

## **CALIFORNIA COASTAL COMMISSION**

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



# **F14a**

**A-4-MAL-20-0136 (City of Malibu Public Works Department)**

**July 10, 2020**

### **EXHIBITS**

#### **TABLE OF CONTENTS**

**Exhibit 1 – Vicinity Map**

**Exhibit 2 – Aerial Photo**

**Exhibit 3 – Civic Center Way Improvements Project ESHA Map**

**Exhibit 4 – Civic Center Way Improvements Project Cross-Sections**

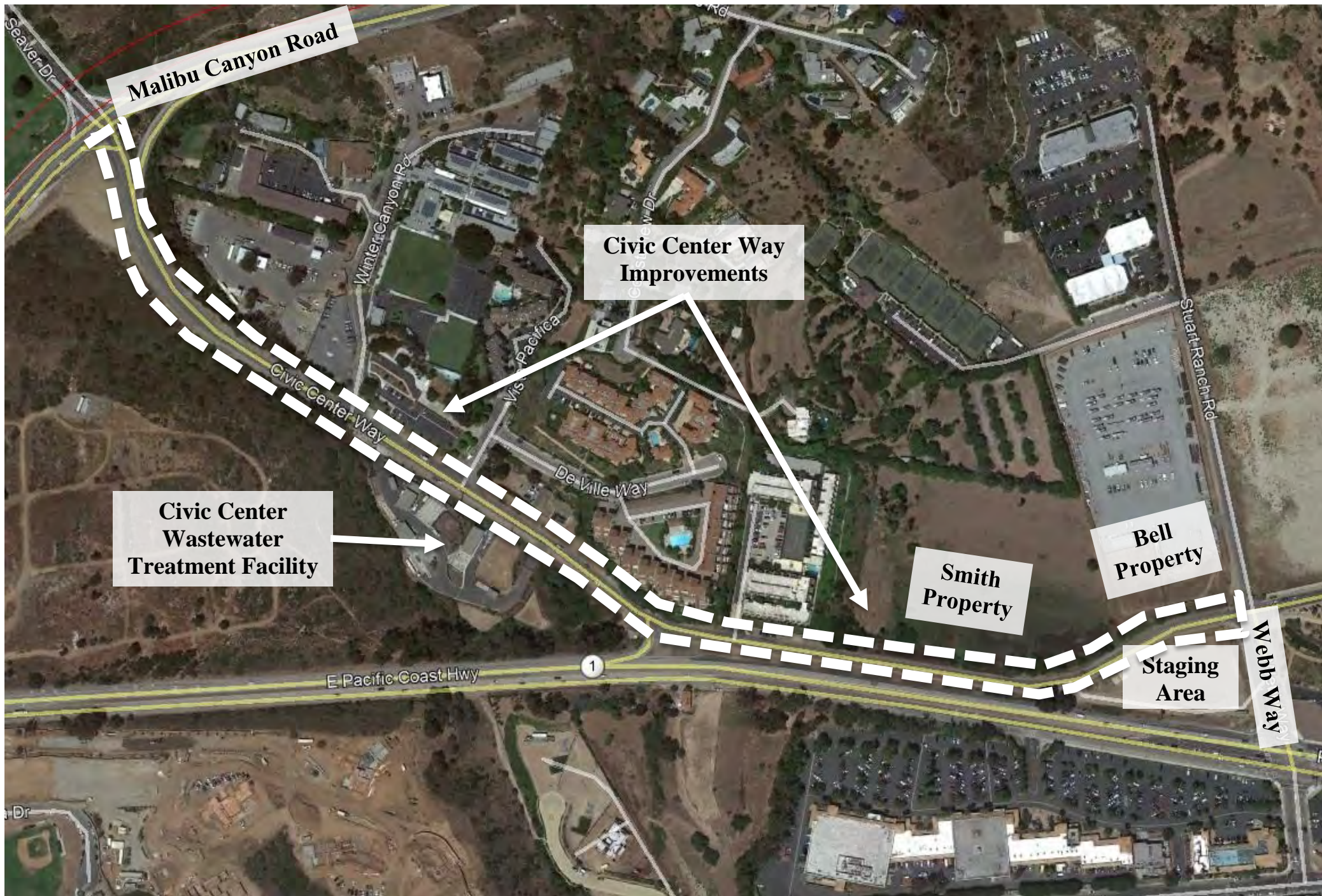
**Exhibit 5 – Appeal by Bruce Silverstein**

**Exhibit 6 – Final Local Action Notice & City Resolution**



**Exhibit 1**  
**Vicinity Map**  
**Appeal No. A-4-MAL-20-0136**





**Exhibit 2**  
**Site Photo**  
**Appeal No. A-4-MAL-20-0136**





**Kimley»Horn**

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PRELIMINARY  
NOT FOR CONSTRUCTION

## CIVIC CENTER WAY IMPROVEMENT PROJECT ENVIRONMENTALLY SENSITIVE HABITAT AREA EXHIBIT

Exhibit 3  
Civic Center Way Improvements  
Project ESHA Map  
Appeal No. A-4-MAL-20-0136





SECTION A-A



SECTION C-C



SECTION B-B



SECTION D-D



**CALIFORNIA COASTAL COMMISSION**

South Central Coast District Office  
89 South California Street, Suite 200  
Ventura, CA 93001-4508  
(805) 585-1800

**Received**

MAR 02 2020

California Coastal Commission  
South Central Coast District

**APPEAL TO THE CALIFORNIA COASTAL COMMISSION**  
**OF A LOCAL COASTAL PERMIT DECISION**

**TO BE COMPLETED BY COMMISSION STAFF**APPEAL NO: 4-MAL-20-0136DATE FILED: March 2, 2020DISTRICT: South Central Coast

**APPELLANT:** COMPLETE THE INFORMATION BELOW AND SUBMIT TO THE DISTRICT OFFICE WITH JURISDICTION OVER THE LOCAL PERMIT DECISION.

NOTE: To ensure the appeal is adequate for filing, please review the Appeal Information Sheet located above this form on the Commission website.

NOTE: E-mailed appeals to the Central Coast District Office will be accepted ONLY at the general e-mail address as follows: [SouthCentralCoast@coastal.ca.gov](mailto:SouthCentralCoast@coastal.ca.gov). The Executive Director will reject e-mailed appeals sent to any other address, including addresses of individual staff members.

**SECTION I. Appellant Information****1. Contact Information**

Name: Bruce L. Silverstein

Street Address: 23858 Harbor Vista Drive

City, Zip: Malibu, CA 90265

Phone: 302-740-4294

E-mail Address: [bsilvesq@gmail.com](mailto:bsilvesq@gmail.com)

**2. How did you participate during the local government's consideration of the permit application? Check all that apply:**

☐ **Testified at the first local hearing**

- ☐ Submitted a written comment in advance of the first local hearing  
☒ Otherwise participated (describe): Spoke in Opposition of CDP before City Council at the hearing at which the CDP was approved  
☐ Good cause for why I did not participate (describe):

3. Each appellant must supply their individual contact and participation information. To add other appellants, copy this page, fill out, and attach.

