CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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Appeal Filed:	12/30/19
49th Day:	3/11/20
Staff:	D. Venegas - V
Staff Report:	1/30/20
Hearing Date:	2/13/20

STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE

APPEAL NO.:	**A-4-MAL-19-0218**
APPLICANT:	**Klein Family Partnership**
APPELLANTS:	Commissioner Padilla and Commissioner Uranga
LOCAL GOVERNMENT:	City of Malibu
LOCAL DECISION:	Coastal Development Permit No. 17-119, Variance No. 19-038, Demolition Permit No. 18-010 approved by the Malibu Planning Commission on December 2, 2019
PROJECT LOCATION:	30708 Pacific Coast Highway, City of Malibu, Los Angeles County (APN: 4469-026-009)
PROJECT DESCRIPTION:	Demolition of an existing 3,153 sq. ft. single-family residence and associated development and construction of a new 6,120 sq. ft. single-family residence, 680 sq. ft. attached garage, swimming pool and spa, decks, side yard perimeter walls, permeable driveway, driveway gate, 394 cu. yds. of grading, and the replacement of the onsite wastewater treatment system, including a variance for the reduction of the required 100-foot buffer from an Environmentally Sensitive Habitat Area (Trancas Creek).
STAFF RECOMMENDATION:	Substantial Issue Exists
MOTION & RESOLUTION:	Page 7

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 at a future Commission meeting, during which time the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Here, the appellants contend that the approved project is not consistent with the policies of Malibu's certified LCP and the Coastal Act regarding the provision of public access and recreation, as well as the LCP policies regarding coastal hazards and environmentally sensitive habitat areas. Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed. The **motion** and **resolution** for "no substantial issue" findings (for which a "no" vote is recommended) are found on page 7.

On December 2, 2019, the City of Malibu Planning Commission approved a coastal development permit (CDP) for the demolition of an existing single family residence and associated development and the construction of a new single family residence, garage, swimming pool, spa, decks, side yard perimeter walls, onsite wastewater treatment system, permeable driveway, driveway gate and other associated development (Exhibits 1-5). The subject site is an infill lot within the existing residential Broad Beach community, and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south.

The property is vulnerable to coastal hazards and flooding and is a part of the Broad Beach Geologic Hazard Abatement District (BBGHAD). On October 9, 2015, the Commission approved CDP No. 4-15-0390 for the retention of the approximately 4,150 foot long emergency rock revetment and implementation of a beach nourishment program and dune habitat restoration along Broad Beach just upcoast of the subject property. No revetment is present nor approved on the subject property, but beach nourishment and dune habitat restoration were authorized on the property as part of CDP No. 4-15-0390. Although the permit was approved in 2015, it has not yet been issued because the BBGHAD is still working to satisfy all of the required prior-to-issuance special conditions. The permit authorization has not expired yet because the BBGHAD has obtained time extension approvals from the Commission in order to allow more time to satisfy the remaining prior-to-issuance special conditions.

The City's action on the project was appealed by Commissioners Steve Padilla and Roberto Uranga on the grounds that the project is inconsistent with the City of Malibu LCP policies related to shoreline development, coastal hazards, environmentally sensitive habitat areas, public recreation access opportunities to and along the coast, and with the public access policies of the

Coastal Act. In this case, the approved project would be vulnerable to coastal hazards over its expected life. The approved retaining wall and at grade, pile-supported pool and deck on the seaward side of the residence are located within the maximum expected wave uprush limit line and would potentially function as a seawall/shoreline protective structure. The approved development would be increasingly acted upon by wave uprush and increased wave action in the future due to anticipated sea level rise, which may exacerbate beach erosion and affect the sand supply beach profile, thereby impacting the public's ability to gain access along the beach.

The City's findings relied on a Wave Uprush Study that analyzed the project's susceptibility to coastal hazards by assuming the sea level will rise by 18 inches (1.5 ft.) relative to the highest observed still water elevation, and analyzing wave run up from there. The City asserted that this analysis was consistent with the 2012 National Research Council (NRC) estimate of sea-level rise and the Commission's 2015 SLR Policy Guidance, but this is incorrect. The Commission's 2015 SLR Policy Guidance states that the appropriate scenario for the year 2100 in the NRC 2012 Report (for areas South of Cape Mendocino), would have been a minimum of 66 inches, not 18 inches. Today, the new best available science indicates that in this area, sea levels may rise 6.15 feet. The wave uprush study therefore underestimated potential sea level rise by 4.65 feet, which is significant and would change the conclusions of the analysis about the required finished floor elevation and the safety of the proposed structure from extreme events and sea level rise. The City's findings also failed to demonstrate whether the approved development is sited as far landward as possible and is designed to minimize risk from coastal hazards, and whether there are siting and design alternatives that would avoid the need for structures that may function as shoreline protective devices.

Moreover, the project raises issues regarding consistency with public access policies of the Malibu LCP and Coastal Act. Specifically, LUP Policy 2.64 requires that an Offer-to-Dedicate (OTD) an easement for lateral public access shall be required for all new ocean-fronting development causing or contributing to adverse public access impacts. The approved project would occupy sandy beach area and would affect shoreline sand supply, which sustains public access opportunities. Given the narrow width of Broad Beach, particularly coupled with projected sea level rise, it is likely that the proposed development will be subject to wave action and will affect the beach profile, and thereby impact the public's ability to gain access to public areas of the beach. In order to minimize potential adverse impacts to public access, the City should have considered whether to require a lateral public access easement, consistent with the Malibu LCP, and its failure to do so raises substantial issue with LCP and Coastal Act consistency.

Lastly, the City's findings state that, although the subject parcel is located entirely within the required 100-foot stream "environmentally sensitive habitat area" (ESHA) buffer of Trancas Creek, the approved residence will not result in new ESHA impacts because it will not expand development beyond the area that is already disturbed on the site. However, while the approved residence is located within the general footprint of the existing residence, the project is a complete redevelopment of the site, and the LCP requires new development to be sited and designed to avoid impacts to ESHA or, if there are no feasible alternatives that can eliminate all impacts, then the alternative that would result in the fewest impacts shall be selected. Therefore, the City should have analyzed project alternatives, including reducing or reconfiguring the

footprint of development, in order to increase the development's setback from ESHA to the maximum extent feasible.

