

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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# W21a

Appeal Filed 6/25/20  
49<sup>th</sup> Day: 9/2/20  
Staff: D.Venegas-V  
Staff Report: 7/23/20  
Hearing Date: 8/12/20

## STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

**APPEAL NO.:** A-4-MAL-20-0026

**APPLICANT:** Richard K. Perrin

**APPELLANT:** James E. Moore, Tracy E. Moore and Rody Castroll

**LOCAL GOVERNMENT:** City of Malibu

**LOCAL DECISION:** Coastal Development Permit No. 16-038, Variance Nos. 16-017 and 18-045 approved by the Malibu City Council on June 8, 2020

**PROJECT LOCATION:** 21490 Paseo Portola, City of Malibu, Los Angeles County (APN: 4451-023-037)

**PROJECT DESCRIPTION:** Construction of a 2,954 sq. ft. single-family residence, 434 sq. ft. attached garage, spa, decks, pile supported retaining wall, landscaping, hardscaping, grading, and new alternative onsite wastewater treatment system, including two variances for the construction on slopes steeper than 1.5 to 1 and retaining walls in excess of six feet.

**STAFF RECOMMENDATION:** No Substantial Issue Exists

**MOTION AND RESOLUTION:** Page 7 & 8

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**Important Hearing Procedure Note:** This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

## SUMMARY OF STAFF RECOMMENDATION

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 appellant contends that the approved project is not consistent with the policies of the City of Malibu's certified LCP regarding scenic and visual resources and hazards. Staff recommends that the Commission determine that **no 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 "yes" vote is recommended) are found on pages 7 and 8.

On June 8, 2020, the Malibu City Council approved a Coastal Development Permit (CDP) for the construction of a new single-family residence, garage, spa, decks, pile supported retaining wall, alternative onsite wastewater treatment system, and associated grading on a 0.27-acre parcel located at 21490 Paseo Portola Street in the City of Malibu. The subject site is in an infill lot within the existing La Costa residential neighborhood, and is bordered by residentially developed lots to the south, north, and east. The Commission's appeal jurisdiction for this area extends 300 feet from the inland extent of the beach. The subject CDP is appealable to the Commission because a portion of the approved development (limited to portions of the pile supported retaining wall and micro-dosed subsurface drip field for the alternative wastewater treatment system) is located within 300 feet of the beach.

The property consists of a previously disturbed and developed lot that contains remnants of an existing single-family building foundation. The foundation was left from the original residence which was destroyed by the 1993 Malibu/Topanga Fire. Due to the previous development, the subject site currently consists of a relatively flat building pad area within the northern portions of the site, closest to the street. However, beyond the building pad the site has a slope that descends steeply towards existing residential development downslope and to the south. According to the geotechnical reports prepared for the subject property, the site contains a prehistoric landslide and subsurface landslide debris exists on the site.

The appeal by James E. Moore, Tracy E. Moore, and Rody Castroll asserts that the approved pile supported retaining wall is not in conformance with the development standards contained in Local Implementation Plan (LIP) Section 6.5 (A) and (B) (cited below) in that the retaining wall would exceed the 6-foot height limit for retaining walls and the wall height, length, and mass across the entire width of the property in one continuous U-shaped wall facing Pacific Coast Highway would have adverse visual impacts.

The project site is located inland of Pacific Coast Highway and within a largely developed residential subdivision (La Costa neighborhood) along the coastal terrace. According to the City's staff report, the project site is visible from Pacific Coast Highway (PCH), which is identified as a scenic road, pursuant to the LCP. Their staff report also indicates that the pile supported retaining wall, which ranges in height from 2 feet to 9 feet, is necessary to accommodate the alternative wastewater treatment system for the development and achieve the minimum required factor of safety for slope stability. While the approved pile supported retaining wall does not meet the technical requirement of the LCP, which states that retaining walls are not to exceed 6 feet in height, the City made the required findings to approve a variance of this standard, consistent with the variance procedure in the City's LCP. Further, the City found that based on a site reconnaissance, site photos, and the nature of the surrounding area, the approved retaining wall is compatible with the surrounding built environment and would not impact any scenic bluewater views from PCH nor any scenic views of the Santa Monica Mountains from PCH. However, the City found that segments of the approved pile supported retaining wall would be unavoidably visible from PCH, and there are no feasible alternatives to reduce its height, length, or location, and therefore the City required measures to help visually screen the wall from PCH. Consistent with the Malibu LCP, the City required a condition of approval that requires the property owner/applicant to install and maintain a vertical living wall or other similar landscaping along the south-facing retaining wall, and staggered planting in front of the wall to help visually screen the wall from PCH. Furthermore, consistent with the Malibu LCP, the City required the retaining wall to include veneers, texturing, and/or colors that blend with the surrounding earth materials or landscaping. Therefore, Commission staff recommends that the Commission find that the appellants' contentions regarding scenic and visual resources raise no substantial issue with regards to consistency with the scenic and visual resources protection policies and provisions of the City's LCP.

