

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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**W12b**

Appeal Filed:	8/14/20
49th Day:	Waived
Staff:	I. Qi - V
Staff Report:	6/17/21
Hearing Date:	7/7/21

STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE

APPEAL NUMBER: A-4-MAL-20-0046

APPLICANT: Michael Price

APPELLANT: Kraig Hill

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Coastal Development Permit No. 17-017 approved by the Malibu City Council on July 13, 2020

PROJECT LOCATION: 33608 Pacific Coast Highway, City of Malibu, Los Angeles County (APN: 4473-021-010)

PROJECT DESCRIPTION: An interior and exterior remodel of, and addition to, an existing 2,547 sq. ft., two-story single-family residence, including an addition of 366 square feet to the second story and 793 square feet of covered decks to the first story.

STAFF RECOMMENDATION: No Substantial Issue Exists

MOTION & RESOLUTION: Page 7

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: NO SUBSTANTIAL ISSUE EXISTS

The Commission’s role at the “substantial issue” phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Here, the appellant contends that the approved project is not consistent with the policies of Malibu’s certified LCP regarding shoreline development, coastal hazards, and visual resources. 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 page 7.

On July 13, 2020, the City of Malibu City Council approved a coastal development permit (CDP) for the interior and exterior remodel of, and 1,159 square feet of additions to, an existing 2,547 square feet, two-story, single-family residence on a 0.66-acre beachfront parcel located at 33608 Pacific Coast Highway in the western portion of the City of Malibu (Exhibits 1-4). Specifically, the approved additions include 366 square feet of habitable space to the second story and 793 square feet of covered decks to the first story. The approved remodel would involve replacement of 15 percent of exterior walls. The subject site is located near the toe of a stepped coastal bluff below Pacific Coast Highway and is bordered by residential developments to the west, north, and east, and the Pacific Ocean to the south. A portion of the property is projected to be vulnerable to coastal hazards and flooding over the next 75 years, and there is an existing rock revetment on the site.

The City’s action on the project was appealed by Kraig Hill on the grounds that the project is inconsistent with the City of Malibu LCP policies related to shoreline development, coastal hazards, and visual resources (Exhibit 7-8). The appellant asserts that the Wave Uprush Study that the City relied on for its findings used the incorrect sea level rise height projection, thus underestimating the impacts of flooding that will be brought by sea level rise to the project location. The applicant’s March 2018 Wave Uprush Study analyzed the project’s susceptibility to coastal hazards by assuming that the sea level will rise by 24 inches (2 ft.) relative to the highest observed still water elevation over the next 75 years. The 24-inch (2 ft.) sea level rise projection used in the study falls within the range of projected sea level rise that the Commission considered best available science at the time it was conducted (as detailed in the Commission’s 2015 Sea Level Rise Policy Guidance which was the most updated guidance available in March 2018). But the City did not take action on the permit until 2020, long after the Commission published its updated Sea Level Rise Guidance in August 2018 with a higher sea level rise projection and more detailed risk-aversion scenarios. As such, the City should have required an updated Wave Uprush Study using the best available science on sea level rise projection in compliance with the Commission’s 2018 guidance.

However, in this unique case, applying updated sea level rise projections would not have necessitated project redesign or required other conditions of approval by the City. In fact, the applicant has provided an updated Wave Uprush Study (dated February 2021) for the subject project site using the current sea level rise projection of 6.15 ft. by 2095 (based on the Commission's 2018 Sea Level Rise Policy Guidance) and without reliance on the existing revetment for protection. The updated analysis demonstrates that the approved 366 sq. ft. second story addition and its associated foundation on the landward side of the house will not be affected by sea level rise by 2095, even without relying on the existing revetment for protection. The second story addition will be supported on its own concrete pile and grade beam foundation system independent from the main house. No improvements to the foundation of the existing residence were proposed or approved and the limited additions to the existing residence that were approved in the subject permit would not serve to extend the life of the existing structure. Furthermore, the proposed physical additions to the covered porches on the first floor are all on the landward side of the house and will not be affected by sea level rise through the life of the development, since they are more landward than the projected wave uprush limit by 2095 (Exhibit 5). Also, patio areas are considered accessory structures under the City's LCP that must be removed when they become threatened by wave runup, flooding, or erosion and are not entitled to shoreline protection. Although the City erred in relying on a wave uprush study with outdated sea level rise projections in its findings, in this case, the updated Wave Uprush Study shows that using the appropriate sea level rise projection of 6.15 ft. by 2095 without relying on the existing revetment does not necessitate any change in the design of the project and does not affect the project's consistency with the shoreline development hazards policies of the LCP. As approved by the City, the development is consistent with the shoreline development and coastal hazard policies and provisions of the certified LCP.

