

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: PERMIT AMENDMENT

Application No.: P-3-24-76-7476-A1

Applicant: Ayahlusim Getachew

Agent: Susan McCabe

Project Location: 33018 Pacific Coast Highway, City of Malibu, Los Angeles County (APN: 4473-018-002)

Amendment Description: Deletion of Special Condition No. Three (3), which requires recordation of a public view easement, and extinguishment of the recorded public view easement deed restriction.

Staff Recommendation: Approval

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed amendment. The project site is located on a 0.33-acre parcel located on top of a coastal bluff at 33018 Pacific Coast Highway, within the City of Malibu in Los Angeles County (APN 4473-018-002) (Exhibits 1-3). The subject parcel is on the seaward side of Pacific Coast Highway (“PCH”) but is not directly adjacent to PCH and does not front the shoreline. The site, which is in a partially built-out area of Malibu, is currently developed with a one-story single family residence, garage, landscaping, and driveway (constructed pursuant to the subject coastal development permit). Currently, the project site is not visible from Pacific Coast Highway or the sandy beach because the surrounding area—including all adjacent lots—is developed with other residential structures.

In 1976, the South Central Regional Commission approved the underlying coastal development permit for development on the subject property. In that action, the Commission found that the proposed development would occur in an area where a view corridor existed from Pacific Coast Highway to the coast. Although the shoreline was not visible from Pacific Coast Highway,

distinctive views of the ocean and distant horizon were available. Accordingly, the Commission conditioned the permit to require the recordation of a deed restriction indicating that there is a view easement from Pacific Coast Highway over the property to blue water (Special Condition Three (3) of CDP No. P-5-17-78-3428). The intent/purpose of the public view easement at the time of development was to broadly protect this view corridor by restricting development, including the planting of major vegetation on the project site, that might obstruct the view to the water, except for the development that was approved pursuant to the permit. However, the Commission also found that each additional unit constructed on nearby lots in this location would marginally reduce this view corridor from Pacific Coast Highway, and that by the time all the lots in the area were developed, the view corridor from PCH would probably be eliminated.

The applicant is proposing an amendment to the underlying permit to delete Special Condition Three (3), which required the recordation of the public view easement deed restriction, and the applicant also seeks authorization to extinguish the recorded public view easement deed restriction. The area surrounding the subject property has undergone a number of changes over the 42 years since the Commission's approval of the underlying permit. For example, in [1977] the Commission approved a CDP (CDP No. P-5-17-78-3428) for the construction of a single family residence on a vacant lot (33020 PCH) between the subject property (33018 PCH) and Pacific Coast Highway. Unlike the permit at issue in this amendment request, the Commission did not condition CDP No. P-5-17-78-3428 to require a similar public view easement deed restriction over the property. Due to the location and height of that residence, this resulted in the obstruction of views of the subject residence (33018 PCH) from PCH and blocked the previously available north to south ocean views from Pacific Coast Highway through the subject site. Additionally, another vacant lot has since been developed with a single family residence (33006 PCH) since the approval of the underlying permit. This residence is located south east of the subject property and also resulted in the elimination of angled ocean views from Pacific Coast Highway through the subject lot. Therefore, no views of the subject residence and/or ocean views through the subject property are currently available from Pacific Coast Highway.

Because ocean views from PCH through the subject property have been obstructed by subsequent development in the surrounding area, and the subject property is no longer visible from Pacific Coast Highway, the view corridor over the property no longer provides or protects any views. As such, there is no visual resource that is being protected by Special Condition Three (3), and Special Condition Three (3) of CDP No. P-3-24-76-7476 can be deleted consistent with the applicable policies of the Malibu LCP, including Section 30251 of the Coastal Act, which is incorporated as part of the LCP. This will, in turn, allow the owner to extinguish the applicable public view easement deed restriction.

Although the project site is located in the City of Malibu, an area with a certified Local Coastal Program (LCP), the Commission retains authority over some coastal development permits that were issued by the Commission prior to such certification. (See Malibu LIP Section 13.10.2(B)(2).) Relevant here, the Commission retains jurisdiction over permit amendments, such as this one, that will affect mitigation measures that include recorded documents. Therefore, the Commission is processing the subject amendment request. However, the standard of review for the proposed amendment is the policies and provisions of the certified City of Malibu Local Coastal Program (LCP). As proposed, the amendment is consistent with all applicable policies of the Malibu certified LCP.