## SECTION II. Decision Being Appealed

1. Name of local government or port district: City of Malibu  
2. Development location (street address, assessor parcel number, cross street, etc.):

23800 5 Civic Center Way, Within The Public Right-Of-Way, 400 Malibu Canyon Road, And 23800 Civic Center Way, Los Angeles County Apr 06037-4458020900

3 Brief description of development being appealed: Roadway Improvement Project, including Construction on property with ESHA and use of property on scenic route for construction staging

4. Type of appeal (check one):

- ☒ Approval with special conditions  
☐ Approval with no special conditions  
☐ Denial - NOTE: appeals for denials are available only for major energy or public works projects denied by jurisdictions with a fully-certified local coastal program (both land use plan and implementation plan are certified)

5. Decision being appealed was made by (check one):

- ☐ Administrator (e.g. Planning Director)  
☐ Planning Commission or equivalent  
☒ City Council, Board of Supervisors, or equivalent body  
☐ Other (describe):

6. Date of latest local government decision: 2/18/2020

7. Local permit number or other filing number: CDP 19-018

## SECTION III. Grounds Supporting this Appeal

State your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements with which you believe the project is inconsistent and why the asserted inconsistencies form a substantial issue for the Commission's consideration. Attach additional pages as necessary. Be concise but complete. The Executive Director may request further information in order to file the appeal.

The City of Malibu issued the challenged CDP in violation of the LCP by approving a project that includes construction on or near ESHA without complying with the requirements of the LCP that govern construction on or adjacent to ESHA. The City of Malibu also has improperly granted a variance to permit property along a scenic highway to be used as a staging ground for construction on a different site. All of the foregoing will impair the scenic beauty and rural character of the area in which the proposed construction has been approved to occur in violation of the LCP and Malibu's statutory Vision and Mission Statements, which, are an aspect of the LCP. *For more details, see attached sheet.*

NOTE: Each appellant is encouraged to supplement the information in Section IV. Each appellant must fill out Section V, and if necessary, Section VI. To add appellants, copy this page, fill out, sign, and attach.

**SECTION IV. Identification of Interested Persons**

Please supply the names, mailing addresses, and if available, e-mail addresses of the following persons or entities. Attach pages if necessary.

1. Applicant. City of Malibu


2. Persons who commented, either in person or in writing, at the local hearing.

Various Malibu Residents Spoke Against the Project – including members of Malibu's Planning Commission. Other residents wrote to City Council to express opposition to the Project. Some of the reasons stated in opposition to the Project included allegations that the Project violated of the LCP and/or Malibu's statutory Vision and Mission Statements, which are an aspect of the LCP.

3. Other persons you know have an interest in the matter.

**SECTION V. Certification Signatures**

*I attest that to the best of my knowledge, all information and facts in this submitted appeal are correct and complete.*

  
\_\_\_\_\_  
Signature of Appellant or Authorized Agent

Bruce Silverstein  
PRINT NAME AND ORGANIZATION

3/3/20  
DATE

**SECTION VI. Agent/Organization Authorization**

*I hereby authorize \_\_\_\_\_ (print agent name) to act as my or my organization's representative with the power to bind me or my organization in all matters concerning this appeal, including any subsequent Commission actions.*

\_\_\_\_\_  
Signature of Appellant

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE



## **APPEAL STATEMENT**

This is an appeal of the City of Malibu's grant / approval of CDP 19-018 and a related variance.

In an appeal of a Coastal Development Permit (a "CDP"), the California Coastal Commission (the "Commission") exercises *de novo* review in which the findings of the inferior governing body that approved the issuance of the CDP are both legally and factually immaterial.

For the reasons set forth below (and in the December 2, 2019 submission to the Planning Commission by the Malibu Commission for Slow Growth, a copy of which is attached hereto), it is respectfully requested that the Commission determine that this appeal raises a substantial issue, conduct a *de novo* review of the application for the CDP and associated variance, and deny the CDP and associated variance.

### **The CDP Violates Chapter 4 of the Local Coastal Program**

The CDP challenged by this appeal includes, among other things, authorization to perform construction on property that contains ESHA, including documented "wetlands" that are protected by federal, state, and local law. Accordingly, the Subject Property is entitled to all protection provided for ESHA in the Local Coastal Program (the "LCP"). As discussed below, the protections provided for ESHA in the LCP mandate that the CDP be denied based on the record before the Commission.

Chapter 4 of the LCP lays out a multi-step process that must be followed to rule out the legal requirement of according the Subject Property all protection provided for ESHA in the LCP. That process is as follows: *First*, the City of Malibu was required to perform a "site-specific biological study" of the Subject Property n



connection with the application for the CDP. **IT DOES NOT APPEAR FROM THE RECORD THAT THIS HAS OCCURRED.** *Second*, based on the legally mandated site-specific biological study and other independent evidence, the City of Malibu was required to determine the physical extent of habitat meeting the legal definition of “environmentally sensitive area” on the Subject Property. **IT DOES NOT APPEAR FROM THE RECORD THAT THIS HAS OCCURRED.** *Third*, if the Subject Property contains one or more of the six types of “habitat area” identified in Section 4.3(B) of Chapter 4 of the LCP (discussed more fully below), then the City of Malibu was required to accord the Subject Property all protection provided for ESHA in the LCP, and no permit to alter or use the Subject Property can be granted without a prior “review by the City biologist and the Environmental Review Board.” **AGAIN, IT DOES NOT APPEAR FROM THE RECORD THAT THIS HAS OCCURRED.**

In connection with the multi-step process delineated in the LCP, (i) the City of Malibu is not permitted to rely upon the ESHA Overlay Maps to rule out the existence of ESHA, and (ii) the City of Malibu is required to apply a presumption that ESHA does exist in the Subject Property if the pre-permit biological study and/or other independent evidence considered by the City in advance of the issuance of the permit reflects the existence on the Subject Property of any six types of habitat identified in Section 4.3(B) of Chapter 4 of the LCP.

Section 4.3(A) of Chapter 4 of the LCP clearly and unequivocally states that “[a]ny area not designated on the ESHA Overlay Map that meets the ‘environmentally sensitive area’ definition (Chapter 2 of the Malibu LIP) is ESHA and shall be accorded all the protection provided for ESHA in the LCP.” ESHA overlay Maps are not legally dispositive because the environmental state of natural habitats changes from time to time and is subject to constant re-evaluation.



Section 4.3(A) further states that “[t]he City shall determine the physical extent of habitat meeting the definition of ‘environmentally sensitive area’ on the project site, based on the applicant’s site-specific biological study, as well as available independent evidence.” Section 4.3(B) of Chapter 4 of the LCP establishes a presumption that “the following habitat areas shall be considered to be ESHA”:

1. “Any habitat area that is rare or especially valuable from a local, regional, or statewide basis”;
2. “Any habitat area that contributes to the viability of plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law”;
3. “Any habitat area that contributes to the viability of species that are designated ‘fully protected’ or ‘species of special concern’ under State law or regulations”;
4. “Any habitat area that contributes to the viability of species for which there is other compelling evidence of rarity, for example plant species eligible for state listing as demonstrated by their designation as ‘1b’ (Rare or endangered in California and elsewhere) or designation as ‘2’ (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society”;
5. “Any designated Area of Special Biological Significance, or Marine Protected Area”; and
6. “Streams.”

The Subject Property contains habitat area that is rare or especially valuable from a local, regional, or statewide basis. Among other things, the Subject Property contains documented wetlands and there also is evidence that the Subject Property contains habitat area that contributes to the viability of one or more of the plant and/or animal species identified in subparts 2 through 4.



Once the presumption of the existence of ESHA attaches, that presumption can be negated only by “site-specific evidence that establishes otherwise” – using the studies and evidenced referenced in Section 4.3(A). This does not appear to have occurred.