The appeal also raises an issue with respect to consistency with the City's "two-thirds rule" as explained in Section 3.6(K)(2) of the City's Local Implementation Plan. It states that "[a]ny portion of the structure above 18 feet in height shall not exceed 2/3rds the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties". The appellant contends that the City interpreted the language of the code incorrectly by reading "first floor area" to include covered decks as part of the two-thirds provision calculation. Under this reading, the proposed addition of 366 square feet to the second floor, part of which is above 18 feet in height, could be allowed without exceeding the two-thirds provision. The appellant argues that, to the contrary, only the interior floor areas of the first and second floors of the structure (i.e. not the floor area of anywhere outside of the structure, such as an outdoor deck) should be included in calculations for the two-thirds provision. Under this interpretation, the proposed 793 square feet of covered decks would not be included in the first floor area for the two-thirds provision calculation, and the two-thirds provision would not allow any further additions to the second floor. While Commission staff does not agree with the City's interpretation of LIP Section 3.6(K)(2) that covered decks are included in the floor area of a structure, the application of this LIP provision relative to the approved additions in this case would not result in any adverse impacts to coastal resources. The two-thirds provision in the City's LCP is an aesthetic standard for multi-level residential structures that exceed 18 feet in height in order to prevent a box-like appearance and to protect

views from adjacent private properties. However, it is public views to and along the ocean and scenic coastal areas, rather than private views, that are protected as a coastal resource under the Coastal Act. Since the approved additions would be located on the landward side of the house and significantly below the elevation of Pacific Coast Highway, no scenic public views would be affected by the proposed project. Therefore, no significant coastal resource issue is raised with respect to the two-thirds provision or other visual resource policies of the certified LCP.

The appellant also contends that the City incorrectly calculated the allowable TDSF on the site by failing to exclude the area of the revetment with slopes equal to or greater than 1:1. Commission staff concurs with the City's explanation that, since the revetment is a structure that sits on the lot, not the land of the lot itself, the exclusion does not apply to the area of the existing revetment. Furthermore, staff notes that even if the City did erroneously calculate the allowable TDSF due to this interpretation, no coastal resource would be adversely impacted by this error. As such, this contention does not raise a substantial issue with respect to allowable TDSF or other visual resource policies of the certified LCP.

For the reasons discussed above, Commission staff recommends 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. Although there lacks strong factual and legal support for the City's decision, the subject decision may have precedential value in the interpretation of the City's LCP policies, and the appeal raises issues of regional and statewide significance, the extent and scope of the development is small and there are no significant coastal resources affected by the decision. Therefore, staff recommends that the Commission finds that the appellants' contentions raise no substantial issue with respect to the grounds on which it was filed.

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EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Parcel Map
Exhibit 3.	Aerial Photo
Exhibit 4.	Site Plan, Floor Plan, and Elevation Plans, Malibu Planning Commission Agenda Report for CDP No. 17-071 and SPR No. 17-036 dated 2/6/20
Exhibit 5.	Wave Uprush Line
Exhibit 6.	Final Local Action Notice & City Resolution
Exhibit 7.	Appeal by Kraig Hill
Exhibit 8.	Supplemental Memo in support of Appeal (filed 8-14-20) of CDP No. 17-071 by Kraig Hill

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

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

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized will be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603(a)). Any action on an application for development that constitutes a major public works project or major energy facility may also be appealed to the Commission (Coastal Act Section 30603(a)(5)).

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

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (See Public Resources Code § 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that 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

de novo. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

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

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was denied by the City of Malibu Planning Commission on February 18, 2020. The decision was then appealed to the City Council by the applicant. The City Council granted the appeal and approved a coastal development permit on July 13, 2020. The City's Notice of Final Action for the project was received by Commission staff on July 31, 2020 (Exhibit 6). Commission staff provided notice of the ten working day appeal period, which began on July 31, 2020 and ended on August 14, 2020. An appeal of the City's action was filed by Kraig Hill on August 14, 2020, during the appeal period (Exhibit 7 and 8). 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 September 9, 2020. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission; however, according to Section 30625(a), the applicant can waive that time limit. The time limit was waived by the applicant on August 27, 2020.