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APPENDICES

Appendix 1 Substantive File Documents

EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Parcel Map
Exhibit 3.	Aerial Photo
Exhibit 4.	Historic 1972 Aerial Photo
Exhibit 5.	CDP No. P-3-24-76-7476 Permit
Exhibit 6.	CDP No. P-3-24-76-7476 Staff Summary & Recommendation, dated 4/19/1976
Exhibit 7.	Recorded Declaration of Restrictions
Exhibit 8.	Blue Water View Analysis
Exhibit 9.	Site Photo from PCH

I. MOTION AND RESOLUTION

Staff Recommendation of Approval:

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit No. P-3-24-76-7476 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 approves the coastal development permit amendment on the ground that the development, as amended, will be in conformity with the policies of the City of Malibu Local Coastal Program. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts on the amended development on the environment.

II. STANDARD AND SPECIAL CONDITIONS

NOTE: Special Condition Three (3) of Coastal Development Permit P-3-24-76-7476 shall be deleted as shown below (deletions shown as ~~strikethrough~~). All other standard and special conditions of Coastal Development Permit P-3-24-76-7476 are unchanged and remain in effect.

Prior to issuance of permit, applicant shall submit:

...

- ~~3. A deed restriction indicating that a view easement from the public way over the property to blue water shall have been granted to the public, the applicant shall agree to construct nothing that would block the view to the water nor to plant any major vegetation that might obstruct the view, other than the construction which is a part of this permit.~~

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. AMENDMENT DESCRIPTION AND BACKGROUND

The applicant is requesting an amendment to Coastal Development Permit (CDP) P-3-24-76-7476 to delete Special Condition Three (3) which requires the recordation of a deed restriction indicating that there is a view easement¹ from the public way over the property to blue water. In addition, the applicant is requesting approval to remove the deed restriction that was recorded by a prior property owner in 1976 to comply with Special Condition Three (3). Specifically, Special Condition Three (3) states:

Prior to issuance of permit, applicant shall submit: ...3. a deed restriction indicating that a view easement from the public way over the property to blue water shall have been granted to the public, the applicant shall agree to construct nothing that would block the view to the water nor to plant any major vegetation that might obstruct the view, other than the construction which is a part of this permit.

The subject site is located on a 0.33-acre parcel (14,333 sq. ft.) located on top of a coastal bluff at 33018 Pacific Coast Highway in the City of Malibu (Exhibits 1-3). The subject parcel is on the seaward side of Pacific Coast Highway (PCH); however, it is not directly adjacent to PCH or fronting the shoreline (Exhibit 3). Presently, the project site is not visible from Pacific Coast Highway or the sandy beach. The property is located approximately 500 feet upcoast from El Pescador State Beach, and the surrounding lots are all developed with residential structures. The subject parcel is a square shaped lot and is currently developed with a single family residence, garage, landscaping, and driveway (constructed pursuant to the subject underlying coastal development permit). The subject site is generally flat, with the western portions of the site descending into a north/south stream that runs towards the beach, which is designated as an environmentally sensitive habitat area on the Malibu LCP ESHA and Marine Resources Overlay Map.

On May 17, 1976, the South Central Regional Commission approved Coastal Development Permit P-3-24-76-7476 (Exhibit 5) for the construction of a one-story single family residence, 16 feet above the average finished grade, garage, and driveway at 33018 Pacific Coast Highway (APN: 4473-018-002). The project was authorized with three (3) special conditions, including a condition that required the property owner to record a public view easement deed restriction (Special Condition Three (3)). All special conditions were satisfied and the permit was issued on June 1, 1976.

In that action the Commission found that the proposed development would occur in an area where a view corridor existed from Pacific Coast Highway. Although the shoreline was not visible from Pacific Coast Highway, distinctive views of the ocean and distant horizon were available in 1976. Specifically, the staff report for CDP No. P-3-24-76-7476 stated that this view corridor “extended from Pacific Coast Highway diagonally to the southeast over nine lots ranging in size from 0.36 - 0.84-acre” ... “three existing single-family residences were within this view corridor” and “the existing units are arranged in such a configuration that an essentially

¹ Staff would note that although this special condition requiring a deed restriction includes the term “view easement”, it did not require the recordation of an offer to dedicate an easement or direct grant of an easement to a third party.

unobstructed view is afforded across vacant lots at this time” (Exhibit 6). Furthermore, the Commission found that each additional unit which was constructed in this location would marginally reduce this view corridor from Pacific Coast Highway, thereby impacting visual resources from PCH. Accordingly, the Commission conditioned the permit to require that the applicant record a deed restriction stating that a view easement from the public way over the property to blue water was granted to the public. The intent/purpose of the Commission-required public view easement at the time of development was to provide protection of this view corridor in a broad manner by restricting development and the planting of major vegetation on the project site that might obstruct the view to the water, except for the development that was approved pursuant to the permit. The previous property owner recorded the public view easement deed restriction on May 7, 1976 (Declaration of Restriction recorded as Document Number 76-4564) (Exhibit 7).