For these reasons, staff recommends that the Commission determine that a substantial issue exists with respect to the grounds raised by Commissioners Padilla and Uranga in the subject appeal, because there are questions as to whether the permit approved by the City of Malibu is consistent with the shoreline development, coastal hazards, environmentally sensitive habitat areas, public access and recreational policies and provisions of the City's certified LCP and the public access policies of the Coastal Act.

TABLE OF CONTENTS

EXHIBITS

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.

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized will 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 action on an application for development that constitutes a major public works project or major energy facility may also be appealed to the Commission (Coastal Act Section 30603(a)(5)).

In this case, the project site is located on Pacific Coast Highway, in the City of Malibu (Exhibits 1-3). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for the area extends between the first public road and the sea, which includes the subject property. As such, the City's coastal development permit for the subject project is appealable to the Commission.

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be 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 (See Public Resources Code § 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue questions, proponents and opponents will have three minutes per side, at the Chair's discretion, to address whether the appeal raises a substantial issue. Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their

representatives), and the local government. Testimony from other persons must be submitted in writing. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issues and that the Commission will therefore not review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea, the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was approved by the City of Malibu Planning Commission on December 2, 2019. The City's Notice of Final Action for the project was received by Commission staff on December 16, 2019 (Exhibit 6). Commission staff provided notice of the ten working day appeal period, which began on December 16, 2019 and ended on December 31, 2019. An appeal of the City's action was filed by Commissioners Steve Padilla and Roberto Uranga on December 30, 2019, during the appeal period (Exhibit 7). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on January 22, 2020. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be March 11, 2020; however, according to Section 30625(a), the applicant can waive that time limit.

II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

MOTION: ***I move that the Commission determine that Appeal No. A-4-MAL-19-0218 raises NO substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.***

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolutions 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 an affirmative vote by a majority of the appointed Commissioners present (i.e., a tied vote results in a finding that a "substantial issue" is raised).

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-MAL-19-0218 raises a **Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the

Coastal Act regarding consistency with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING

The Malibu Planning Commission approved the subject CDP for the demolition of an existing 3,153 square foot, two-story single family residence and associated development and construction of a new 6,120 square foot, two-story single family residence, a 680 square foot attached garage, swimming pool, spa, decks, side yard perimeter walls, permeable driveway, driveway gate and other associated development, upgrade and replacement of the existing onsite wastewater treatment system (OWTS), and 394 cu. yds. of associated grading (355 cu. yds. of fill, 39 cu. yds. of cut, 37 cu. yds. of export, and 353 cu. yds. of import) on a 0.44-acre beachfront parcel located at 30708 Pacific Coast Highway on Broad Beach in the western portion of the City of Malibu (Exhibits 1-3). The project also includes a Variance (VAR) No. 19-038 for the reduction of the required 100-foot buffer from an environmentally sensitive habitat area (Trancas Creek). Furthermore, the project includes the demolition of two unpermitted accessory structures totaling 530 square feet (City of Malibu Code Violation No. 19-055). The subject parcel is zoned Single Family Medium Density (SF-M).

The topography of the subject property gently descends from Pacific Coast Highway to the ocean. The property is vulnerable to coastal hazards and flooding and is a part of the Broad Beach Geologic Hazard Abatement District (BBGHAD). The subject site is an infill lot within the existing residential Broad Beach community, and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south. The nearest vertical public access to the beach is located approximately 0.60 miles to the north of the subject site at a Broad Beach vertical accessway and 350 feet south of the project site at Zuma Beach County Park. The subject project (involving demolition of the existing residential structure and construction of an entirely new residence) constitutes a substantial redevelopment of the subject site. The existing residence was originally constructed in 1968.

The subject beachfront property is immediately adjacent to Trancas Creek/Lagoon, which is identified as an Environmentally Sensitive Habitat Area on the Malibu LCP ESHA and Marine Resource Map. According to the biological assessment prepared for the subject property, the site contains existing vegetation along the eastern property line, which includes exotic and invasive plant species that extend beyond the property line onto the sandy bank of Trancas Creek to the east. The California Department of Transportation (Caltrans) owns and maintains Trancas Creek Bridge, which is the stretch of Pacific Coast Highway that traverses Trancas Creek immediately east of the project site (Exhibit 3). Caltrans has a pending coastal development permit application with the City of Malibu for the proposed Trancas Creek Bridge replacement project. The bridge replacement project proposes to replace the existing deteriorated bridge with a wider and longer bridge and restore portions of Trancas Creek/Lagoon. Since the subject property is directly adjacent to the Trancas Creek Bridge, its unknown at this time if the proposed bridge

replacement project may require temporary or permanent acquisition of any portion of the subject property to accommodate the construction of the new bridge.

B. BACKGROUND AND PERMIT HISTORY

The existing residence on the subject property was originally constructed in 1968 and pre-dates the effective date of the Coastal Act and Proposition 20. Broad Beach was historically a wide beach which supported an active dune system. However, in recent decades, Broad Beach has been subject to periodic erosional events which appear to have increased in both frequency and duration and have endangered existing residential development located along portions of the beach that were historically considered safe.

In response to shoreline erosion, in 2008, and again in 2009, the homeowners began constructing large sand bag walls to protect their properties. Although some homeowners obtained emergency coastal development permits from the City of Malibu, the majority of the homeowners constructed these sand bag seawalls without benefit of either an emergency coastal development permit or a regular coastal development permit from either the City of Malibu or the Coastal Commission. In January 2010, the Trancas Property Owners Association obtained emergency permits from both the California Coastal Commission (CDPs 4-10-003-G and 4-10-029-G) and the City of Malibu for the temporary authorization of the 4,150 linear ft. long rock revetment on 79 of the properties at Broad Beach, extending from 31346 – 30760 Broad Beach Road. The Broad Beach Geologic Hazard Abatement District (BBGHAD) was then formed by the Broad Beach property owners in order to come up with a long-term plan to address the significant coastal hazard risks to their existing residential development.