Finally, Section 4.3(D) of Chapter 4 of the LCP requires that “the City shall make findings as to the physical extent of habitat meeting the definition of environmentally sensitive habitat on the project site, based on the applicant’s site specific biological study, available independent evidence, and review by the City biologist and the Environmental Review Board.” Again, the City does not appear to have prepared a “site specific biological study.” Nor was the Subject Property “review[ed] by the City biologist and the Environmental Review Board” prior to the issuance of challenged CDP. Nor did the City even purport to make any of the specific findings required by Section 4.3(D).

Notably, this is the second time in the past year that the City of Malibu has disregarded the provisions of the LCP designed to protect ESHA. Moreover, it is precisely the same ESHA that has been disregarded by the City of Malibu both times. The earlier instance of the City of Malibu’s disregard for the environmental laws is the subject of another appeal of the City of Malibu’s Approval / Grant of CDP No. 19-025 (as follow-up to ECDP No. 19-005 and ECDP No. 19-014) and related TUP No. 19-019 – an appeal that was lodged in August 2019 and is currently pending *de novo* review of the Commission

Also notably, at least one member of the City of Malibu’s City Council has publicly stated that he does not accept that the Subject Property is entitled to the protections of the environmental laws based on his personal observations of the Subject Property – a view that is entitled to no respect, whatsoever, under the

applicable law, and which demonstrates the City of Malibu's callous disregard for the environmental laws that protect ESHA. Indeed, this same member of City Council recently removed a member of the Planning Commission who has been a vocal opponent to development that affects ESIIA and otherwise disturbs the rural character of Malibu, and replaced that member of the Planning Commission with a new member who presumably will be more friendly to developers who seek to urbanize Malibu. Significantly, the removal of the member of the Planning Commission occurred shortly after the City Council granted the CDP at issue herein – which had been opposed by the Planning Commission (in the form in which it was approved by the City Council).

#### **The CDP is Not Supported By Proper Fact-Finding by the City Council**

Before the City of Malibu can approve the issuance of a CDP, the City Council is required to make various findings of fact in support of the CDP. Although the City Council routinely purports to make such findings, the reality of the situation is that the City Council mistakenly believes that its responsibility is not to “find” facts so much as it is to become satisfied that the record contains evidence that would support the recommendations of the City's staff who are recommending the issuance of a CDP. Indeed, the City's counsel has stated as much during the course of public hearings on the issuance of CDP – instructing the members of the Planning Commission and/or City Council that they can approve a CDP if they are satisfied that the record contains evidence to support the findings proposed by the staff. That, however, is not true “fact finding.” Rather, that is akin to an appellate review process, which is not the legal standard for the “grant” or “approval” of a CDP in a *de novo* proceeding.



It is a rare proceeding in which there is not “evidence” that would support just about any finding a fact finder may wish to make. When a fact finder actually weighs the evidence and makes findings of facts based on a “preponderance” standard, then such a finding is entitled to great deference on appellate review (when the standard is not *de novo*). The initial fact finding, however, involves an actual weighing of the evidence, and not simply an assessment of whether the evidence is sufficient to support a finding advocated by the applicant for relief. When that is the standard applied by the fact finder, the fact-finding process is legally improper and constitutes an abuse of discretion.

That is precisely what occurred here – as well as in the pending appeal of the City of Malibu’s Approval / Grant of CDP No. 19-025 (as follow-up to ECDP No. 19-005 and ECDP No. 19-014) and related TUP No. 19-019. In approving the CDP (both here and in the other pending appeal), the City Council did not engage in any true fact-finding process. Instead, they simply conducted a hearing, rejected arguments in opposition of the CDP, and rubber stamped the staff’s recommended findings without engaging in any analysis of the facts. This “process” (or lack thereof) is particularly disturbing in light of the fact that the Planning Commission – which is far more familiar with the LCP and its application to the CDP -- had opposed the grant of the CDP in the form approved by the City Council.

**The CDP and Associated Variance Will Disturb the Rural Character and Scenic Beauty of the Area**

***Malibu will plan to preserve its*** natural and cultural resources, which include the ocean, marine life, tide pools, beaches, creeks, canyons, hills, mountains, ridges, views, ***wildlife and plant life, open spaces,*** archaeological, paleontological and historic sites, as well as ***other resources that contribute to Malibu’s special natural and rural setting.***

## MALIBU MISSION STATEMENT (emphasis added)

Malibu's Mission Statement is codified in the Malibu Municipal Code (the "MMC"). Indeed, it is the foundation of the MMC upon which all other provisions of the MMC are built – including the provisions of the LCP. As such, the Mission Statement provides the prism through which all applications for a CDP must be considered – including by the Commission. Consistent with Malibu's Mission Statement, the LCP requires findings that a proposed project will not disturb the scenic beauty of the California Coast.

Malibu is a rural buffer that stands between the City of Los Angeles to the south of Malibu and the relatively undeveloped coastline that runs through Ventura County to the north of Malibu. As such, the rural character of Malibu is important not only to the residents of Malibu, but also to the residents of the areas to the north, which will be the next target of urban sprawl if Malibu is permitted to develop in a manner that conflicts with its Mission Statement.

The project that is the subject of the CDP is a public works project that is characteristic of pork barrel funding. The City of Malibu seeks to use public funding to create a construction project that will alter the rural character of a local side-road that runs parallel to the Pacific Coast Highway (the "PCH"), and transform that road into an alternative to the PCH in order to, among other things, accommodate the construction of office space and other commercial development that is inconsistent with the rural nature and scenic beauty of the area. As such, the CDP not only fails to facilitate the preservation of the rural nature and scenic beauty of the area, but it works to destroy that rural nature and scenic beauty of the area by contributing to the urbanization of the area.



Nor is there any true need for this project. The rural side-road has existed in its current form for many years, and there is no record of any safety issue that necessitates the transformation of the rural side-road into an alternate to the PCH. Although there is anecdotal evidence of some people who have expressed concerns about the safety of the rural side-road, there is no true evidence that the road is unsafe – much less sufficient evidence that would cause a reasonably objective finder of fact to conclude that the weight of the evidence supports a decision to alter the rural character of a local side-road. Moreover, no consideration appears to have been given to the very real potential that further urbanization of the area will, itself, make the area less safe.

Finally, the CDP includes the grant of a variance that will permit the City to use a parcel of land that is located adjacent to the PCH as a staging site for the proposed construction for an indefinite period of time. The PCH is a scenic highway, and the use of a parcel of land adjacent to the PCH as a construction staging site undeniably will disturb the scenic beauty of the area. Yet, the CDP is not supported by any findings pertaining to this subject.

The City of Malibu appears to be bent on transforming the area in question into a highly urbanized area – in violation of the LCP, in violation of the City's Mission Statement, and in disregard for the wishes of the residents of the community who lack the political clout of the local developers. In just the past 18 months, the City of Malibu has (i) unlawfully, and without any CDP or other process, transformed the undeveloped "Chili Cook-Off" site into a gravel-covered parking lot, (ii) unlawfully permitted SCE to transform the "Bell Property" into a gravel and concrete covered industrial work-yard, and (iii) approved a CDP and associated variance that will alter property containing ESHA, transform a rural side-road into an alternate to the PCH and utilize a parcel of land adjacent to the PCH as a

construction staging site. Plainly, the intervention of the Commission is needed to force the City of Malibu to comply with its own laws – including the LCP which is the ultimate responsibility of the Commission.

### **CONCLUSION**

The forgoing is a summary of the bases for the appeal of the grant of the CDP. For these reasons, and other reasons that will be further developed through the appeal, it is respectfully requested that the Commission determine that this appeal raises a substantial issue, conduct a de novo review of the application for the CDP and associated variance, and deny the CDP and associated variance.