It is important to note that the area surrounding the subject property has undergone a number of changes over the years since the Commission’s approval of the underlying permit. In 1977, the Commission approved the construction of a single family residence (CDP No. P-5-17-78-3428) on a previously vacant lot located directly along PCH at 33020 Pacific Coast Highway. This lot sits between the subject property (33018 PCH) and Pacific Coast Highway. At the time CDP No. P-5-17-78-3428 was approved, the Commission did not impose a similar condition to record a public view easement deed restriction or any other restriction over the property to protect ocean views from PCH through the property. Furthermore, the permit approved development in a location that ultimately resulted in the obstruction of the subject residence (33018 PCH) from Pacific Coast Highway and blocked north to south ocean views that were protected by the subject, recorded public view easement over 33018 PCH. Additionally, one other vacant lot has been developed with a single family residence (33006 PCH) since the approval of the underlying permit. This residence is located south east of the subject property and also resulted in the elimination of angled ocean views from Pacific Coast Highway through the subject property.

The applicant is proposing to delete Special Condition Three (3), and extinguish the recorded public view easement deed restriction, in order to accommodate a future second story addition to the existing single family residence. This future development would be processed through the approval and issuance of a new coastal development permit by the City of Malibu. Presently, a second story addition to the existing residence would be in direct conflict with the public view easement since a second story addition would be considered development that might block the view to the water.

B. VISUAL RESOURCES

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The Malibu LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads and public viewing areas. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures.

Section 30251 of the Coastal Act, as incorporated into the Malibu LCP, requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 states that:

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 governments shall be subordinate to the character of its setting.

In addition, both the certified Malibu Land Use Plan and Local Implementation Plan contain scenic and visual resource protection policies and ordinance requirements to carry out the provisions of the Coastal Act and the LUP, respectively. The primary intent of these policies is to require that new development is sited and designed to minimize impacts to visual resources, and where feasible, to preserve bluewater ocean views by limiting the height and siting of structures to maintain views over the site and/or to provide view corridors to maintain an ocean view through the site. The following policies from the Land Use Plan (LUP) portion of the LCP are applicable in this case:

LUP Policy 6.1 states:

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.

LUP Policy 6.2 states:

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 beaches and other beach areas accessible to the public

LUP Policy 6.3 states:

Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:

- a. Pacific Coast Highway
- b. Decker Canyon Road

- c. Encinal Canyon Road
- d. Kanan Dume Road
- e. Latigo Canyon Road
- f. Corral Canyon Road
- g. Malibu Canyon Road
- h. Tuna Canyon Road

LUP Policy 6.4 states:

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.

LUP Policy 6.5 states:

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 Policy 6.12 states:

All new structures shall be sited and designed to minimize impacts to visual resources by:

- a. Ensuring visual compatibility with the character of surrounding areas.
- b. Avoiding large cantilevers or understories.
- c. Setting back higher elements of the structure toward the center or uphill portion of the building.

LUP Policy 6.33 states:

The Pacific Coast Highway corridor shall be protected as a scenic highway and significant viewshed.

The subject property is located on a 0.33-acre parcel located on top of a coastal bluff on the seaward side of Pacific Coast Highway (PCH); however, the parcel is not directly adjacent to PCH and does not front the shoreline (Exhibit 3). The surrounding area is developed with residential structures and is considered a partially built-out area of Malibu. The property is

located approximately 500 feet upcoast from El Pescador State Beach. The public views of the ocean from Pacific Coast Highway have been significantly degraded due to past residential development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding areas which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean.

Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public ability to view the coast or ocean to only those few parcels which have not yet been developed. Therefore, in past permit actions, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential development be conditioned to require the provision of a public view corridor to provide for unobstructed public views of the beach and ocean from Pacific Coast Highway over a portion of the site.