On October 9, 2015, the Commission approved Coastal Development Permit No. 4-15-0390 requested by the BBGHAD for retention of the approximately 4,150 foot long emergency rock revetment and relocation of the downcoast approximately 1,600 linear feet of the as-built rock revetment further landward; implementation of a beach nourishment program involving deposition of 300,000 cu. yds. of sand on the beach from inland sand quarries during the first year, with major renourishments of up to approximately 300,000 cu. yds. of sand and interim renourishment of up to 75,000 cu. yds. of sand allowed when certain triggers are reached, periodic sand backpassing operations to occur no more than once per year, and dune habitat restoration from 30708 Pacific Coast Highway to 6526 Lechuza Point Road at Broad Beach.

It's important to note that no revetment is present nor approved on the subject property at 30708 Pacific Coast Highway; however, beach nourishment and dune habitat restoration were authorized on the property as part of CDP No. 4-15-0390. Although the permit was approved in 2015, the permit has not yet been issued because the BBGHAD is still working to satisfy all of the required prior-to-issuance special conditions of the permit. The permit authorization has not expired because the BBGHAD has obtained time extension approvals from the Commission in order to allow more time to satisfy the remaining prior-to-issuance special conditions of the permit. Furthermore, the approved project does not include any development in the location approved for beach nourishment and/or dune habitat restoration, and therefore the approved project will not preclude the development approved in CDP No. 4-15-0390.

Early Coordination

Prior to the City's final action on the subject project, Commission staff provided City staff with a comment letter on November 27, 2019 regarding the subject project and potential LCP and Coastal Act inconsistencies that were raised by the City's staff report findings.

C. SUMMARY OF APPEAL CONTENTIONS

The appeal filed by Commissioners Padilla and Uranga is attached as Exhibit 7. The appeal contends that the approved project is not consistent with the policies and provisions of City of Malibu's certified LCP related to shoreline development, coastal hazards, environmentally sensitive habitat areas, public access and recreation opportunities to and along the coast, and with the public access policies of the Coastal Act. The appellants assert that the City failed to demonstrate whether the approved development is sited as far landward as possible and is sited and designed to minimize risk from wave run-up, flooding and beach erosion hazards in consideration of anticipated sea level rise without shoreline protection for the economic life of the development. Further, the appeal asserts that the City failed to analyze a range of siting and design alternatives that would avoid the need for structures that may function as shoreline protective devices as beach conditions change and that site development as far landward as feasible, and that eliminate or mitigate adverse impacts to local shoreline sand supply and public access. Additionally, the appeal contends the City failed to require the recordation of a lateral access offer-to-dedicate as a condition of approval of the CDP in order to minimize potential adverse impacts to public access consistent with Land Use Plan (LUP) Policies 2.63 and 2.64, and Chapter 12 of the Malibu Local Implementation Plan (LIP). Moreover, the appeal states the City failed to analyze a range of siting and design alternatives that would maximize the development's setback from environmentally sensitive habitat areas (ESHA) to avoid and minimize impacts to ESHA. The specific policy inconsistencies raised in the appeal are discussed in further detail below.

D. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to the policies contained in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. In this case, the appellants cited the LCP policies related to the shoreline development, coastal hazards, environmentally sensitive habitat areas, public access and recreational opportunities to and along the coast, and the and the public access policies of the Coastal Act.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (§ 30625(b)(2)). Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;

2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

In this case, for the reasons discussed below, the Commission determines that the appeal raises a substantial issue with regards to the grounds on which the appeal has been filed.

1. Shoreline Development and Coastal Hazards

The appellants contend that the project, as approved by the City, fails to conform with the following LCP policies and provisions relating to coastal hazards and shoreline development. Specifically, the appellants raise issues with respect to consistency with the Land Use Plan (LUP) and Local Implementation Plan (LIP) policies (cited below) that require new development to avoid impacts to beaches and to be sized, sited and designed to minimize risks from hazards without the need for shoreline protective devices. The appellants also state that the City's approval did not utilize the stringline provision of the LCP correctly and therefore resulted in the approved development extending further seaward that the adjacent upcoast property.

Coastal Act Section 30253, as incorporated into the certified LCP, states (in applicable part):

> *New development shall:*
>
> *(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
>
> *(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or surrounding area or in any way require the construction of protective device that would substantially alter natural landforms along bluffs and cliffs.*

Land Use Plan Policy 4.23 states:

> *New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazards areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.*

Local Implementation Section 10.4, in applicable part, states:

A. Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered and its potential impact on beach erosion, shoreline retreat, and bluff erosion rates shall be evaluated. Development shall be set back a sufficient distance landward and elevated to a sufficient finished floor height to eliminate or minimize extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.

B. New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full protected 100 year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and sited as far landward as possible to the maximum extent practicable. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

…

G. In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill as defined in Section 2.1 of the LIP and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development as it is defined in Section 2.1 and where it will not result in development which would require a shoreline protective structure at any time during the life of the project.

H. All new beachfront development and bluff-top development shall be sized, sited and designed to minimize risks from wave run-up, flooding, and beach and bluff erosion hazards without requiring a shoreline protection structure.

…

L. No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structure shall be removed if it is determined that the structure is in danger from erosion, flooding or wave run-up. Such structures shall be considered threatened if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures, including but not limited to patios, stairs, recreational facilities, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazard.

The project approved by the City of Malibu is for the demolition of an existing 3,153 sq. ft., two-story, single-family residence and associated development, and the construction of a new 6,120 sq. ft., two-story, single family residence with a 680 sq. ft. attached garage, swimming pool, spa, decks, permeable driveway, side yard perimeter walls, and replacement of the existing onsite wastewater treatment system, demolition of unpermitted structures totaling 530 sq. ft., and 394 cu. yds. of associated grading on a 0.44-acre beachfront parcel on Broad Beach in the City of Malibu. The subject site is an infill lot within the existing residential Broad Beach community, and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south. The property is vulnerable to coastal hazards and flooding and is part of the Broad Beach Geologic Hazard Abatement District.