## **Kathleen Stecko**

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**Subject:** agenda item 5A  
**Attachments:** pc 12-2-19 esha bike path sidewalk in ESHA. ff.docx

**From:** Patt Healy  
**Sent:** Sunday, December 1, 2019 1:46 PM  
**To:** Kathleen Stecko  
**Subject:** Fwd: agenda item 5A

Dear Commissioners here is Slow Growths comments on item 5A If you have any questions, I will be happy to answer them.

**To: Members of the Planning Commission**

**From: Malibu Coalition for Slow Growth**

**Re: Item 5A**

**Date : December 2,2019**

**Members of the Commission,**

**We object to this project because of its intrusion onto the Smith Property, This parcel is mapped ESHA The intrusion into this parcel by this proposed project is development in a wetland ESHA not into an ESHA buffer as the staff report mistaken reports.**

**Secondly, the proposed project intrudes into the adjacent Bell property where there is an unmapped seasonal wetland. Edison filled in this wetland and Slow Growth in its appeal to the Coastal Commission is asking the Commission to acknowledge this wetland and to have this destroyed wetland restored. Until Coastal makes this determination, no development should be approved or take place on this property.**

**Although the intrusion into ESHA may seem to be insignificant, however the cities allowing variances for development over 28 years in ESHA has cumulatively resulted in significant destruction of ESHA.**

**Slow Growth has come to the conclusion that variances for intrusion into ESHA must stop and we hope the Planning Commission recognizes this fact too. The city should be protecting its ESHA not destroying it. The city should not allow a discretionary action (variance) unless a proposed project meets every test of minimizing harm to public resources and maximizing the full retention of such values.**

**In the instance of the Smith and Bell property once again the city is destroying ESHA. Ninety (90) percent of the California's wetlands have been destroyed and this project will further perpetuate this destruction. No matter the shape or size, wetlands provide numerous important functions such as protecting and improving water quality, providing habitats for fish, birds and other and wildlife, and sequestering carbon which help alleviate the negative impacts of climate change.**

**On another note, this project appears to be very suburban in nature. It is highly engineered and looks like it belongs in Westlake. It doesn't protect Malibu's natural environment and is suburban in nature. How does such a project conform to the city's Mission and Vision statement? It clearly doesn't. (see Mission and Vision Statement below.)**

**For these reasons please do not approve this project as proposed. Thank you for considering these comments.**

#### **Vision and Mission Statements**

**Vision Statement—Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in**



**order to protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics. The people of Malibu are a responsible custodian of the area's natural resources for present and future generations.**

**Mission Statement**—Malibu is committed to ensure the physical and biological integrity of its environment through the development of land use programs and decisions, to protect the public and private health, safety and general welfare.

**Malibu will plan to preserve its natural and cultural resources,** which include the ocean, marine life, tide pools, beaches, creeks, canyons, hills, mountains, ridges, views, wildlife and plant life, open spaces, archaeological, paleontological and historic sites, **as well as other resources that contribute to Malibu's special natural and rural setting.**

**Malibu will maintain its rural character by establishing programs and policies that avoid suburbanization and commercialization of its natural and cultural resources.**

Malibu will gradually recycle areas of deteriorated commercial development that detract from the public benefits or deteriorate the public values of its natural, cultural and rural resources.

**Malibu will provide passive, coastal-dependent and resource-dependent visitor-serving recreational opportunities (at proper times, places and manners) that remain subordinate to their natural, cultural and rural setting, and which are consistent with the fragility of the natural resources of the area,** the proximity of the access to residential uses, the need to protect the privacy of property owners, the aesthetic values of the area, and the capacity of the area to sustain particular levels of use.

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4-MAL-20-0136

**NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT****Received****Date of Notice: February 13, 2020**

FEB 18 2020

**Notice Sent to (US. Certified Priority Mail):**  
California Coastal Commission  
South Central Coast District Office  
89 South California Street, Suite 200  
Ventura, CA 93001

California Coastal Commission  
South Central Coast District

**Contact:**  
Lilly Rudolph, Contract Planner  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265  
(310) 456-2489

Please note the following **Final City of Malibu Action** on a coastal development permit application (all local appeals have been expired for this matter):

**Project Information**

**COASTAL DEVELOPMENT PERMIT NO. 19-018, APPEAL NO. 19-009, VARIANCE NO. 19-011, AND VARIANCE NO. 19-013**— An application for construction of roadway improvements along Civic Center Way between Malibu Canyon Road and Webb Way, along Webb Way between Civic Center Way and Pacific Coast Highway, and on an adjacent City-owned parcel (APN 4458-020-904) to widen and improve the profile of the roadway; install sidewalks, bicycle lanes, landscaping, fencing, water quality treatment devices, and traffic control signage; add a turn lane from Civic Center Way to Webb Way; and temporary staging on City-owned parcels (APNs 4458-020-904 and 4458-020-900); including two variances for construction within the 100-foot stream, wetland Environmentally Sensitive Habitat Area buffer and height of a retaining wall in excess of six feet

Application Date: May 10, 2018  
Issue Date: February 10, 2020  
Applicant: Nicole Benyamin, City of Malibu Public Works Department, 23825 Stuart Ranch Road, Malibu, CA 90265  
Owner: City of Malibu  
Location: 23800.5 Civic Center Way, within the public right-of-way, 4000 Malibu Canyon Road, and 23800 Civic Center Way  
APNs: 4458-020-904, 4458-020-900, 4458-030-007, and 4458-028-901

**Final Action Information**

Final Local Action: ☐ Approved ☒ Approved with Conditions ☐ Denied  
Final Action Body: Approved by the City Council on February 10, 2020

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: February 10, 2020 City Council Meeting		1/30/2020
Adopted Findings and Conditions: City Council Resolution No. 20-07	X	
Site Plans and Elevations		1/30/2020

**California Coastal Commission Appeal Information**

This Final Action is:

- ☐ **NOT** appealable to the California Coastal Commission (CCC). The Final City of Malibu Action is now effective.
- ☒ **Appealable** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this final action. The final action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission South Central Coast District Office in Ventura, California; there is no fee for such an appeal. Should you have any questions regarding the California Coastal Commission appeal period or process, please contact the Office at 89 South California Street, Suite 200, Ventura, California, 93001 or by

Copies of this notice have also been sent to:

- Property Owner/Applicant

Prepared by: Kathleen Stecko

Exhibit 6  
Final Local Action Notice &  
City Resolution  
Appeal No. A-4-MAL-20-0136

RESOLUTION NO. 20-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, GRANTING APPEAL NO. 19-009 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 19-018 AND VARIANCE NOS. 19-011 AND -013 FOR CONSTRUCTION OF THE CIVIC CENTER WAY IMPROVEMENT PROJECT, WHICH CONSISTS OF ROADWAY IMPROVEMENTS ALONG CIVIC CENTER WAY BETWEEN MALIBU CANYON ROAD AND WEBB WAY, ALONG WEBB WAY BETWEEN CIVIC CENTER WAY AND PACIFIC COAST HIGHWAY, AND ON AN ADJACENT CITY-OWNED TRIANGLE PARCEL (APNS 4458-020-990 AND -904, ADDRESSED AS 23800 CIVIC CENTER WAY), INVOLVING WIDENING AND IMPROVING THE PROFILE OF CIVIC CENTER WAY; INSTALLING SIDEWALKS, BICYCLE LANES, LANDSCAPING, FENCING, WATER QUALITY TREATMENT DEVICES, AND TRAFFIC CONTROL SIGNAGE; ADDING AN EASTBOUND RIGHT TURN LANE FROM CIVIC CENTER WAY TO WEBB WAY; AND ALLOWING TEMPORARY STAGING ON THE CITY-OWNED TRIANGLE PARCEL; INCLUDING A VARIANCE FOR CONSTRUCTION WITHIN THE 100-FOOT ENVIRONMENTALLY SENSITIVE HABITAT AREA BUFFER AND FOR A RETAINING WALL IN EXCESS OF SIX FEET IN HEIGHT (UP TO 13.5 FEET, INCLUDING A SAFETY RAILING) LOCATED IN THE PUBLIC RIGHT-OF-WAY AND IN THE COMMERCIAL GENERAL (CG) AND COMMERCIAL VISITOR SERVING – 2 (CV-2) ZONING DISTRICTS AT 23800.5 CIVIC CENTER WAY, 4000 MALIBU CANYON ROAD AND 23800 CIVIC CENTER WAY (CITY OF MALIBU AND GREEN ACRES, LLC)

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

SECTION 1. Recitals.