The appeal also states the project site contains challenging geology, including slopes greater than 1:1 (in parts), a prehistoric landslide, and is in close proximity to the Calle del Barco landslide. The appeal makes general assertions regarding LCP development standards that pertain to the geologic constraints on the site but does not cite any specific policies or provisions. Due to substandard factors of safety for potential failures within the subsurface landslide debris, the project includes a pile supported retaining wall along the west, south, and eastern limits of the subject site for purposes of mitigating earthquake induced landsliding and to achieve the minimum required factor of safety for slope stability, consistent with the Malibu LCP. The City's action adequately concluded that the project is feasible from an engineering geologic standpoint; will be

safe from geologic hazards such as landslides, slippage, settlement; and will not have an adverse effect upon the stability of the site or adjacent properties. Further, the City determined, based on substantial evidence in the administrative record, that the project will minimize risks to life and property from geologic hazard, will assure site stability and structural integrity, and is consistent with the applicable hazard policies of the Malibu LCP. Therefore, Commission staff recommends that the Commission find that the appellants' contentions regarding geological issues/hazards raise no substantial issue with regards to consistency with the applicable LCP policies and provisions regarding hazards.

In summary, the City's record includes extensive factual evidence and legal support for the City's findings that the project is consistent with the policies and provisions of the City's LCP. In addition, the extent and scope of the subject development on this particular site is relatively small, does not have a significant adverse effect on significant coastal resources, does not raise issues of regional or statewide significance, and the local action does not set an adverse precedent for future coastal development permit decisions. Therefore, staff recommends that the Commission find that the appellants' contentions raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the City of Malibu's certified LCP.

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## **EXHIBITS**

[Exhibit 1 Vicinity Map](#)

[Exhibit 2 Aerial Photo](#)

[Exhibit 3 Parcel Map](#)

[Exhibit 4 CCC Appeal Jurisdiction for 21490 Paseo Portola](#)

[Exhibit 5 La Costa Overlay District](#)

[Exhibit 6 Project Plans](#)

[Exhibit 7 Appeal by James E. Moore, Tracy E. Moore and Rody Castroll](#)

[Exhibit 8 Final Local Action Notice & City Resolution](#)

# 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

The approval of a CDP by cities or counties may be appealed if the development authorized will be located within certain appealable areas. This includes 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; along or within 100 feet of a wetland or stream; or 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 at 21490 Paseo Portola Street in the City of Malibu. The appeal jurisdiction for this area extends 300 feet inland from the beach, as shown on Exhibit 4. As such, the City of Malibu's coastal development permit for the subject project is appealable to the Commission because portions of the project (limited to portions of the pile supported retaining wall and micro-dosed subsurface drip field area for the alternative wastewater treatment system) are located within 300 feet of the inland extent of a beach.

### 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 no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the

Commissioners present is required to determine that an appeal raises no substantial issue and that the Commission will therefore not review the coastal development permit application *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 Review**

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. 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 September 3, 2019. The action by the Planning Department was appealed to the Malibu City Council by the appellants (James Moore, Tracy Moore, and Rod Castroll) on September 24, 2019. That appeal was denied and the permit for the project was approved by the Malibu City Council on June 8, 2020. The City's Notice of Final Action for the project was received by Commission staff on June 15, 2020 (Exhibit 8) Commission staff provided notice of the ten working day appeal period, which began on June 16, 2020 and ended on June 29, 2020. The appellants filed the subject appeal on June 25, 2020, during the Commission's 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 July 13, 2020. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal shall be set no later than 49 working days after the date on which the appeal is filed with the Commission, which would be September 2, 2020. However according to Section 30625(a), the applicant can waive that time limit.