Coastal Act Section 30253, which is incorporated as a policy of the LUP, and Local Implementation (LIP) Section 10.4 (H) mandate that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and shall not require the construction of protection devices that would substantially alter natural landforms. LIP Section 10.4 provides that the siting and design of new shoreline development shall take into account anticipated future changes in sea level including an acceleration of the historic rate of sea level rise. Further, LUP Policy 4.23 and LIP Section 10.4 (B) requires that new development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the fill project 100 year economic life of the development and if complete avoidance of hazard areas is not feasible, all new development shall be elevated above the base flood elevation and sited as far landward as possible. Lastly, LUP Section 10.4 (L) states that "accessory structures, including but not limited to patios, stairs, recreational facilities, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards".

Consistent with LUP Policy 4.16, the City required the preparation of a Coastal Hazards and Wave Run-up Study for the project. The Wave Uprush Study/Coastal Engineering Report for 30708 Pacific Coast Highway, prepared by Pacific Engineering Group, dated December 17, 2017 that the City relied upon in their action analyzed the proposed development in relation to coastal hazards under a range of sea level rise projections (assuming no shoreline protection devices), and provided a recommended finished floor elevation. The study analyzed sea level rise by adding 18 inches (1.5 ft.) of sea level rise to the highest observed still water elevation and analyzing wave run up from there. The City's findings state that the City's Coastal Engineer reviewed the proposed project based on the 2012 National Research Council (NRC) estimate of sea-level rise of 18 inches over a 100-year period and found it to be in conformance with the Commission's 2015 Sea Level Rise Policy Guidance.

Commission staff notes that at the time of the preparation of the Wave Uprush Study and Coastal Engineering Report, the Commission's 2015 Sea Level Rise Policy Guidance recommended the use of region-specific sea level rise projections contained in the NRC 2012 science report as the best available science. However, the Commission's 2015 Sea Level Rise Policy Guidance states that the appropriate region-specific sea level rise projection for the year 2100 in the NRC 2012 Report (for areas South of Cape Mendocino), is a minimum of 66 inches. This projection was the best available science in place in 2017 at the time the applicant's coastal engineering consultants

prepared their report. The 66 inch projection is significantly higher than the 18-inch (1.5 ft.) sea level rise projection used in the applicant's December 2017 Wave Uprush Study and Coastal Engineering Report that the City relied on in its CDP action.

Additionally, it is important to note that in August 2018, the Commission's Sea Level Rise Guidance was updated to reflect new best available science with new sea level rise projections stemming from two reports from the California Ocean Protection Council (OPC), the State Sea Level Rise Guidance (OPC 2018), and Rising Seas in California (Griggs et al. 2017). The new best available science on sea level rise indicates that in this area, sea levels may rise between 3.3 and 10 feet by the year 2100, which is significantly higher than the level analyzed in the City's findings. Using the appropriate medium-high risk aversion and high emissions scenario, sea level rise is projected to be 5.5 feet by 2090 and 6.8 feet by 2100 in the Santa Monica area (OPC 2018). For the 75-year project life of the approved residence, sea level rise is projected to be roughly 6.15 feet by year 2095 (the mid-way point between the 2090 and 2100 projections). The difference in sea level rise projection between the projection used in the Wave Uprush Study and Coastal Engineering Report for the approved project (1.5 feet) and the updated and best available sea level rise science (6.15 feet) is more than 4.65 feet, which is significant and would change the conclusions of the analysis about the required setback, finished floor elevation, and the safety of the proposed structure from extreme events and sea level rise.

More specifically, the updated Commission's SLR Guidance states that because residential structures have moderate capacity to adapt to sea level rise and relatively high consequences if impacted by sea level rise, it is appropriate to use the 6.15-foot sea level rise scenario to inform decision-making. This guidance was adopted by both the Ocean Protection Council and the California Coastal Commission in 2018, more than a year before the City's action on the subject permit. Therefore, it should be noted that the 1.5-foot scenario utilized by Pacific Engineering Group in its December 2017 report is much lower than the 6.15-foot scenario recommended by the current best available science and adopted state guidance on sea level rise, and as a result the hazard conditions at the project site could intensify sooner than described in the Pacific Engineering Group report.

The approved project would be vulnerable to coastal hazards over its expected life. Although, the approved new residence will not be located further seaward than the existing residence and will be 4 feet further landward than the existing residence, the new residence would be larger than the existing residence and a portion of the approved residence and associated accessory development would be located within the maximum expected wave uprush limit line even based on a sea level rise projection of 1.5 ft., which is significantly lower than both the 2015 and 2018 best available science sea level rise projections that have served as Commission guidance and that should form the basis of finding consistency with LIP Policy 10.4. Furthermore, a wall and at-grade, pile-supported pool and deck on the seaward side of the residence were approved that would be located within the maximum expected wave uprush limit line and would potentially function as a seawall/shoreline protective structure. The siting of these structures fails to minimize the project's risk related to coastal hazards, as the approved development would be increasingly acted upon by wave uprush and increased wave action in the future due to anticipated sea level rise.

The applicant's representative has claimed that the approved project does not include any walls on the seaward side of the development, and stated that the perimeter walls depicted on the project plans approved by the City on December 2, 2019 contained a drafting error. However, a perimeter wall around the entire development is depicted on the project plans (Exhibit 4) attached as Attachment 2 to the City's Planning Commission Agenda Report dated November 21, 2019 for the subject project, and on project plans (Exhibit 5) submitted by the City as part of the administrative record on January 22, 2020 for the subject permit. In addition, the project description in the City's resolution approving the project states that perimeter walls are approved. Therefore, Commission staff must consider the walls as part of the approved project approved by the Malibu Planning Commission on December 2, 2019.