In its approval of the underlying permit for the residence, the Commission found that the construction of the proposed residence on the bluff top lot would result in adverse impacts on public visual resources. Specifically, the Commission found that the proposed development would occur in an area where a view corridor existed from Pacific Coast Highway (PCH). Although the shoreline was not visible from PCH, distinctive views of the ocean and distant horizon were available. The underlying permit staff report stated that this view corridor extended from Pacific Coast Highway diagonally to the southeast over nine lots and that three existing single-family residences were already within the view corridor; however, these three residential structures were arranged in a configuration providing an unobstructed view was afforded across the subject lot at the time. Furthermore, the Commission found that each additional unit which was constructed in this location would marginally reduce this view corridor from PCH, thereby resulting in visual resource impacts to PCH. In order to minimize these impacts, the Commission found it necessary to require, pursuant to Special Condition Three (3), the recordation of a public view easement.

The intent/purpose of the Commission-required public view easement at the time of development was to broadly protect this view corridor by restricting any future development, including the planting of major vegetation on the project site, that might obstruct the view to the water.

The area surrounding the subject property has changed over the 42 years since the Commission's approval of the underlying permit, which the Commission had anticipated would occur as lots that were vacant at the time of approval in 1976 were developed. Specifically, the staff report for the underlying permit stated "each additional unit which is constructed in this location will marginally reduce the view corridor, and at that point in time when all the lots are developed the view corridor probably will be eliminated". As previously discussed in detail above, in 1977, the Commission approved the construction of a single family residence (CDP No. P-5-17-78-3428) on a vacant lot located directly along and fronting PCH at 33020 Pacific Coast Highway. This lot

sits between the subject property (33018 PCH) and Pacific Coast Highway. At the time of approval, the Commission did not condition the permit to require a public view easement deed restriction over the property to protect ocean views along PCH, which Special Condition Three (3) of the underlying permit sought to protect. This permit approved development in a manner that ultimately resulted in the obstruction of the subject residence (33018 PCH) and blocked north to south ocean views from the view corridor along PCH. Additionally, one other vacant lot has since been developed with a single family residence (33006 PCH) since the approval of the underlying permit. This residence is located south east of the subject property and also resulted in the elimination of angled ocean views from Pacific Coast Highway through the subject property. It's important to note that should the redevelopment of 33020 PCH occur in the future, and if the new development allowed for the subject property to be visible from PCH once again, ocean views from PCH through the subject property would still be obstructed by the subject residence at 33006 PCH.

To verify that ocean views are no longer available from Pacific Coast Highway within the on-site view corridor, the Commission staff requested that the applicant submit as part of the subject coastal development permit amendment application a view analysis that evaluated ocean views from Pacific Coast Highway through the subject property. In response to staff's request, the applicant provided staff with a blue water view analysis (Exhibit 8). This analysis makes the assertion that no blue water views from PCH through the subject property are available. Commission staff carefully analyzed the blue water view analysis and concurred with the analysis that no ocean views from PCH through the subject lot currently exist.

Because ocean views from PCH through the subject property have been obstructed by permitted development constructed since 1976 in the surrounding area, and the project site is no longer visible from Pacific Coast Highway, the view corridor over the property no longer provides or protects any views. Therefore, it is appropriate to delete Special Condition Three (3) of CDP No. P-3-24-76-7476 and to allow the applicant to extinguish the public view easement deed restriction. The amendment to remove the view restriction will not result in any adverse impacts to public views or visual resources, consistent with the applicable policies of the Malibu LCP, including Section 30251 of the Coastal Act, which is incorporated as part of the LCP. Any future development of the site will be reviewed by the City of Malibu for consistency with the policies and provisions of the certified LCP.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit Amendment application to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). 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 that the proposed development may have on the environment.

The Commission incorporates its findings on Local Coastal Program consistency at this point as if set forth in full. As discussed above, the project as proposed to be amended has been conditioned to be consistent with the policies of the Coastal Act. No public comments regarding

potential significant adverse environmental effects of the project amendment were received prior to preparation of the staff report. As discussed above, the proposed amendment is consistent with the policies of the Certified Local Coastal Program. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment, and the project does not have any significant environmental effects within the meaning of CEQA. Therefore, the Commission finds that the proposed amendment can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX 1

Substantive File Documents

City of Malibu, Local Coastal Program; Coastal Development Permit No. P-3-24-76-7476;
Coastal Development Permit No. P-5-17-78-3428.