## **II. STAFF RECOMMENDATION FOR NO SUBSTANTIAL ISSUE:**

**MOTION:** I move that the Commission determine that Appeal No. A-4-MAL-20-0026 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 **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo*, and the local action will become final and effective. The motion passes only by an

affirmative vote by a majority of the Commissioners present (i.e., a tied vote results in a finding that a “substantial issue” is raised).

### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. A-4-MAL-20-0026 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING**

The Malibu City Council approved the subject CDP for construction of a new 2,954 square foot, two-story single-family residence, a 434 square foot attached garage, spa, decks, pile supported retaining wall, landscaping, hardscaping, alternative onsite wastewater treatment system, and 1,040 cu. yds. of associated grading (445 cu. yds. of fill, 520 cu. yds. of cut, 75 cu. yds. of export, and 0 cu. yds. of import) on a 0.27-acre parcel located at 21490 Paseo Portola Street in the City of Malibu ( Exhibits 1-3). The approval also included a Variance (VAR) No. 16-017 for the construction on slopes steeper than 1.5 to 1 and VAR No. 18-045 for retaining walls in excess of six feet for up to nine feet. The subject site is zoned Single-Family Medium within the La Costa Overlay District.

The subject site is a triangle-shaped parcel located at the end of the cul-de-sac of Paseo Portola Street, within the La Costa residential neighborhood. Pacific Coast Highway and a row of single-family residences (fronting the highway) lie to the south of the project site. The site is located approximately 160 feet north of Pacific Coast Highway. The property is classified as a C-type lot as defined by the La Costa Overlay District, which is associated with specific development standards (Exhibit 5). The La Costa Overlay District of the LCP includes custom development criteria intended to respond to the steep slopes and constrained lots that dictate the development pattern of the neighborhood. Many residences in this area cascade down steep slopes that face the Pacific Ocean.

The subject property consists of a previously disturbed and developed lot that contains remnants of an existing single-family building foundation. The foundation was left from the original residence which was destroyed by the 1993 Malibu/Topanga Fire. Due to the previous development, the subject site currently consists of a relatively flat building pad area within the northern portions of the site, closest to the street. However, beyond the building pad the site has a slope that descends steeply towards existing residential development downslope and to the south. According to the geotechnical reports



prepared for the subject property, the site contains a prehistoric landslide and subsurface landslide debris exists on the site. Lastly, the project site is not within an area designated Environmentally Sensitive Habitat Area (ESHA) on the Malibu LCP ESHA and Marine Resources Map. No native trees are proposed to be removed.

## **B. SUMMARY OF APPEAL CONTENTIONS**

On June 25, 2020, James E. Moore, Tracy E. Moore, and Rody Castroll (appellants) filed an appeal of the subject CDP (Exhibit 7). The appeal contends that the approved project is not consistent with the policies and provisions of the City of Malibu's certified LCP related to scenic and visual resources and hazards. Specifically, the appeal states that the approved pile supported retaining wall is not in conformance with the development standards contained in Local Implementation Plan (LIP) Section 6.5 (A) and (B) (cited below) because the retaining wall, which is visible from Pacific Coast Highway (PCH), exceeds the 6-foot height limit for retaining walls and will extend across the entire width of the property in one continuous U-shaped wall (mass of the retaining wall). Further, the appeal claims the pile supported retaining wall will have adverse visual impacts due to the length and mass of the retaining wall and its visibility from Pacific Coast Highway.

The appeal also states the project site contains challenging geology, including slopes greater than 1.1 (in parts), a prehistoric landslide, and is in close proximity to the Calle del Barco landslide. Staff has reviewed the appellants' stated concerns in the context of the relevant specific LCP policies and provisions in an effort to fully characterize the nature of the appellant's contentions, even in those instances where specific citations to LCP policies were not included in the appeal. The relevant LCP provisions are therefore interpreted and analyzed as the basis of the appellant's contentions, as detailed in the sections below.

Moreover, the appeal makes several additional claims: (1) the retaining wall was never shown in a rendering by the developer, (2) the developer has never explored, nor submitted, plans for multiple retaining walls, (3) the developer has made an argument that the segment of retaining wall that will be 9 feet in height will be screened by an existing mature tree on the site, and (4) the developer graded the lot in 2014 without a permit and the City issued a "Stop All Work Notice". However, these claims do not appear to point to an inconsistency with any specific policy or provision of the certified Malibu LCP, or with the public access and recreation policies of the Coastal Act. Therefore, they are not valid grounds for appeal. Furthermore, the appeal contends that the project should have required an "Administrative Plan Review" pursuant to Section 17.62.030(A) of the Malibu Municipal Code (MMC). However, the MMC is not a part of the City's LCP, and thus the policies and provisions of the MMC are not the standard of review for the subject CDP and are not relevant to this appeal. Furthermore, an Administrative Plan Review is not a review process under the City's LCP. Therefore, the appellant's contention that the project is not consistent with the MMC and the other above-mentioned allegations are not valid grounds for an appeal.