The City's action fails to demonstrative whether the approved development (including all accessory development such as decks, swimming pool, etc.) is sited as far landward as possible and is sited and designed to minimize risks from wave run-up, flooding and beach erosion hazards in consideration of anticipated sea level rise without shoreline protection for the economic life of the development, consistent with the above noted shoreline development provisions of the Malibu LCP (LUP Policy 4.23, and LIP Section 10.4). Further, the City failed to analyze a range of siting and design alternatives that would avoid the need for structures that may function as shoreline protective devices as beach conditions change and that site development as far landward as feasible. As such, the Commission finds that there is not adequate factual and legal support for the City's position that the proposed project will minimize risks from coastal hazards in compliance with the above-mentioned policies and provisions of the certified LCP regarding shoreline development and coastal hazards.

The appellants also state that the City's approval did not utilize the stringline provision of the LCP correctly and therefore resulted in the subject development extending further seaward than the adjacent upcoast property. Specifically, LUP Policy 4.30 and LIP Section 10.4 (G) state that in existing developed areas where new beachfront development is found to be infill, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structure on either side of the subject lot. Similarly, a proposed deck or other accessory structure shall not extend seaward of a stringline drawn between the nearest corners of the nearest deck or other accessory structure on either side. The City's findings in this case state that since the subject parcel is the end property along Broad Beach between developed properties upcoast and a three-mile stretch of public beach downcoast where there is no nearest adjacent corner on the downcoast end of the subject property, the City determined the average stringlines of the three adjacent developed properties upcoast should be used to determine the appropriate stringline. However, this methodology is inconsistent with the stringline provisions of the LCP and resulted in the approved development extending further seaward than the nearest adjacent corner of the adjacent upcoast property at 30712 Pacific Coast Highway. Specially, the approved residential structure extends 4 feet further seaward than the upcoast residential structure, and the approved deck extends 1 foot further seaward than the upcoast deck. Furthermore, the stringline drawn from the adjacent building and deck should be considered the maximum approvable seaward extent of development, and it may be necessary to further limit the seaward extent of development in this case given the coastal hazard and resource constraints of the site in order to comply with the other LIP provisions previously described. In addition, the project creates cumulative impacts by establishing a precedent for future development on similar lots where there is no nearest adjacent corner on one

side of the subject property and the development is allowed to extend further seaward than the adjacent development and into an area subject to wave action.

Additionally, the banks of Trancas Creek directly adjacent to the eastern property line of the subject property have a history of bank erosion. To address the City Coastal Engineer's concerns of severe erosion potential along the west bank of Trancas Creek, the applicant's coastal engineer provided further findings and recommendations in an addendum to the Wave Uprush and Coastal Engineering Report (Trancas Creek Erosion (2019) and Recommendations, dated April 17, 2019, and prepared by Pacific Engineering Group). Specifically, the addendum included findings of an April 4, 2019 site visit that observed the condition and extent of recent erosion that had taken place along the west bank of Trancas Creek seaward of the Pacific Coast Highway bridge east of the subject site. Additionally, the addendum's findings state that all proposed structures located on the subject property should be elevated high enough and supported on a deepened concrete friction pile foundation that will allow flood waters and erosion from the ocean or from Trancas Creek to flow below those structures without causing structural damage. As previously mentioned above, the applicant's representative has claimed that the approved project does not include any perimeter walls around the development, however, perimeter walls around the entire development are depicted on the project plans attached as exhibits to the City's Commission Agenda Report and on project plans submitted by the City as part of the administrative record on, and the approved project description states that perimeter walls are approved. Therefore, Commission staff must consider the walls as part of the approved project approved by the Malibu Planning Commission on December 2, 2019. The City's action did not adequately describe or analyze all of these components of the project, including foundation system and walls, and how they would function in consideration of coastal hazards on the creek and ocean side of the approved development. Therefore, the City's findings failed to demonstrate whether the approved development (including all accessory development such as decks, swimming pool, etc.) has been sited and designed to withstand future erosion of the west bank of Trancas Creek and minimize flooding risk.

Therefore, for the above reasons, issue is raised regarding the approved development's consistency with the shoreline development and coastal hazard policies and provisions of the certified LCP.

2. Environmentally Sensitive Habitat Area

The appeal states the City failed to analyze a range of siting and design alternatives that would maximize the development's setback from environmentally sensitive habitat areas (ESHA) to avoid and minimize impacts to environmentally sensitive habitat areas. The appeal also contends that the City findings failed to include an analysis of the project's consistency with LUP Policy 3.32 and failed to analyze project alternatives that would avoid alteration of Trancas Creek under a range of conditions.

Coastal Act Section 30236, as incorporated into the certified LCP, states:

> *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing*

structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Coastal Act Section 30240, as incorporated into the certified LCP, states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Land Use Plan Policy 3.1 states:

Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.

Land Use Plan Policy 3.8 states:

Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses depended on such resources shall be allowed within such areas.

Land Use Plan Policy 3.10 states:

If the application of the policies and standards contained in this LCP regarding use of property designated as Environmentally Sensitive Habitat Area, including the restriction of ESHA to only resource dependent use, would likely constitute a taking of private property, then a use that is not consistent with the Environmentally Sensitive Habitat Area provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking.