II. STAFF RECOMMENDATION FOR NO SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-4-MAL-20-0046 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-20-0046 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 the interior and exterior remodel of, and 1,159 square feet of additions to, an existing 2,547 square foot, two-story, single-family residence on a 0.66-acre beachfront parcel located at 33608 Pacific Coast Highway in the Rural Residential-Two Acre (RR-2) zoning district within the western portion of the City of Malibu (Exhibit 1-3). Specifically, the additions include 366 square feet to the second story and 793 square feet of covered decks to the first story (Exhibit 4). The 366 sq. ft. additions to the second story will be on the landward side of the house, and 598 sq. ft. of the approved 793 sq. ft. covered porch additions will also be on the landward side of the house. The remaining 195 sq. ft. of approved covered porch area consists of an interior adjustment to an *existing* covered porch area on the seaward side of the house. The current depth of the covered porch on the seaward side of the house is 5 ft 11 in. and the approved interior adjustment to the fireplace would cause the porch to become 6 ft. 3.5 in. deep. This adjustment allows the existing covered porch to be counted as part of the structure's "total development square footage" (TDSF)¹, which the City used in this case as a measure of the structure's "first floor area" for purposes of calculating the maximum allowable floor area for any portion of residential structure above 18 feet in height pursuant to the City's two-thirds provision. The two-thirds provision in Section 3.6(K)(2) of the City's Local Implementation Plan requires that any portion of residential structure above 18 feet in height shall not exceed two-thirds of the first floor area. The City considers covered open areas that extend more than six feet from a building as part of the residence TDSF², and therefore counted as floor area for the two-thirds provision. However, the approved porch will not extend any further seaward than the existing covered porch. The only physical additions of covered porch are the 598 sq. ft. on the landward side of the residence.

¹ The City's LCP limits the square footage of structures on residential properties to a maximum allowable total development square footage (TDSF) pursuant to a formula that is based on a parcel's net lot area. The formula allocates TDSF per square foot of net lot area on a sliding scale so that as lot size increases, the amount of TDSF per square foot of lot size allowed decreases.

² The LCP defines TDSF as "the calculation of the interior space of the primary and accessory structures (including interior and exterior walls). Accessory structures shall include, but are not limited to, guest houses, garages, barns, sheds, gazebos, cabanas. Decks, terraces and balconies shall not be included in total square footage calculations when they are a part of a primary or accessory structure and are open on all sides."

The subject project (addition of floor area on the second floor and covered decks on the first floor) will involve the replacement of 15 percent of exterior walls. Combined with previous remodeling of the residence that was permitted by the City in 2013 and 2014, the subject project would result in a cumulative total of 30 percent of exterior walls replaced for the residence. Since the cumulative total exterior wall replacement is less than 50 percent, the project qualifies as repair and maintenance (rather than a replacement structure) and does not constitute a substantial redevelopment in which the entire structure would need to be brought into conformance with the LCP. Site Plan Review (SPR) No. 17-036 was also approved for this project for construction up to 24 feet in height with flat roofs for the residence.

During the Planning Commission meeting on February 18, 2020, the Planning Commission denied CDP No. 17-071, citing the project's failure to comply with the "two-thirds rule" (LIP Section 3.6(K)(2)) and adverse effects on neighborhood character as findings for denial. The applicant then appealed the project to the City Council. On July 13, 2020, the Malibu City Council granted Appeal No. 20-003, and approved CDP No. 17-071 along with Site Plan Review No. 17-036.

The subject property is the more seaward of two parcels that are between the Pacific Ocean and Pacific Coast Highway located in western Malibu, approximately .75 miles west of Decker Canyon Road (Exhibit 3). The subject site is on a previously graded coastal bluff that extends from Pacific Coast Highway to the ocean. There is a curved common access driveway that begins at Pacific Coast Highway on vacant property northeast of the subject property and cuts through the slope, and then terminates at the subject property. The subject site is bordered by residentially developed lots to the east, north, and west and the Pacific Ocean to the south. The project site is located on a flat pad between the beach and the access driveway, which abuts a steep ascending slope. The property is developed with a two-story, single-family residence and a detached, two-story guest house and garage. The existing residence was originally constructed in 1955. The existing residence is built on a slab on grade foundation supported by timber piles, and the approved project includes adding nine piles to support the second story additions. The approved foundation of the second story addition will be independent from that of the main house. There is currently a rock revetment on-site that pre-dates the Coastal Act and provides protection for the existing residential structures. However, no repair or maintenance activities to the rock revetment were proposed or approved under the subject permit.