As discussed previously, the appeal jurisdiction for this area extends to 300 feet from the inland extent of the beach. The approved project includes a substantial amount of development throughout the site in which only a portion of the approved project, segments of the pile supported retaining wall and micro-dosed subsurface drip field for the alternative wastewater treatment system, are located within the appeal area (Exhibit 4). In this situation, the approval of the local CDP is appealable to the Commission, but the grounds of appeal are limited to allegations that the “appealable development” (which is only the development located within the Commission’s appeal jurisdiction) is not consistent with the standards in the certified LCP. In this case, some of the appeal contentions relate to approved development located outside the Commission’s appeal jurisdiction. Since the grounds of appeal in this case are limited to only the development that is located within the Commission’s appeal jurisdiction (portions of the pile supported retaining wall and 2,352 sq. ft. micro-dosed subsurface drip field) the allegations regarding development outside the appeal area are not valid grounds for appeal and will not be analyzed in the substantial issue determination analysis below.

See Exhibit 7 for the full text of the appeal.

### **C. ANALYSIS OF SUBSTANTIAL ISSUE**

Pursuant to Section 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.

The Coastal Act states 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 raised a substantial 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 no substantial issue with regards to the grounds on which the appeal has been filed.

## 1. Scenic and Visual Resources

The appeal asserts that the pile supported retaining wall component of the project does not comply with the scenic and visual resource protection policies of the LCP. Specifically, the appeal states that the retaining wall is not in conformance with the development standards contained in Local Implementation Plan (LIP) Section 6.5 (A) and (B) (cited below) because the retaining wall, which would be visible from a scenic road (Pacific Coast Highway), would exceed the 6-foot height limit for retaining walls and its height, length, and mass would have adverse visual impacts. Staff has reviewed the appellants' stated concerns in the context of specific LCP policies and provisions in an effort to fully characterize the nature of the appellant's contentions, even in those instances where specific citations to LCP policies were not included in the appeal. The relevant LCP provisions are therefore interpreted and analyzed as the basis of the appellants' contentions, as detailed below.

Coastal Act Section 30251, as incorporated into the certified LCP, states:

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

Land Use Plan Policy 6.2 states:

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

Land Use Plan Policy 6.3 states:

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

- a. Pacific Coast Highway
- b. Decker Canyon Road
- c. Encinal Canyon Road
- d. Kanan Dume Road
- e. Latigo Canyon Road
- f. Corral Canyon Road
- g. Malibu Canyon Road
- h. Tuna Canyon Road

Land Use Plan Policy 6.4 states:

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

Land Use Plan Policy 6.5 states:

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

Land Use Plan Policy 6.12 states:

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

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

Land Use Plan Policy 6.14 states:

The height of permitted retaining walls shall not exceed six feet. Stepped or terraced retaining walls up to twelve feet in height, with planting in between, may be permitted. Where feasible, long continuous walls shall be broken into sections or shall include undulations to provide visual relief. Where feasible, retaining walls supporting a structure should be incorporated into the foundation system in a stepped or split level design. Retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.

Local Implementation Plan Section 3.4.1(B), in applicable part, states:

B. Malibu La Costa Overlay District

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2. Multi-Story Floor Area: The requirements of Section 3.6(K) of the Malibu LUP shall not apply; however, the following requirement shall apply. Flat wall facades along the south/ocean-facing elevations shall not extend more than 25 feet horizontally nor 20 feet vertically (excluding gable ends) without a minimum four (4) foot offset. Balconies which project from continuous flat wall facades shall not be considered offsets.

Local Implementation Plan Section 3.5.3(A)(4), in applicable part, states:

4. Retaining Walls: Retaining walls shall not exceed 6 feet in height for any one wall, nor 12 feet for any combination of walls (including required freeboard), and which shall be separated by at least 3 feet, are permitted in all yards.