A. On March 14, 2016, the City Council authorized the City Manager to execute a Measure R Funding Agreement with the Los Angeles County Metropolitan Transportation Authority for the design, bidding and construction of the Civic Center Way Improvements Project.

B. On July 26, 2017, the project was presented to the Public Works Commission. City staff discussed the scope of the project and verified that bike lanes would be provided.

C. On August 2, 2017, the project was presented to the Public Safety Commission.

D. On August 14, 2017, the project was presented at a City Council meeting where Measure R funding and priorities were discussed.

E. On March 7, 2018, the project was presented to the Public Safety Commission. City staff stated that suggestions from the Civic Center Way Blue Ribbon Task Force were incorporated into the design of the project. In addition, the design of the project had been discussed in public meetings and residents would be notified in advance of construction.

F. On May 10, 2018, an application for Administrative Plan Review (APR) No. 18-



022 for the Civic Center Way improvement project was submitted to the Planning Department by the Public Works Department. The application was routed to the City geotechnical staff, City Biologist, the City Public Works Department, and Los Angeles County Fire Department (LACFD) for review.

G. On June 19, 2019, Planning Department staff conducted a site visit to document site conditions, the project site, and surrounding area.

H. On July 25, 2018, the project was presented to the Public Works Commission.

I. On September 3, 2018, the project was presented at a Community Meeting. This public outreach effort solicited input on the project from the community.

J. On March 18, 2019, staff assigned Variance (VAR) No. 19-011 because it was determined that the proposed development would necessitate relief from the development standard for a retaining wall to have a maximum height of six feet.

K. On March 25, 2019, the Public Works Director provided an update on the project to the City Council.

L. On March 27, 2019, the Planning Director determined that the project is not exempt from the requirement to obtain a Coastal Development Permit because the design would involve work on private property and extend the right of way into the triangle parcel. The Planning Department converted APR No. 18-022 to Coastal Development Permit (CDP) No. 19-018.

M. On April 24, 2019, the Assistant Public Works Director presented project alternatives for the Civic Center Way Improvements Project to the Public Works Commission, and the Public Works Commission received and filed the report on the retaining wall variance for the project.

N. On September 30, 2019, a Notice of Application was posted on the subject property.

O. On September 30, 2019, the CDP application was deemed complete for processing.

P. On October 23, 2019, Planning Department staff conducted a second site visit to document site conditions, the project site, and surrounding area.

Q. On November 1, 2019, staff assigned VAR No. 19-013 because it was determined that the proposed development would necessitate relief from the development standard for construction to occur within the 100-foot Environmentally Sensitive Habitat Area (ESHA) buffer.

R. On November 7, 2019, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

S. On December 2, 2019, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record and adopted Planning Commission Resolution No. 19-72 approving the project with amended conditions of approval and a recommendation that the City Council direct staff to study and mitigate any traffic impacts on Malibu Canyon Road that result from the project.

T. On December 11, 2019, an appeal of the project conditions of approval was timely filed by the Public Works Department.

U. On January 16, 2020, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a radius of 500 feet from the subject property and all interested parties.

V. On February 10, 2020, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record. At the conclusion of the hearing, Council approved the project subject to the conditions of approval in Section 5.

## SECTION 2. Appeal of Action.

The appeal filed by the Appellant, the Public Works Department, contends that the amended conditions of approval are not supported by evidence justifying the need for the condition in order to achieve consistency with the Malibu Local Coastal Program (LCP). Specifically, the Appellant contends that: a) the originally proposed safety fencing protects pedestrians and allows for wildlife safe passage and is consistent with the LCP; b) a rock wall texture and landscaping on the retaining wall on the north side of the Civic Center Way may be cost prohibitive and is not necessary to comply with the LCP; c) the relocated street light pole is not required to be upgraded or replaced to meet City dark sky goals, and is not under the City's jurisdiction or ownership; d) the safety railing on the retaining wall on the north side of Civic Center Way is necessary to protect maintenance workers, does not adversely impact views and is not inconsistent with the LCP ; e) a dedicated Class II bicycle lane west of the intersection of Civic Center Way and Webb Way would result in increased costs and scheduling delays to the project and is not necessary to comply with the LCP; and f) decomposed granite (DG) is not an environmentally superior alternative, would not adequately meet federal and State standards for sidewalks within a public right-of-way and is not necessary to achieve rural character and enhance pedestrian activity consistent with the LCP.

In the associated Council agenda report, Planning Department staff responded to each of the Appellant's contentions.

## SECTION 3. Findings for Granting the Appeal.

Based on evidence in the record and in the Council agenda report for the subject project, the City Council hereby makes the following findings of fact granting the appeal and finds that substantial evidence in the record supports the required findings for approval of the project as originally

proposed. In addition, the analysis, findings of fact, and conclusions set forth by staff in the Council agenda report and Planning Commission agenda report are incorporated herein as though fully set forth.

A. The proposed safety fencing will serve to protect pedestrians from entering into the ESHA area and from potentially falling into the adjacent steep slope drop-off. The fencing complies with the applicable provisions of the LCP, including ESHA development standards contained in LIP Chapter 4, because it is necessary for public safety and is wildlife permeable. An alternative to wood or the proposed textured colored vinyl fencing may result in a significant increase in funding resources not covered by the current funding source (i.e., Metro Measure R) and is not necessary to achieve consistency with the LCP.

B. The retaining wall as designed with colored concrete textured in a wood plank finish would blend with the surrounding earth materials. The wall would not block views of the Santa Monica Mountains or the Pacific Ocean and would be viewed against a backdrop of existing condominium and roadway development. The required vegetative covering on the retaining wall would pose a design challenge because there is limited planting area between the retaining wall and the right of way. The additional cost associated with both a rock wall texture and vegetation for the retaining wall on the north side of Civic Center Way may not be covered by available project funds, could make the project infeasible and are not necessary to achieve consistency with the LCP's scenic protection policies.

C. The project scope does not include replacing the subject streetlight, just relocating it. The fixture is owned by Southern California Edison and is not under the City's jurisdiction. The existing light has a warm pinkish color and is not overly bright and does not conflict with the City's dark sky goals or the requirements of the LCP. The evidence does not support the imposition of the condition to replace and upgrade the light.

D. The safety railing's purpose is to promote employee protection in an area where maintenance work may be performed. The safety railing cable design is visually permeable and will fade into the scenery, and not result in adverse visual impacts from PCH or elsewhere. The No evidence exists to demonstrate that the visual benefits of omitting the railing would outweigh its safety benefits, and its inclusion in the project does not conflict with the LCP.