Land Use Plan Policy 3.12 states (in applicable part):

> *For all ESHA other than wetlands, the allowable development area (including the building pad and all graded slopes, if any, as well any permitted structures) on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less. If it is demonstrated that it is not feasible from an engineering standpoint to include all graded slopes within the approved development area, then graded slope areas may be excluded from the approved development area. For parcels over 40 acres in size, the maximum development area may be increased by 500 sq. ft. for each additional acre in parcel size to a maximum of 43,560-sq. ft. (1-acre) in size. The development must be sited to avoid destruction of riparian habitat to the maximum extent feasible. These development areas shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance, as defined in California Civil Code Section 3479. Mitigation of adverse impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be required.*

Land Use Plan Policy 3.14 states:

> *New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.*

Land Use Plan Policy 3.23 states:

> *Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.*

Land Use Plan Policy 3.28 states:

> *Variances or modifications to buffers or other ESHA protection standards shall not be granted, except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development pursuant to Policies 3.10-3.13.*

Land Use Plan Policy 3.32 states:

Channelization or other substantial alterations of streams shall be prohibited except for: (1) necessary water supply projects where no feasible alternative exists; 2) flood protection for existing development where there is no other feasible alternative, or 3) the improvement of fish and wildlife habitat. Any channelization or stream alteration permitted for one of these three purposes shall minimize impacts to coastal resources, including the depletion of groundwater, and shall include maximum feasible mitigation measures to mitigation unavoidable impacts. Bioengineering alternatives shall be preferred for flood protection over "hard" solutions such as concrete or riprap channels.

Local Implementation Plan (LIP) Section 4.6.1 states, in part:

New development adjacent to the following habitats shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers except as provided in Section 4.6.1 (E) or (F) of the Malibu LIP. The following buffer standards shall apply:

A. Stream/Riparian

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

Local Implementation Plan (LIP) Section 4.7 states, in part:

Any coastal development permit application for a use other than one permitted in the ESHA overlay district, in which the uses permitted in this district would preclude construction of a residence on an undeveloped legal parcel, shall be subject to the provisions of this section. The uses of the property and the siting, design, and size of any development approved in ESHA or ESHA buffer, shall be limited, restricted, and/or conditioned to minimize impacts to ESHA on and adjacent to the property, to the maximum extent feasible. Where all feasible building sites are ESHA or ESHA buffer, the City may only permit development as specified below in Sections 4.7.1 through 4.7.4 of the Malibu LIP in order to provide the owner with an economically viable use of the property. In no case shall the approved development exceed the following maximum standards.

4.7.1. Development Area

No development shall be allowed in wetlands unless it is a permitted use identified in Section 4.5.1 of the Malibu LIP. In other ESHA areas, the allowable development area (as defined in Chapter 2 of the Malibu LIP) on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less. For parcels over 40 acres in size, the maximum development area may be increased by 500 square feet for each additional acre over 40 acres in parcel size to a maximum of 43,560 square feet (one acre) in size. The development must be sited to

> *avoid destruction of riparian habitat to the maximum extent feasible. The development area shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance.*

The beachfront subject site is an infill lot within the existing residential Broad Beach community, and is immediately adjacent to Trancas Creek/Lagoon, which is identified as an Environmentally Sensitive Habitat Area under the Malibu LCP ESHA and Marine Resource Map.

Trancas Creek is defined as a seasonal creek, running only after heavy rains; in drier years, it does not run at all. Trancas Lagoon itself measures approximately 10 acres in area and supports a mix of southern coastal salt marsh and brackish and freshwater marsh habitats, with approximately 0.50 acre located seaward of Pacific Coast Highway. The lagoon is created by a sand berm, which limits tidal exchanges and causes the creek to pond during high seasonal flows or during times of tidal inundation or wave run-up. The lagoon supports native species, such as California bulrush, pickleweed and alkali heath; non-native species, such as brass buttons and tamarisk; and substantial areas of open water. Wildlife species known to use the lagoon and the sandy beach in the immediate vicinity include common waterfowl, such as mallard, as well as a number of shorebirds, such as double-crested cormorant and gulls. Additionally, western snowy plover, a federally threatened species and a California Department of Fish and Wildlife (CDFW) species of special concern, has federally designated critical overwintering and foraging habitat in the immediate vicinity of the lagoon.

Land Use Plan (LUP) Policy 3.1 of the certified LCP defines ESHA to include, among other resources, streams and riparian areas. The Malibu LUP ESHA Map contains most known watercourses and ESHA locations throughout the Malibu Coastal Zone. Even resources not depicted on the Malibu ESHA Map are to be considered ESHA if the resources meet certain criteria (pursuant to LUP Policy 3.4), including any habitat area that is rare or especially valuable from a local, regional, or statewide basis. Additionally, LUP Policy 3.23 requires a minimum 100-foot buffer from ESHA, to ensure development is at a distance sufficient to avoid impacts to the ESHA.

According to the biological assessment prepared for the subject property (Biological Resources Assessment for 30708 Pacific Coast Highway, dated December 26, 2017, prepared by E Read and Associates, Inc.), the subject site contains existing exotic and invasive plant species including myoporum, iceplant, and palm trees which surround the existing residence and are found along the eastern property line. The biological assessment did not observe any dune habitat or other sensitive habitat on the property and the City's action indicates that dune habitat does not exist on the property. However, in the Commission's action on CDP No. 4-15-0390 for the Broad Beach rock revetment and beach nourishment project, the Commission has found there to be dune habitat on the portion of the property that is seaward of the existing residential development. Although the dune system on the subject property and adjacent properties along Broad Beach have been highly disturbed from past residential development, unpermitted landscaping, yard improvements, and wave erosion, the Commission found that coastal dunes such as those on the project site are rare and therefore meet the definition of environmentally sensitive habitat areas (ESHA).

In its action on the subject permit, the City determined that, even though disturbed, Trancas Creek adjacent to the project site constitutes ESHA and that the ESHA protection policies of the LCP do apply. The City's staff report states that the subject parcel is located entirely within the required 100-foot stream ESHA buffer of Trancas Creek, and the approved residence does not expand beyond the area that is already disturbed by existing development on the site and therefore the project will not result in new ESHA impacts. Specifically, the City approved the development with only a 4 ft. 9 in. setback from the edge of the bank of Trancas Creek (stream ESHA). Since the approved development did not comply with 100-foot stream ESHA buffer of Trancas Creek, the City approved the requested Variance (VAR) No. 19-038 for the reduction of the required 100-foot buffer from stream ESHA.