Local Implementation Plan Section 6.5, in applicable part, states:

A. Development Siting

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

to minimize adverse impacts on views from scenic highways or public viewing areas.

3. Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.
4. New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.

## B. Development Design

1. The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, pursuant to Section 13.27 of the Malibu LIP the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and roof-top antennas may be permitted to extend above the permitted height of the structure.
2. The length of on-site roads or driveways shall be minimized, except where a longer road or driveway would allow for an alternative building site location that would be more protective of visual resources or ESHA. Driveways slopes shall be designed to follow the natural topography. Driveways that are visible from a scenic highway, a beach, a public viewing area, or public hiking trail shall be neutral color that blends with the surrounding landforms and vegetation.
3. Retaining walls visible from scenic highways, public viewing areas, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.
4. Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public view areas.
5. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
  - a) Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones.
  - b) The use of reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
  - c) All windows shall be comprised of non-glare glass.
6. New water tanks in scenic areas visible from scenic roads or public viewing areas shall be designed to be partially below grade, where

feasible. Water tanks shall incorporate colors that are compatible with the surrounding landscape and landscape screening to minimize visual impacts.

Discussion:

One of the primary objectives of the Coastal Act and the City's LCP is the protection of scenic and visual resources, particularly as viewed from public places. Section 30251 of the Coastal Act, which is incorporated into the City's LCP, requires that development be sited and designed to protect views to and along the ocean and other scenic coastal areas. The Malibu certified LUP requires protection of scenic areas and coastal views from public viewpoints. LUP Policy 6.2 defines "public viewing areas," in part, as public roads and trails that offer scenic vistas, and states that existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. In addition, LUP Policy 6.4 states that places on, along, within, or visible from scenic roads, trails, beaches, parklands, and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons, and other unique natural features are considered Scenic Areas. However, LUP Policy 6.4 also clarifies that inland areas that are largely developed or built out, specifically including residential subdivisions along the coastal terrace, are not considered Scenic Areas.

Furthermore, LUP Policy 6.5 and LIP Section 6.5 (A) and (B) do not set objective numerical standards. Rather, they require new development to be sited and designed to "minimize adverse impacts" on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. When there is no feasible building site location on the site where development would not be visible, then the development is only required to be sited and designed to minimize impacts on scenic areas. This may be through measures such as siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, and incorporating landscape elements/screening. Additionally, LIP Section 6.5(B) states that retaining walls visible from scenic highways, public viewing areas, trails, parks, and beaches should incorporate veneers, texturing, and/or colors that blend with the surrounding earth materials or landscape.

The project approved by the City consists of construction of a new 2,954 square foot, two-story single-family residence, a 434 square foot attached garage, spa, decks, pile supported retaining wall, landscaping, hardscaping, alternative onsite wastewater treatment system, and associated grading. As previously stated, the only portion of the approved project that is located within the Commission's appeal jurisdiction consists of portions of the pile supported retaining wall (which ranges in height from 2 feet to 9 feet) and portions of the 2,352 sq. ft. micro-dosed subsurface drip field for the alternative onsite wastewater treatment system. The appeal contends that the pile supported retaining wall does not conform to the policies of the LCP with regards to scenic and visual resources because the retaining wall would exceed the 6-foot height limit for

retaining walls (LUP Policy 6.14), would be massive in scale with no relief because it would extend across the entire width of the parcel (LIP Section 3.4.1(B)(2)), would not be visually compatible with the character of the surrounding area (Coastal Act Section 30251), and would be highly visible from Pacific Coast Highway (LUP Policy 6.3).

According to the City's staff report, the project site is visible from Pacific Coast Highway (PCH), which is a designated scenic road under LUP Policy 6.3. The City approved a pile supported retaining wall ranging in height from 2 ft to 9 ft. high and totaling 220 linear feet of retaining wall. While it's true that the approved development does not meet the technical requirement of the LCP for which states that the height of retaining walls is not to exceed 6 feet in height (LUP Policy 6.14 and LIP Section 3.5.3(A)(4)), the City made the required findings to approve a variance (VAR No. 18-045) of this standard, consistent with LIP Section 13.26. Specifically, LIP Section 13.26 allows for applicants to make an application for a coastal development permit variance from standards or requirements of the Malibu LIP and to provide specific findings for approval or denial of variances. In this case, the City correctly found that there are special circumstances or exceptional characteristics applicable to the subject property, including shape, topography, location and surroundings such that strict application of the zoning ordinance (LIP Section 3.5.3(A)(4)) would deprive the property of having an onsite wastewater treatment system to serve a new single-family residence, which is a privilege enjoyed by other properties in the vicinity and under the identical zoning classification. Therefore, despite the approved pile supported retaining wall exceeding the 6 foot height limit, the approved pile supported retaining wall is still consistent with the City's LCP pursuant to the variance mechanism provided for in LIP Section 13.26. Although most of the approved wall does not exceed 6 feet in height, a 55-foot segment exceeds 6 feet and reaches a maximum of 9 feet (which includes a foot of freeboard). Furthermore, as a result of geotechnical reports prepared for the subject site that mapped a prehistoric landslide and the existence of subsurface landslide debris exists on the subject site, the project's geologist recommended a pile supported retaining wall along the west, south and eastern limits of the subject site for purposes of mitigating earthquake induced landsliding and to help stabilize the site from potential slope failure.