E. New bicycle striping would be an improvement compared to existing conditions, which provides no striping in the area. The design, as proposed, is consistent with LCP Land Use Plan (LUP) Policy 2.43. Anticipated cost associated with converting a Class III bicycle lane to a Class II lane are upwards of \$300,000.00 and may not be covered by available project funds. This is not a feasible alternative and the project as designed complies with the LCP.

F. The use of DG materials results in higher maintenance costs and increased safety problems for pedestrians, particularly those with wheelchairs and strollers, compared to concrete. The maintenance and safety benefits associated with the use of concrete sidewalk outweigh any potential visual improvements associated with DG. Colored concrete and colored porous concrete proposed by the Public Works Department would blend with the natural environment and would



match nearby sidewalks. The proposed materials would not result in visual impacts and would be consistent with the Scenic, Visual, and Hillside Resource Protection provisions.

#### SECTION 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed project. The City Council found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is exempt from the provisions of CEQA according to CEQA Guidelines Sections 15301(c) – Existing Facilities and 15304(a)(b)(h) – Minor Alterations to Land. The City Council has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

#### SECTION 5. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to LCP Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the City Council adopts the analysis in the agenda report, incorporated herein, and the findings of fact below and approved CDP No. 19-018, VAR No. 19-011, and VAR No. 19-013 for construction of the Civic Center Way improvement project, which consists of roadway improvements along Civic Center Way between Malibu Canyon Road and Webb Way, along Webb Way between Civic Center Way and Pacific Coast Highway, and on an adjacent City-owned triangle parcel (APNs 4458-020-990 and -904, addressed as 23800 Civic Center Way), involving widening and improving the profile of Civic Center Way; installing sidewalks, bicycle lanes, landscaping, fencing, water quality treatment devices, and traffic control signage; adding an eastbound right turn lane from Civic Center Way to Webb Way; and allowing temporary staging on the City-owned triangle parcel; including a variance for construction within the 100-foot environmentally sensitive habitat area buffer and for a retaining wall in excess of six feet in height (up to 13.5 feet, including a safety railing) located in the public right-of-way and in the Commercial General (CG) and Commercial Visitor Serving – 2 (CV-2) zoning districts at 23800.5 Civic Center Way, 4000 Malibu Canyon Road and 23800 Civic Center Way (City of Malibu and Green Acres, LLC).

The project is consistent with the LCP's zoning, grading, cultural resources, water quality, and wastewater treatment system standards requirements. With the inclusion of the two proposed variance requests, the project, as conditioned, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings for approval of CDP No. 19-018, and VAR Nos. 19-011 and 19-013 are made herein.

#### **A. General Coastal Development Permit (LIP Chapter 13)**

1. The project has been reviewed and conditionally approved by the Planning Department, City Biologist, City Public Works Department, City geotechnical staff, and the LACFD. The proposed project, as conditioned, conforms to the LCP and Malibu Municipal Code (MMC), with inclusion of the two variances in that it is consistent with the policies of Chapter 7 –

Public Works of the LUP by improving public safety and multimodal access to and between visitor-serving and recreation areas.

2. The proposed roadway improvements have been determined not to result in adverse biological, scenic or visual resource impacts, and the project is the least environmentally damaging feasible alternative. Alternatives, including constructing lower retaining walls, eliminating retaining walls, and moving the project further from ESHA were determined to be infeasible and would cause more offsite impacts, increase landform alteration, and would not adequately achieve the project's goals to improve safety and promote active transportation.

**B. Variance Findings to Allow for a Retaining Wall in Excess of Six Feet in Height (LIP Section 13.26)**

VAR No. 19-011 allows for a retaining wall in excess of six feet in height, when a maximum height of six feet for a retaining wall is required by LIP Section 8.3(C).

1. Due to site constraints, the strict application of the grading ordinance would prevent improvements on Civic Center Way that would increase roadway safety. The proposed retaining wall is required to accommodate the proposed curve corrections, to improve the horizontal alignment on Civic Center Way, and to minimize landform alteration and locate the proposed roadway improvements within the existing public right-of-way. A combination of shorter walls would involve increased landform alteration and offsite (i.e., outside of the public right of way, on private property) grading and is infeasible.

2. The granting of the variance will not be detrimental to the public's interest, safety, health or welfare because the proposed project will improve sight distances and roadway safety. It would allow improvements to vehicular, pedestrian, and bicycle safety and facilitates active transportation, which is beneficial to the public interest and properties in the vicinity.

3. Granting the proposed variance does not constitute a special privilege to the applicant/property owner because any measures to improve roadway safety in this area would require a variance from this standard. Existing horizontal and vertical curvatures are substandard and result in obstructed sight distances. The proposed retaining wall would minimize landform alteration and allow the proposed roadway improvements to be located within the existing public right-of-way.

4. The granting of the proposed variance is not contrary to or in conflict with the LCP in that no other feasible alternatives exist that would avoid construction of a retaining wall with a maximum height of 13.5 feet (i.e. 8.5-foot high retaining wall with a 1-foot high concrete coping and 3.5-foot high view permeable wire safety railing). The proposed project, as designed and conditioned, is consistent with the goals, objectives and policies of the LCP.

5. The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted within the public right-of-way. The proposed variance will allow the construction of a retaining wall, a permitted use. Therefore, the proposed variance will not grant a use or activity which is not otherwise allowed.

6. The subject site is physically suitable for the proposed variance as there is no feasible alternative. The proposed retaining wall conforms to the development and design standards, inclusive of the variance for the increase in height. All final recommendations of the applicant's structural engineer, as well as those recommendations of the City Environmental Sustainability Department, the City Biologist, City Public Works Department, City geotechnical staff, and LACFD, will be incorporated into the project.

7. The proposed project, inclusive of the proposed variance, as designed and conditioned, complies with all applicable requirements of State and local law. The proposed project has been reviewed for conformance with the LCP by Planning Department staff, City Biologist, City geotechnical staff, City Public Works Department and the LACFD. Prior to the issuance of permits, the project must have a final approval by the City Environmental Sustainability Department.

**C. Variance Findings to Allow for Construction within the 100-foot Environmentally Sensitive Habitat Area (ESHA) buffer (LIP Section 13.26.5)**

VAR No. 19-013 allows for construction within the 100-foot ESHA buffer, when construction is required to be outside of the ESHA buffer pursuant to LIP Section 4.6.1(A).

1. There are special circumstances and exceptional characteristics applicable to the project site, such that the strict application of the zoning ordinance would preclude a project design that would improve sight distances and safety on Civic Center Way, including descending steep slopes and existing residential development directly north of the road improvement area. The proposed encroachment into ESHA buffer is required to accommodate the proposed vertical curve corrections and avoid encroachment into the residential development to the north. The entire width of the roadway is included in both buffers, and as such, any safety improvements in these areas would involve work in ESHA buffers.

2. The granting of the variance will not be detrimental to the public's interest, safety, health or welfare because it would allow the City to improve the horizontal alignment on Civic Center Way, which will improve sight distances and roadway safety.

3. Granting the proposed variance does not constitute a special privilege to the applicant/property owner because the entire width of the roadway is included in both buffers, and as such, any safety improvements in these areas would involve work in ESHA buffers that cannot be avoided. The proposed encroachment into ESHA buffer would minimize landform alteration and allow the proposed roadway improvements to remain within the existing public right-of-way.