B. BACKGROUND AND PERMIT HISTORY

As previously described, the existing residence on the subject property was originally constructed in 1955 and pre-dates the effective date of the Coastal Act and Proposition 20. In 1987, the Commission approved CDP No. 5-86-594 for the addition of a gym and guest house, remodel of the existing single-family residence, and repair of an existing rock revetment. The permit also included an offer of dedication of an easement from the mean high tide line to the toe of the revetment to allow public lateral access along the shoreline. In 1999, the Commission approved CDP No. 4-98-190 for the repair of the

existing driveway that was destroyed by a landslide, including constructing a twelve-foot high retaining wall on soldier piles, remedial grading, and installation of dewatering wells. In 2013, the City of Malibu approved Over-the-Counter (OC) Permit No. 13-097 for an interior remodel of the existing single-family residence and detached guest house on the subject property, which involved the demolition of 1.4 percent of exterior walls of the existing residence. Furthermore, in 2014, the City of Malibu approved CDP No. 13-050 for the construction of a new swimming pool and spa, installation of a new alternative onsite wastewater treatment system (AOWTS), new stone pavers, new on-grade wood decks and a new fire pit, and remodel of an existing single-family residence and detached guest house, which involved the demolition of 13.6 percent of the exterior walls of the residence and the demolition of 8.5 percent of the exterior walls of the guest house.

C. SUMMARY OF APPEAL CONTENTIONS

The appeal filed by Kraig Hill is attached as Exhibit 7 and 8. 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 shoreline development, coastal hazards, and visual resources. The appellant asserts that the Wave Uprush Study that the City relied on for its findings used the incorrect sea level rise height projection, thus underestimating the impacts of flooding that will be brought by sea level rise to the project location.

Additionally, the appeal raises an issue with respect to consistency with the City's "two-thirds rule" as explained in Section 3.6(K)(2) of the City's Local Implementation Plan. It states that "[a]ny portion of the structure above 18 feet in height shall not exceed 2/3rds the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties". The appellant contends that the City interpreted the language of the code incorrectly, and erroneously interpreted "first floor area" as the total development square footage (TDSF) of the first floor (which includes covered decks that are deeper than six feet) instead of using only the interior floor area of the first floor. Under the City's interpretation, the proposed addition of 793 square feet of covered decks on the first floor allowed the addition of 366 square feet to the second floor without exceeding the two-thirds provision. However, the appellant argues that, in calculations for the two-thirds provision, the language in the LIP should be interpreted as the "floor area" of the first floor and second floor to only refer to the interior floor areas of the respective floors of the structure and to not include the floor area of anywhere outside of the structure, such as an outdoor deck. Under this interpretation, the proposed 793 square feet of covered decks would not be included in the first floor area in the two-thirds provision calculation and the two-thirds provision would not allow any further additions to the second floor.

The appellant also contends that the City failed to correctly calculate the TDSF allowed on the parcel, thus permitting more TDSF than the Malibu Municipal Code (MMC) allows. Although the cited MMC is not part of the certified LCP, Section 3.6(K) of the City's certified Local Implementation Plan includes a similar TDSF requirement, so this is a valid ground for appeal even though the appellant did not cite the appropriate LCP provision. As stated previously, the City's LCP limits the square footage of structures on

residential properties to a maximum allowable total development square footage (TDSF) pursuant to a formula that is based on a parcel's net lot area. Slopes equal to or greater than 1:1 are to be excluded from the lot area calculation. Specifically, the appellant asserts that the City did not exclude the area of the on-site rock revetment with slopes equal to or greater than 1:1 from the lot area calculation, which is inconsistent with Section 3.6(K) of the LIP.

D. ANALYSIS OF SUBSTANTIAL ISSUE

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

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

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

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

In this case, for the reasons discussed below, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed.