Additionally, the subject property's physical constraints, such as steep slopes and subsurface landslide debris, limit the type of septic system that can be used and sited on the site. According to the City's staff report, in order to achieve the minimum required factor of safety for slope stability, the pile supported retaining wall is required to protect the septic system's micro-dosed subsurface drip field and the approved wall height permits an adequate size drip field area for the residence. The height of the retaining wall is driven by the project's consultant's recommended 2 to 1 slope for the drip field area behind the wall, as well as the minimum size of the drip field area for compliance with the absorption rate for an acceptable factor of safety. Without the approved variance for a portion of the retaining wall to be 9 feet instead of the required 6 feet, the septic system's drip field for the approved single-family residence would not be feasible. Furthermore, the City's Planning Commission also considered an alternative option of using a two-tier retaining wall that would be consistent with the wall height requirement of LUP Policy 6.14. However, this project would require two, six-foot high retaining



walls, and the City found this alternative would not significantly improve potential visual impacts of the retaining walls as seen from PCH. Additionally, in this specific case, such an additional retaining wall would be required to be embedded into bedrock and would result in additional grading and landform alteration of the site versus the use of one taller wall.

In its action on the subject CDP, the City found that since segments of the approved pile supported retaining wall will be unavoidably visible from a scenic road (Pacific Coast Highway), and there are no feasible alternatives to reducing its height, length, or location, the City required measures to help visually screen the wall from PCH. Consistent with LUP Policy 6.5 and Coastal Act Section 30251, the City required a condition of approval that requires the property owner/applicant to install and maintain a vertical living wall or other similar landscaping along the south-facing retaining wall, and staggered planting in front of the wall to help visually screen the wall from PCH (Special Condition No. 18). Furthermore, consistent with Land Use Plan Policy 6.14 and LIP Section 6.5(B), the City required the retaining wall visible from PCH to include veneers, texturing, and/or colors that blend with the surrounding earth materials or landscaping.

Additionally, the project site is located inland of Pacific Coast Highway and within a largely developed residential subdivision (La Costa neighborhood) along the coastal terrace. The subject site is not considered a Scenic Area under the LCP. However, site development would be visible from PCH, a scenic road. The City found that based on a site reconnaissance, site photos, and the nature of the surrounding area, the approved retaining wall is compatible with the surrounding built environment and would not impact any scenic bluewater views from PCH nor any scenic views of the Santa Monica Mountains from PCH. Since the pile supported retaining wall component of the project is surrounded by existing residential development along the hillside and will be appropriately screened, it would not have a significant adverse impact on any public views.

Finally, the appeal asserts that the approved retaining wall does not provide relief as required by LIP Section 3.4.1(B)(2) (Multi-Story Floor Area). LIP Section 3.4.1(B)(2) requires flat wall facades (on multi-story residences) along south/ocean-facing elevations shall not extend more than 25 feet horizontally nor 20 feet vertically without a minimum four-foot offset. However, the requirements of this section clearly apply to buildings and not to retaining walls. As such, the retaining wall is not inconsistent with LIP Section 3.4.1(B)(2).

For all these reasons, the Commission finds that the City-approved project conforms to the scenic and visual resources protection policies and provisions of the City's LCP. Therefore, the Commission finds that the appellants' contentions regarding these issues do not raise a substantial issue with regards to consistency with the policies and provisions of the City's LCP.