4. The granting of the proposed variance is not contrary to or in conflict with the LCP in that no other feasible alternatives exist that would avoid encroachment into the ESHA buffer. Encroachment has been minimized to the extent that the roadway width meets minimum design standards. No permanent impacts will occur that would widen the roadway and increase vegetation clearance in the ESHA buffer.



5. A roadway and associated grading is a permitted use in the public right-of-way. Therefore, the proposed variance will not grant a use or activity which is not otherwise expressly authorized by the applicable zoning district.

6. The subject site is physically suitable for the proposed variance. The roadway will be enhanced with new native tree plantings and biofiltration measures that will provide wildlife habitat and improve storm water quality. The proposed safety fencing adjacent to ESHA is designed to be wildlife permeable. The proposed encroachment into the ESHA buffer conforms to the development and design standards, inclusive of the proposed variance, because no other feasible alternatives exist that would avoid encroachment into the ESHA buffer.

7. The proposed project, inclusive of the proposed variance, as designed and conditioned, complies with all applicable requirements of State and local law.

**D. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)**

1. The proposed project has been reviewed and approved by the City Biologist. No development is proposed within ESHA. The proposed work adjacent to the Smith parcel occurs within the disturbed public right-of-way, and no further encroachment is proposed. Fencing is proposed adjacent to the Smith parcel ESHA but is designed to be wildlife permeable and is required for public safety. Work proposed adjacent to the Wastewater Treatment Facility would occur outside of the existing paving on the disturbed shoulder and would not result in any expansion to the required fuel modification area in ESHA.

**E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

1. The project site is visible from Pacific Coast Highway, Malibu Canyon Road and Legacy Park, scenic areas. The retaining wall would not pose a significant adverse scenic impact from Pacific Coast Highway because the development will be obstructed by topography, viewed against a background of existing development, and will likely be partially blocked from view by vehicles traveling on Civic Center Way. The proposed project does not block views of the Santa Monica Mountains or the Pacific Ocean.

2. The project does not have a significant adverse impact on any public views. The conditions of approval include restrictions on materials and landscaping that can be used at the site to prevent any future impacts as they pertain to public views. Therefore, the project will not have any significant adverse scenic or visual impacts due to project modifications, new landscaping or other conditions.

3. The project, as proposed and conditioned, is the least environmentally damaging alternative. Other configurations of the proposed roadway improvements would require more landform alteration than what is currently proposed.

**F. Hazards (LIP Chapter 9)**

1. The record demonstrates that the project, as proposed and conditioned, will not adversely affect stability of the site or structural integrity from geologic, flood, or fire hazards.
2. The project, as designed, conditioned, and approved by the City Geotechnical staff, City Public Works Department, and LACFD, does not have any significant adverse impacts on the site stability or structural integrity from geologic, flood or fire hazards due to the project design.
3. The project, as conditioned, is the least environmentally damaging alternative.
4. There are no alternatives that would avoid or substantially lessen impacts on site stability or structural integrity.
5. No adverse impacts to sensitive resources are expected.

**SECTION 6. Action.**

Based on the foregoing findings and evidence contained within the record, the City Council hereby grants Appeal No. 19-009 and approves CDP No. 19-018, and VAR No. 19-011 and 19-013, subject to the following conditions.

**SECTION 7. Conditions of Approval.**

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the project described herein.
  - a. Demolition of portions of the existing public roadway;
  - b. Grading to improve the profile and horizontal and vertical curves and widen the roadway within the existing public right-of-way;
  - c. Installation of two retaining walls: one retaining wall 66 feet in length and up to six feet in height, and the other retaining wall 280 feet in length and up to a maximum of 13.5 feet in height (i.e., 8.5-foot high retaining wall with a 1-foot high concrete coping and 3.5-foot high safety railing);
  - d. Addition of an eastbound right turn lane from Civic Center Way to Webb Way;
  - e. Installation of sidewalk facilities on the south side of Civic Center Way from the bus stop on Malibu Canyon Road to the bus stop on Winter Canyon Road and on the north side of Civic Center Way from Winter Canyon Road to Webb Way;

- f. Installation of a wildlife-permeable safety fence on the north side of Civic Center Way from the eastern boundary of Malibu Canyon Village to Webb Way;
  - g. Installation of Class II and Class III bicycle facilities;
  - h. Concrete curb and gutters, asphalt concrete overlay, and concrete work;
  - i. Storm drain improvements and water quality treatment devices;
  - j. Traffic striping and traffic control signage;
  - k. Associated utility work, including removal and replacement of a fire hydrant, electrical structures, and traffic signal pull box;
  - l. Landscaping, including native trees, ground covers, coordinated with stormwater infiltration devices;
  - m. Temporary construction staging on the Triangle parcel; and
  - n. Discretionary requests:
    - i. VAR No. 19-011 for construction of a retaining wall in excess of six feet in height (i.e., 8.5-foot high retaining wall with a 1-foot high concrete coping and 3.5-foot high view permeable safety railing); and
    - ii. VAR No. 19-013 for construction within the 100-foot ESHA buffer.
3. Except as specifically changed by conditions of approval, the proposed development shall be constructed in substantial conformance with the approved scope of work, as described in Condition No. 2 and depicted on plans on file with the Planning Department date stamped **November 1, 2019**. The proposed development shall further comply with all conditions of approval stipulated in this resolution and Department Review Sheets attached hereto. In the event project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions of approval set forth herein. The applicant shall file this form with the Planning Department prior to issuance of any development permits.
5. The applicant shall submit three (3) complete sets of plans, including the items required in Condition No. 6 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
6. This resolution, signed and notarized Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check, and the City of Malibu Public Works Department for an encroachment permit (as applicable).
7. The CDP shall expire if the project has not commenced within three (3) years after issuance of the permit, unless a time extension has been granted. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing



by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request. In the event of an appeal, the CDP shall expire if the project has not commenced within three years from the date the appeal is decided by the decision-making body or withdrawn by the appellant.

8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Biologist, City Coastal Engineer, City Environmental Health Administrator, City geotechnical staff, City Public Works Department, Los Angeles County Waterworks District No. 29 and LACFD, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission (CCC), have been exhausted.
12. The property owner must submit payment for all outstanding fees payable to the City prior to issuance of any building permit, including grading or demolition.

#### *Cultural Resources*

13. Archaeological and Native American monitoring of all project-related excavation activities is required in native soils within the project site by qualified archaeologists and Native American representatives.
14. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in MMC Section 17.54.040(D)(4)(b) shall be followed.
15. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in

Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

*Construction*

16. A construction staging plan shall be reviewed and approved by the Planning Director prior to plan check submittal.
17. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays unless altered by the City Manager.
18. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires rinsed prior to leaving the property.
19. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in LIP Chapter 17, including:
  - a. Construction shall be phased to the extent feasible and practical to limit the amount of disturbed areas present at a given time.
  - b. Grading activities shall be planned during the southern California dry season (April through October).
  - c. During construction, contractors shall be required to utilize sandbags and berms to control runoff during on-site watering and periods of rain in order to minimize surface water contamination.
  - d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within the project site.

*Public Works*

20. The consulting engineer shall sign the final plans prior to the issuance of permits.

*Grading/Drainage/Hydrology (Public Works)*

21. Prior to the approval of the drainage plan, the applicant shall improve the County of Los Angeles Flood Control District Facility.