1. Shoreline Development and Coastal Hazards

The appeal states that the Wave Uprush Study for the project used unrealistic maximum wave height and sea level rise height, thus underestimating the amount of likely sea level rise and failing to accurately analyze the risks sea level rise poses to the project. Although the appeal did not identify specific LCP policies that the approved project

violates, the coastal hazards and shoreline development policies of the City of Malibu LCP listed below pertain to the subject development.

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

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or surrounding area or in any way require the construction of protective device that would substantially alter natural landforms along bluffs and cliffs.

Local Implementation Plan Section 10.4, in applicable part, states:

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

...

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

Coastal Act Section 30253, which is incorporated as a policy of the LUP, mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and shall not require the construction of protection devices that would substantially alter natural landforms. Local Implementation Plan (LIP) Section 10.4(H) goes further to require that new beachfront development be sized, sited, and designed to minimize risks from wave run-up, flooding, and beach and bluff erosion hazards and shall not require the construction of shoreline protection structures. LIP Section 10.4(A) provides that the siting and design of new shoreline development shall take into account anticipated future changes in sea level including an acceleration of the historic rate of sea level rise.

Consistent with LUP Policy 4.16 and LIP Section 10.5, the City required the preparation of a Coastal Hazards and Wave Uprush Study for the project. The City relied upon the Wave Uprush Study and Coastal Engineering Report for 33608 Pacific Coast Highway, prepared by David C. Weiss Structure Engineer & Associates (“David C. Weiss”), dated March 21, 2018, in their action. The Wave Uprush Study analyzed the proposed development in relation to coastal hazards under a range of sea level rise projections, with the high end of the range adding a projection of 24 inches (2 ft.) of sea level rise over the next 75 years to the highest observed still water elevation and analyzing wave run up from that level. The study concludes that the proposed remodel and additions will not be affected by this projected wave uprush nor will the proposed development have any adverse impact on the beach profile. Based on this Wave Uprush Study, the City’s findings state that the existing rock revetment provides protection for the existing residential structures and associated development, and that the existing finish floor elevation of +19.27 ft. NAVD88 is adequate to prevent overtopping by ocean waves. The City’s findings conclude that wave uprush is not anticipated to affect the proposed development.

Commission staff notes that at the time of the preparation of the Wave Uprush Study and Coastal Engineering Report, the Commission’s 2015 Sea Level Rise Policy Guidance recommended the use of region-specific sea level rise projections contained in the NRC 2012 science report as the best available science. The Commission’s 2015 Sea Level Rise Policy Guidance states that the appropriate region-specific sea level rise projection for the year 2100 in the NRC 2012 Report (for areas South of Cape Mendocino) is 17 to 66 inches. This projection was the best available science in place in March 2018 when the applicant’s coastal engineering consultants prepared their report. However, in August 2018, the Commission’s Sea Level Rise Guidance was updated to reflect new best available science with updated sea level rise projections stemming from two reports from the California Ocean Protection Council (OPC), the State Sea Level Rise Guidance (OPC 2018), and Rising Seas in California (Griggs et al. 2017). The new best available science on sea level rise indicates that at the Santa Monica tide gauge (the closest tide gauge to the project site), sea levels may rise between 3.3 and 10 feet by the year 2100, which is significantly higher than the level used by the applicant’s consultants to project the maximum wave uprush expected during the life of the proposed project and analyzed in the City’s findings. Using the appropriate medium-high risk aversion and high emissions scenario, sea level rise is projected to be 5.5 feet by 2090 and 6.8 feet by 2100 at the Santa Monica tide gauge (OPC 2018). For the 75-year project life of the approved residence, sea level rise is projected to be roughly 6.15 feet by year 2095 (the mid-way point between the 2090 and 2100 projections). This guidance was adopted by both the Ocean Protection Council and the California Coastal Commission in 2018, more than a year before the City’s action on the subject permit in July 2020. Therefore, although the 24-inch (2 ft.) sea level rise projection used in the applicant’s March 2018 Wave Uprush Study falls within the range of projected sea level rise per the Commission’s 2015 guidance, since the City acted on the permit in 2020, the City should have required an updated Wave Uprush Study using the best available science on sea level rise projection in compliance with the Commission’s most updated 2018 Sea Level Rise Guidance before taking a final action on the permit application. In addition, the City’s findings should have addressed whether the proposed additions

themselves comply with the current policies of the LCP regarding being sited and designed to minimize risks from wave run-up, flooding, and coastal erosion without reliance on the existing revetment.