However, in this case, the existing extent of development on the project site is not relevant because the proposed project is a complete redevelopment of the site that is subject to all applicable LCP policies and provisions. There are potential impacts to ESHA resulting from an inadequate buffer between the creek/lagoon and the structure throughout the life of the development. Further, in addition to the development area limitations required pursuant to LIP Section 4.7.1, which limit the development area on parcels where all feasible building sites are ESHA or ESHA buffer to 25 percent of the parcel size (and the City applied in this case), LUP Policy 3.14 requires new development to be sited and designed to avoid impacts to ESHA, and if there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Although it is not feasible to require the full buffer in this case given the parcel configuration in relation to the ESHA, there appear to be siting and design alternatives that would allow a greater setback from the ESHA. Therefore, regardless that the approved residence is sited within an existing disturbed area, the City's findings should have included project alternatives, including reduction or reconfiguring the footprint of the development in order to maximize the development's setback from ESHA to the maximum extent feasible.

Furthermore, the banks of Trancas Creek follow the subject property's eastern property line, and there is a history of bank erosion along the eastern property line. To minimize bank erosion and flooding hazards, the subject property owner has attempted to alter the drainage course in the past through unpermitted grading and placement of sandbags. The appellants contend the approved perimeter wall along the eastern property line will likely alter the natural drainage course of Trancas Creek. Coastal Act Section 30236, which has been incorporated in to the certified LCP, and LUP Policy 3.32 states that channelizations or other substantial alterations of streams shall be prohibited except for necessary water supply projects, flood protection for existing development, or the improvement of fish and wildlife habitat. The City's findings failed to include an analysis of the project's consistency with LUP Policy 3.32 and failed to analyze project alternatives that would avoid alteration of Trancas Creek under a range of conditions.

The City's project description of the approved project and the project plans provided in the staff report to the City Planning Commission at the time of CDP approval and available at the time the appeal was filed depicted a perimeter wall along the eastern property line. However, updated project plans included in the City's administrative record no longer depict a perimeter wall along the eastern property line. Therefore, it's unclear at this time if a perimeter wall on the eastern portion of the site was approved by the City in their final action. Regardless, the City's findings

failed to include an analysis of how the proposed development, including all accessory development, has been sited and designed to avoid alteration of Trancas Creek.

As such, for the reasons above, issues are raised regarding the approved development's consistency with the LCP requirements necessary to avoid and minimize impacts to environmentally sensitive habitat areas.

3. Public Access and Recreation

The appellants assert that the project, as approved by the City, fails to conform with the LCP and Coastal Act policies and provisions relating to the protection and preservation of public access and recreational opportunities to and along the coast. Specifically, the appellants contend the City did not require the recordation of a lateral access offer-to-dedication as condition of approval of the coastal development permit.

Coastal Act Section 30210, as incorporated into the certified LCP, states:

> *In carrying out the requirements 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 for overuse.*

Coastal Act Section 30211, as incorporated into the certified LCP, states:

> *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.*

Coastal Act Section 30212, as incorporated into the certified LCP, states (in applicable part):

> *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
>
> *(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
>
> *(2) Adequate access exists nearby, or,*
>
> *(3) Agricultural would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*
>
> …

Land Use Plan Policy 2.5 states:

> *New development shall be sited and designed to minimize impacts to public access and recreational along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP*

mapped access or trial alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.

Land Use Plan Policy 2.63 states:

Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agricultural would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.

Land Use Plan Policy 2.64 states:

An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. Such easements shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff.

Local Implementation Plan Section 12.4. states:

As a condition of approval and prior to issuance of a permit or other authorization for any new development identified in A through D of this section, except as provided in Section 12.5 of the Malibu LIP, an offer to dedicate an easement or grant of easement (or other legal mechanism pursuant to Section 12.7.1(b) of the Malibu LIP) for one or more of the types of access identified in Sections 12.2 (a-e) of the Malibu LIP shall be required and shall be supported by findings required by Sections 12.7.3-12.9 of the Malibu LIP; provided that no such condition of approval shall be imposed if the analysis required by Section 12.7.3(a) through (d) of the Malibu LIP establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources to that the access dedication requirement will not alleviate the access burdens identified.

A. New development on any parcel or location specifically identified in the Land Use Plan or in the LCP zoning districts as appropriate for or containing an historically used or suitable public access trail or zoning districts as appropriate for or containing an historically used or suitable public access trail or pathway.

B. New development between the nearest public roadway and the sea.

> *C. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a blufftop trail or an inland trail acquired through use or a public right of access through legislative authorization.*
>
> *D. New development on any site where a trail, blufftop access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.*

Local Implementation Plan Section 12.7.1 states, in applicable part:

> *A. Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development). Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals or conditional approvals of projects (whether development or new development) where an access dedication is included in the project proposal or required as a condition of approval. …*

A fundamental goal of the Coastal Act is to "maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone" (Coastal Act § 30001.5, subd. (c)). To achieve this goal, both the Coastal Act and the City's certified LCP set forth specific policies governing the provision of public access and recreational opportunities, and development along the coast. The public access policies of the Coastal Act (Sections 30210, 30211, 30212), which are incorporated into the LCP (and which are one standard of review for appeals of development between the first public road and the sea such as this in any event), mandate that development shall not interfere with the public's right to access the coast. In addition, the Malibu LCP contains several policies to ensure the protection and provision of public access in new development along the shoreline, in consideration of public safety needs, private property rights, and the protection of natural resources, where applicable (Land Use Plan (LUP) Policies 2.63 – 2.86 and LIP Sections 12.4 and 12.7). Specifically, LUP Policy 2.64 requires that an Offer-to-Dedicate (OTD) an easement for lateral public access shall be required for all new ocean fronting development causing or contributing to adverse public access impacts.

The project site is an infill lot within the existing residential Broad Beach community, and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south. Zuma Beach County Park, which is heavily used by beachgoers, is located approximately 150 ft. to the east of the subject site. The area of Broad Beach seaward of the subject parcel is also subject to significant use by beachgoers who access the beach from Zuma Beach County Park or from the two Los Angeles County-owned public vertical accessways along Broad Beach.

