest unrestricted on-street parking upcoast would be on the other side of the Malibu Pier and downcoast would be along a section of the highway lined with private homes and limited public beach access. Beachgoers would have to walk approximately ¼ mile along the highway from these on-street parking areas before reaching the visitor serving portion of Surfrider Beach on the east side of the Malibu Pier.

Because the subject parking area is an important resource for nighttime public access and recreational opportunities, Coastal Commission staff asked the City to consider alternatives to the

proposed project. The City responded that its actions were constrained by its Municipal Code which incorporates Section 15.64.060 of the Los Angeles County Code by reference. That Provision states: “Except in that portion of the unincorporated territory of West Hollywood within the Third Supervisorial District, the operator of any vehicle shall not park such vehicle on any highway, street, alley or public way or public place for a period of time longer than 30 minutes between the hours of 2:00 a.m. and 4:00 a.m. on the same day.”

The City argues that because that provision was incorporated into its Municipal Code upon the City’s incorporation in 1991, it is the only parking restriction that can be applied along the section of Pacific Coast Highway subject to this case. This argument is not supported by reason or fact, because the City regulates parking with different time restrictions in different areas – and does not apply this restriction along other sections of Pacific Coast Highway or other local roads. The subject provision was not certified as part of the City’s LCP in 2002 and is therefore not relevant in the context of a coastal development permit application.

Another procedural matter the Coastal Commission must consider is whether a permit applicant has the legal right to carry out the proposed development. Generally, the Commission requires written proof of ownership of the property where development is proposed, or written authorization from the property owner for the applicant to request and obtain a coastal development permit on their behalf. Malibu LIP Section 13.6.2.A requires that: “In addition to other information required to be submitted with an application, applicants must prove that they own the property which is the subject of the application or provide the City with written consent from the owner for the proposed development for the City to file the application”. In this case, the administrative record for the permit contains no evidence that the City of Malibu holds fee title to the property (or is in the process of acquiring ownership) where development is proposed, or that the City obtained an encroachment permit or other written authorization to carry out the development from the California Department of Transportation (Caltrans), which either owns or has a property interest in, and also manages, the right-of-way.

The City’s staff reports state that Caltrans has verbally consented to allow the parking restriction signs if the City obtains a coastal development permit, but Caltrans is not listed as an applicant on the subject application; the Malibu Public Works Department is the listed applicant. There is no communication from Caltrans in the administrative record which the City provided to the Coastal Commission in support of its action. Additionally, there is no indication in the record that Caltrans has consented to a change in the parking rules and a restriction of public access; the City only mentions that Caltrans has verbally consented to the potential installation of 14 new signs.

Caltrans owns and/or has a legal property interest in, and also maintains, the public right-of-way adjacent to state highways along the coast in California, which provide coastal access for millions of people. As such, Caltrans is responsible for working with local governments and the Coastal Commission before eliminating or restricting public parking spaces that provide the public access to the coast. For the section of Pacific Coast Highway that spans Malibu, Caltrans and the City have been coordinating on a comprehensive parking study, considering both public access needs and public safety needs. The comprehensive study began in 2014 and may support a set of recommendations that would eliminate or restrict public parking in some areas; however, in order to be consistent with LCP and Coastal Act policies, the final plan may also establish new public parking areas, eliminate unnecessary red curbs and curbcuts, eliminate confusing signage, and create

greater consistency in parking regulations. Additionally, bicycle lanes and bus stops may be more clearly defined, consistent with public safety needs and public access enhancements.

That plan may propose changes to the subject area of Pacific Coast Highway adjacent to Surfrider Beach and will require Coastal Commission approval through an LCP amendment. Such changes could serve the same objectives the City has identified through the subject application – preventing large recreational vehicles and commercial vehicles from parking on the highway for extended periods and opening up parking opportunities for coastal visitors. New regulations could be crafted to allow a certain number of visitor serving commercial operations that rely on highway parking (e.g. surf and beach equipment rentals, food trucks) in certain areas at certain times. The City could also change its enforcement strategy to promote turnover of large vehicles, and could enhance access by providing new parking areas or extended hours in popular areas that are currently restricted.

A comprehensive plan that has been vetted by the Coastal Commission and Caltrans, which includes mitigation for any restriction of parking, and which would be implemented through an LCP amendment, could be found to be consistent with the Coastal Act and the rest of the LCP. However, analyzed by itself, the proposed restriction would adversely affect public access and does not have Caltrans' written authorization. The Commission finds that, as proposed, the project is not consistent with multiple certified Malibu LCP Policies, including Land Use Plan Policy 2.27, Land Use Plan Policy 7.12, and Implementation Plan Section 3.14.1 (D). Additionally, the Commission finds that, as proposed, the project is not consistent with Coastal Act Sections 30210, 30211, 30220, or 30233. Because the proposed project is not consistent with the certified LCP for the area and is not consistent with the public access and recreation policies of the Coastal Act, the Commission finds that the project must be denied.

### **C. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal access that would occur if the coastal development permit were approved. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

Even if CEQA did apply, Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved 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. As discussed above, the proposed project is inconsistent with the certified LCP and the public access policies of the Coastal Act. The proposed parking regulation has not been crafted to avoid adverse effects to public access; however, denial of the proposed development would avoid any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA and denies a permit for the proposed project.

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**Appendix A – Substantive File Documents**

1. Administrative Record Associated with Local Coastal Development Permit 17-057 and Appeal No. 17-005
2. City of Malibu certified Local Coastal Program (2002)
3. City of Malibu Municipal Code
4. Los Angeles County Code [Title 15, Vehicles and Traffic, Division 1, Section 15.64.060]