## 2. Hazards

The appellants contend that the project, as approved by the City, is located on a site that contains challenging geology, including slopes greater than 1:1, a prehistoric landslide, and is in close proximity to the Calle del Barco landslide. The appeal made general assertions regarding LCP development standards that pertain to the geologic constraints on the site, without citing any specific LCP sections. However, based upon the appellants' contentions, the following policies and provisions are applicable.

Coastal Act Section 30253, as incorporated into the certified LCP, states (in 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, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

...

Land Use Plan Policy 4.1 states:

The City of Malibu and the Santa Monica Mountains coastal zone contains areas subject to hazards that present substantial risks to life and property. These areas required additional development controls to minimize risks, and include, but shall not be limited, to the following:

- a. Low Slope Stability & Landslide/Rockfall potential: hillside areas that have the potential to slide, fail, or collapse.
- b. Fault Rupture: the Malibu Coast-Santa Monica Fault Zone.
- c. Seismic Ground Shaking: shaking induced by seismic waves traveling through an area as a result of an earthquake on a regional geologic fault,
- d. Floodprone areas most likely to flood during major storms.
- e. Liquefaction: areas where water-saturated materials (including soil, sediment, and certain types of volcanic deposits) can potentially lose strength and fail during strong ground shaking.
- f. Liquefaction/Floodprone areas where saturated sediments lie in flood plains.
- g. Tsunami: shoreline areas subject to inundation by a sea wave generated by local or distant earthquake, submarine landslide, subsidence, or volcanic eruption.
- h. Wave action shoreline areas subject to damage from wave activity during storms.

- i. Fire Hazard: areas subject to major wildfires classified in Fire Zone 4 or in the Very High Fire Hazard Severity Zone.

Land Use Plan Policy 4.2 states:

All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

Land Use Plan Policy 4.4 states:

On ancient landslides, unstable slopes and other geologic hazards areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.

Land Use Plan Policy 4.5 states:

Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identified any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.

Land Use Plan Policy 4.11 states:

New development involving a structure dependent on a wastewater disposal system shall utilize secondary treatment, at a minimum, and evapotranspiration waste disposal systems or other innovative measures, where feasible.

Coastal Act Section 30253, which is incorporated as a policy of the LUP, and Land Use Plan Policy 4.2 mandate that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. In addition, LUP Policy 4.4 states that on ancient landslides, unstable slopes and other geologic hazards, new development shall only be permitted where an adequate factor of safety can be provided. The subject property is located in an area that is generally considered to be subject to slope stability hazards due to the steep nature of the slopes. The site consists of a previously disturbed and developed lot that contains remnants of an existing single-family building foundation. Due to the previous development, the subject site currently consists of a relatively flat building pad area within the northern portions of the site, closest to the street. However, beyond the building pad, the site has a constant slope that descends steeply towards existing residential development downslope and to the south. According to the geotechnical reports prepared for the subject property, the site contains a prehistoric landslide and subsurface landslide debris exists on the site.

The City's staff report states that due to substandard factors of safety for potential failures within the subsurface landslide debris, the project geologist recommends pile supported retaining walls along the west, south, and eastern limits of the subject site for purposes of mitigating earthquake induced landsliding and to achieve the minimum required factor of safety for slope stability, consistent with LUP Policy 4.4. Further, due to the subject property's physical constraints, such as steep slopes and subsurface landslide debris, the type of septic system that can be used and sited on the site is limited. The project includes an alternative onsite wastewater treatment facility that utilizes a micro-dosing drain field. This type of system is specified for landslide areas because it minimizes the amount of moisture entering the soils, which minimizes adverse slope stability effects. According to the City's staff report, the geotechnical engineer also recommended the same pile supported retaining wall for the septic system in order to protect the septic system's micro-dosed subsurface drip field.

Consistent with LUP Policy 4.5, the project's geologist concluded that the project is feasible from a geologic engineering standpoint, will be safe from geologic hazards such as landslides, slippage, settlement, and will not have an adverse effect upon the stability of the site or adjacent properties provided their recommendations and those of the project's geotechnical engineer are incorporated into the final plans and implemented during construction. The City's geotechnical staff also reviewed the subject report(s) associated with the approved project. Further, the City's approved permit includes a condition that requires all recommendations of the consulting certified engineering geologist or geotechnical engineer, and/or the City Geologist, be incorporated into all final design and construction plans, and that the final plans must be reviewed and approved by the City Geologist prior to issuance of the grading permit. Finally, the City has required as a condition of approval that all disturbed and graded areas on the subject site be stabilized with native vegetation and all slopes incorporate slope planning measures to ensure the stability and geotechnical safety of the site and to prevent surface soil erosion.