In this case, the approved project, involving construction of a new residence on a beachfront lot, perimeter walls, and at grade, pile-support pool and deck, would occupy sandy beach, and as described above, portions of the development could act as seawalls and could affect shoreline sand supply. Such effects could include increased scour of sand, fixing the back of the beach so that it cannot naturally erode and create new public beach as the mean high tide line moves

landward, and retention of sand that would otherwise nourish the beach. These effects would negatively impact public access opportunities, in contradiction of the public access and recreation policies of the certified LCP. Given the narrow width of Broad Beach, particularly coupled with projected sea level rise, it is likely that the proposed development will be subject to wave action and will affect the beach profile, and thereby impact the public's ability to gain access to the beach. As discussed in detail above, the CDP decision did not adequately address siting and design alternatives necessary to ensure the development is located as far landward as feasible to avoid impacts to sand supply, public access, and recreation. In order to minimize potential adverse impacts to public access, the City should have analyzed whether it was appropriate in this case to require a lateral public access easement, consistent with Policies 2.63 and 2.64 of the Malibu LUP, and Chapter 12 of the Malibu LIP. The City of Malibu did not require the recordation of a lateral access offer-to-dedicate as a condition of approval of the coastal development permit. Therefore, issue is raised regarding the approved development's consistency with the above cited public access and recreation policies and provisions of the City's LCP and the Coastal Act.

4. Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the appealable development's conformity to the policies contained in the certified LCP and the public access policies of the Coastal Act. In this case, the appeal cites shoreline development, coastal hazards, environmentally sensitive habitat areas, and public access policies and provisions of the Malibu LCP and the public access policies of the Coastal Act. The Commission's regulations indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the City's action does not demonstrate that the approved development has been sited and designed to minimize the risks of coastal hazards, protect public access along the beach, and avoid and minimize impacts to environmentally sensitive habitat areas. Among other things, the City did not use the proper sea level rise numbers to analyze hazard risks. Therefore, the City has not provided an adequate degree of factual and legal support for its decision that the proposed development is consistent with the certified LCP related to shoreline development, coastal hazards, environmentally sensitive habitat areas, and public access and recreational opportunities protection policies, as explained in detail above.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the approved project involves the demolition of an existing 3,153 sq. ft. residence and construction of a two-story, 6,120 sq. ft. residence on a beachfront residential lot. Although this lot is not particularly large and the development type is consistent with the surrounding areas, the extent and scope of the approved development has implications for future development project along the Malibu

coastline both currently and into the future, as substantial redevelopment increases the amount of development exposed to shoreline hazards. Although consistent with nearby structures, the proposed home and accessory development is quite large, and the scope of development is relatively significant given its location within ESHA buffer and adjacent to an eroding beach shoreline. Given the sensitive location of this development, the extent of development approved here is significant enough to warrant finding substantial issue.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is in a beachfront residential community, immediately adjacent to the beach and a creek ESHA. Development in such a location has the potential to adversely impact shoreline processes, sand supply, environmentally sensitive habitat areas, and public access, which are all significant coastal resources. Public access, particularly in shorefront areas subject to sea level rise, is a very important issue, and one that supports finding substantial issue.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the precedential value of the City's decision for future interpretation of its LCP is significant because there are several beachfront residential communities where substantial redevelopment could raise similar resource issues. As described above, under the certified LCP, beachfront development is required to be sized, sited and designed to minimize risks from hazards. If redevelopment of beachfront property (such as the subject project) is not required to be consistent with these LCP policies, cumulative impacts of residential development along the Malibu coastline could result in an increased risk of hazards and degradation of coastal resources over time. Additionally, as evidenced by the City's action, the City is not requiring applicants to use the best available science with regard to sea level rise projections as a means to design and site new development to ensure maximum public access and minimize wave hazards, as well as minimize adverse effects to coastal processes, and shoreline sand supply. Resolution of this permit will therefore affect the manner in which future redevelopment of homes on beachfront lots occur in the City. This is an important precedent not just for the City, but also statewide.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the appeal not only raises local issues, but also has implications for resources of regional or statewide significance. The subject development raises issues associated with redevelopment on land subject to shoreline hazards, which hazards are expected to increase over time from sea level rise. These are important issues common to jurisdictions throughout the Coastal Zone, and planning for sea level rise and shorefront adaptation are issues of top importance for the Coastal Commission right now. Therefore, this appeal does have regional and statewide significance.

In conclusion, the City-approved project raises substantial issue with respect to its conformance with applicable LCP provisions related to shoreline development, coastal hazards, environmentally sensitive habitat areas, public access, and the public access policies of the Coastal Act. Therefore, the Commission finds that substantial issue exists with respect to the approved project's conformance with the certified Malibu LCP and the Coastal Act's access policies. As such, the Commission will evaluate the project under a de novo permit review.

APPENDIX 1

Substantive File Documents

Certified City of Malibu Local Coastal Plan; Malibu Planning Commission Agenda Report for CDP No. 17-119 dated November 21, 2019; Malibu Comment Letter 30708 Pacific Coast Highway, December 2, 2019 Planning Commission, dated November 27, 2019; Coastal Development Permit No. 4-15-0390 (Broad Beach Geologic Hazard Abatement District); Biological Resource Assessment for 30708 Pacific Coast Highway, Malibu, dated December 26, 2017, prepared by E Read and Associates, Inc.; Wave Uprush Study/Coastal Engineering Report for 30708 Pacific Coast Highway, dated December 18, 2017, prepared by Pacific Engineering Group; Trancas Creek Erosion (2019) and Recommendations for 30708 Pacific Coast Highway, dated April 17, 2019, prepared by Pacific Engineering Group; California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. Adopted August 12, 2015. Updated November 7, 2018; California Coastal Commission Residential Adaptation Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs. Revised March 2018; National Research Council (NRC). 2012. Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp. Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017; Intergovernmental Panel on Climate Change (IPCC). 2007. Climate Change 2007: Ocean Protection Council (OPC). 2013. State of California Sea-Level Rise Guidance Document. Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update.