*Stormwater*

22. A Local Storm Water Pollution Prevention Plan (LSWPPP) shall be provided prior to issuance of grading/building permits. This plan shall include an Erosion and Sediment Control Plan (ESCP) that includes, but not limited to:

Erosion Controls	Hydraulic Mulch
	Hydroseeding
	Soil Binders
	Straw Mulch
	Geotextiles and Mats
	Wood Mulching
Sediment Controls	Fiber Rolls
	Gravel Bag Berm
	Street Sweeping and/ or Vacuum
	Storm Drain Inlet Protection
	Scheduling
	Check Dam
Additional Controls	Wind Erosion Controls
	Stabilized Construction Entrance/ Exit
	Stabilized Construction Roadway
	Entrance/ Exit Tire Wash
Non-Stormwater Management	Vehicle and Equipment Washing
	Vehicle and Equipment Fueling
	Vehicle and Equipment Maintenance
Waste Management	Material Delivery and Storage
	Spill Prevention and Control

All Best Management Practices (BMP) shall be in accordance to the latest version of the California Stormwater Quality Association (CASQA) BMP Handbook. Designated areas for the storage of construction materials, solid waste management, and portable toilets must not disrupt drainage patterns or subject the material to erosion by site runoff.

23. Prior to the approval of any permits and prior to the submittal of the required construction general permit document to the State Water Quality Control Board, the property owner / applicant shall submit the Public Works Department an Erosion and Sediment Control Plan (ESCP) for review. The ESCP shall contain appropriate site-specific construction site BMPs prepared and certified by a qualified SWPPP developer (QWD). All structural BMPs must be designed by a licensed California civil engineer. The ESCP must address the following elements:
- Methods to minimize the footprint of the disturbed area and to prevent soil compaction outside the disturbed area
  - Methods used to protect native vegetation and trees
  - Sediment / erosion control

- d. Controls to prevent tracking on- and off-site
- e. Non-stormwater control
- f. Material management (delivery and storage)
- g. Spill prevention and control
- h. Waste management
- i. Identification of site risk level as identified per the requirements in Appendix 1 of the Construction General Permit
- j. Landowner must sign the following statement on the ESCP:

“I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that quality personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate and complete. I am aware that submitting false and/or inaccurate information, failing to properly and/or adequately implement the ESCP may result in revocation of grand and/or other permits or other sanctions provided by law.”

#### *Water Quality*

- 24. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the Waste Discharge Identification (WDID) number prior to the issuance of grading or building permits.

#### *Solid Waste*

- 25. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals and drywall.
- 26. Prior to the issuance of a building/demolition permit, an Affidavit and Certification to implement waste reduction and recycling shall be signed by the Owner or Contractor and submitted to the Environmental Sustainability Department. The Affidavit shall indicate the agreement of the applicant to divert at least 65 percent (in accordance with CalGreen) of all construction waste from the landfill.

#### *Geology*

- 27. All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City geotechnical staff shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City geotechnical staff prior to the issuance of a grading permit.



28. Final plans approved by the City geotechnical staff shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require a new CDP.

*Biology/Landscaping*

29. Prior to installation of any landscaping, the applicant shall obtain a plumbing permit for the proposed irrigation system from the Building Safety Division.
30. Invasive plant species, as determined by the City of Malibu, are prohibited.
31. All plantings shall be limited to species native to the Santa Monica Mountains.
32. Native species of the Santa Monica Mountains, characteristic of the local habitat, shall be used on graded slopes or where slope plantings are required for slope stabilization, erosion control, and watershed protection. Plants should be selected to have a variety of rooting depths. A spacing of 15 feet between large woody ( $\geq 10$ -foot canopy) shrubs is recommended by the LACFD. Lawns are prohibited on slopes  $> 5$  percent.
33. Several areas of work are situated in close proximity of ESHA. Therefore, all work areas occurring within 50 feet of ESHA shall have high visibility construction fencing installed within 5 feet of the limits of grading. The construction fencing shall be installed prior to any grading and shall remain in place until all work is completed. In areas adjacent to and within 20 feet of properties supporting ESHA, such as along the wetlands on APN 4458-021-007 and the stream on the City's property at APN 4458-028-901, silt fencing shall be installed at the base of the construction fence such that no debris or unfiltered runoff can infiltrate the ESI-JA habitats. The silt fencing shall be installed prior to any grading and remain in place until all construction is completed.
34. No fencing shall be erected beyond the limits of the right of way.
35. Vegetative cover shall be allowed for the retaining wall on the north side of Civic Center Way.

*Streetlight*

36. Dark-sky compliant lighting shall be allowed for the relocated streetlight if feasible.

*Prior to Final Sign-Off*

37. Prior to, or at the time of a Planning final inspection, the property owner / applicant shall submit to the Planning Department the plumbing permit for the irrigation system installation signed off by the Building Safety Division.

38. Prior to final sign-off of the project, the City Biologist shall inspect the project site and determine that all Planning Department conditions to protect natural resources are in compliance with the approved plans.
39. The applicant shall request a final Planning Department inspection prior to final sign-off of the project. Final sign-off shall not be issued until the Planning Department has determined the project complies with this CDP.
40. Prior to final Planning approval, the City Biologist shall inspect the Black Walnut and Sycamore trees along Civic Center Way on the Malibu Memorial Park site (4000 Malibu Canyon Road). Should any of the identified native trees have grown to a size that qualifies for protection, then the applicant shall mitigate the loss or damage of any tree in accordance with the requirements of LIP Sections 5.5 (mitigation) and 5.6 (monitoring).
41. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval and if applicable, the issuance of the certificate of occupancy.

*Fencing/Sidewalk*

42. Necessary safety fencing shall be of an open rail-type design with a solid rail at the top (instead of wire) and have a space greater than 14-inches between the ground and the bottom rail. A split rail design that blends with the natural environment is preferred. Fence material such as Trex and similar material is allowed. The fence shall use wider diameter rails instead of wire.
43. Fencing or walls shall be prohibited within ESHA, except where necessary for public safety or habitat protection or restoration. Fencing or walls that do not permit the free passage of wildlife shall be prohibited in any wildlife corridor.
44. Development adjacent to, but not within ESHA, may include fencing, if necessary for safety, that is limited to the area around the clustered development area.
45. The concrete retaining wall on the north side of Civic Center Way shall be finished with a wood plank texture in a "Yosemite Brown" paint color to match concrete in the surrounding area.
46. The proposed sidewalk shall be a neutral color that blends with the surrounding landforms and vegetation. The sidewalk shall be made of porous concrete sidewalk material similar to what was used in Trancas Park. The color of sidewalks and retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

*Fixed Conditions*

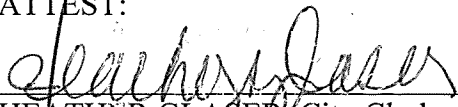
47. This coastal development permit shall run with the land.
48. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted thereunder.

SECTION 8. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.


PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of February 2020.

  
KAREN FARRER, Mayor

ATTEST:

  
HEATHER GLASER, City Clerk  
(seal)

APPROVED AS TO FORM:

  
CHRISTI HUGIN, City Attorney

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the City Council's approval to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at [www.coastal.ca.gov](http://www.coastal.ca.gov) or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the MMC and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.

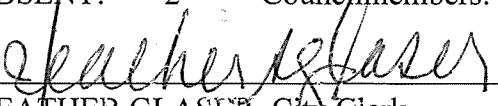
I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-07 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 10<sup>th</sup> day of February 2020 by the following vote:

AYES: 3 Councilmembers: Mullen, Pierson, Farrer

NOES: 0

ABSTAIN: 0

ABSENT: 2 Councilmembers: Peak, Wagner

  
\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)