The appeal also contends that the site is in close proximity to the Calle del Barco Landslide. However, this assertion does not point to an inconsistency with any specific policy or provisions of the certified Malibu LCP. Additionally, although the subject property is located in close proximity of the Calle del Barco landslide, the subject site is not located within the limits of the Calle del Barco landslide and is not located within the Calle del Barco Landslide Assessment District Boundary.

The City determined, based on substantial evidence in the administrative record, that the project will minimize risks to life and property from geologic hazard and will assure site stability and structural integrity and is consistent with the applicable hazard policies of the Malibu LCP. For all these reasons, the Commission finds that the City-approved project conforms to the hazard policies and provisions of the City's LCP and that the appellants' contentions regarding these issues do not raise a substantial issue with regards to consistency with the policies and provisions of the City's LCP.

### 3. 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. In this case, the appeal cites scenic and visual resources and hazard policies and provisions of the Malibu LCP. The Commission's regulations indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue[.]" (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 substantial issue, including but not limited to the five factors that are addressed below.

The first factor 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, as explained above, the City's record includes extensive factual evidence and legal support for the City's findings that the project is consistent with the scenic and visual resources and hazard policies and provisions of the certified LCP. There is substantial evidence in the City's record demonstrating that the approved project is sited and designed to minimize risks to life and property from geologic, flood, and fire hazards. The development, which is located on an ancient landslide, has been permitted because an adequate factor of safety can be provided, in conformance with Land Use Plan Policy 4.2 and 4.4. Further, the City's record includes substantial evidence that demonstrates the project conforms to scenic and visual resource protection policies and provisions of the LCP, as explained in detail above. This factor weighs against finding a substantial issue.

The second factor is the extent and scope of the development as approved. As described above, the approved project consists of a single-family residential development on an approximately 0.27-acre residential lot. Given that the project site is not particularly large and the development type is consistent with the surrounding area, the extent and scope of the subject development on this particular lot is relatively small. This factor weighs against finding a substantial issue.

The third factor is the significance of coastal resources affected by the decision. In this case, the project site is an infill lot that is adjacent to existing single-family residences. Further, the site was previously developed with an existing single-family residence that burned down in the 1993 Malibu/Topanga Fire. The approved project is consistent with the LCP's scenic and visual resources and hazard policies that are asserted in the appeal. Although the approved development will be visible from a scenic roadway (PCH), the subject site is not considered a Scenic Area under the LCP and therefore the view of this area from PCH is not a significant coastal resource. As a result, there are no significant coastal resources and no environmentally sensitive habitat area (ESHA) on the site what would be negatively affected by the project, and the project would be compatible with the character of the surrounding area and would have no significant adverse impacts to scenic views from public viewing areas. As such, there are no

significant coastal resources that would be negatively affected by the City's decision. This factor weighs against finding a substantial issue.

The fourth factor is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the Commission finds that the City applied its LCP policies correctly in finding that the project is consistent with the policies of the LCP with respect to the grounds of the appeal. Specifically, the LCP allows incorporating landscape elements/screening as a mitigation measure when there is no feasible alternative to avoid the project's visibility from scenic roads or public viewing areas. As such, the City's decision will have no adverse precedential value for future CDP decisions. This factor weighs against finding a substantial issue.

The fifth factor is whether the appeal raises only local issues, or those of regional or statewide significance. The appeal raises issues with regard to development standards that only relate to local issues and interpretation of the local LCP, and does not have regional or statewide significance. This factor weighs against finding a substantial issue.

In conclusion, the Commission finds that in consideration of the factors above, on balance, the appeal fails to raise a substantial issue. For the reasons discussed above, the Commission finds that the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the City's certified LCP. Applying the five factors identified above, the Commission finds the City's record adequately supports its position that the proposed project is consistent with the applicable LCP policies. In addition, the development is relatively small in scope, does not have a significant adverse effect on significant coastal resources, would not be an adverse precedent for future coastal development permits, and does not raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds on which it was filed.

APPENDIX A – Substantive File Documents

Certified City of Malibu Local Coastal Plan; Malibu Planning Commission Agenda Report for CDP No. 16-038 dated August 8, 2019; Malibu City Council Agenda Report for Appeal No. 19-007 dated May 20, 2020.