However, in this unique case, applying updated sea level rise projections would not have necessitated project redesign or required other conditions of approval by the City. In fact, the applicant has provided an updated Wave Uprush Study to Commission staff in March 2021 which analyzed the approved project relative to a 6.15 ft. sea level rise projection to reflect best available science. The updated Wave Uprush Study shows that under a projection of 6.15 ft. sea level rise by 2095 with no shoreline protection device, wave uprush would reach an elevation of +31.21 ft. NAVD (+31.40 ft. MLLW) at a distance approximately 35.6 ft. landward of the most southern limit of the existing main house (Exhibit 5). The 366 sq. ft. of interior addition to the second floor and its associated foundation on the landward side of the house are further landward than the maximum wave uprush limit, so they will not be affected by the wave runup in 75 years. Therefore, the additions are sited and designed to minimize risks from wave uprush and inundation even under the updated sea level rise projection through 2095, and without relying on the existing revetment for protection. In addition, the approved foundation system to support the second story additions is independent from the existing residence, and no improvements to the foundation of the existing residence were proposed or approved. The limited additions to the existing residence that were approved in the subject permit would not serve to extend the life of the existing structure. The approved project includes replacement of only 15 percent of exterior walls (30 percent cumulative total for this residence including the previously approved improvements to the residence since the City's LCP was certified), which is consistent with LCP provisions that permit replacement of less than 50 percent of an existing structure (cumulative total of all demolition and/or reconstruction that was undertaken after certification of the LCP) without requiring the entire structure be brought into conformance with current standards of the LCP. Furthermore, the proposed physical additions to the covered porches on the first floor are also all on the landward side of the house and will not be affected by sea level rise through the life of the development. Also, patio areas are considered accessory structures under the City's LCP that must be removed when they become threatened by wave runup, flooding, or erosion and are not entitled to shoreline protection.

So, although the City erred by relying on a wave uprush study based on outdated sea level rise projections, the approved project is in fact sited and designed to minimize risks from wave uprush and inundation through the life of the development. The updated Wave Uprush Study shows that using the current sea level rise projection of 6.15 ft. by 2095, without relying on the existing revetment, does not necessitate any change in the design of the project and does not affect the project's consistency with the shoreline development hazards policies of the LCP. As approved by the City, the development is consistent with the shoreline development and coastal hazard policies and provisions of the certified LCP.

2. Visual Resources

The appellant contends that the City incorrectly interpreted the two-thirds provision as stated in LIP section 3.6(K)(2) to allow the addition of living space on the second floor, and failed to exclude slopes equal to or greater than 1:1 in allowable TDSF calculations in compliance with LIP section 3.6(K).

Local Implementation Plan Section 3.6(K) states (in applicable part):

Residential Structure Size. Except as specifically provided herein and where otherwise restricted by provisions of the ESHA Overlay Ordinance (Chapter 4), of the Malibu LIP, and as indicated on the Total Development Square Footage Structure Size Chart, the total development square footage associated with the construction of a single-family or multiple-family residence on a legal lot equal to or greater than 5 acres shall not exceed a total of 11,172 square feet. On lots 5,000 square feet or less, the total development square footage shall not exceed 1,885 square feet. Total development square footage shall be determined based on the following formula (slopes equal to or greater than 1:1 shall be excluded from the lot area calculation): for lot areas up to 1/2 acre, total square footage shall be 17.7% of lot area plus 1,000 square feet; for lot areas greater than 1/2 acre and up to 1 acre, total development square footage shall be increased by 10% of the amount of lot area exceeding 1/2 acre; for lot areas greater than 1 acre and up to 1 1/2 acre, total development square footage shall be increased by 5% of the amount of lot area exceeding 1 acre; for lot areas greater than 1 1/2 acres and up to 5 acres, total development square footage shall be increased by 2% of the amount of the lot area exceeding 1 1/2 acres. For the purposes of this subsection, arbors or trellis open to the sky shall not be calculated as part of the total development square footage. Beachfront lots shall be exempt from the total development square footage provisions of this paragraph.

...

2. Multi-Story or Single Floor Area, Structures Greater Than 18 Feet In Height. Notwithstanding any other provision of this Chapter, the total development square footage for a structure greater than 18 feet in height shall not be greater than permitted for single-story construction. Any portion of the structure above 18 feet in height shall not exceed 2/3rds the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.

The appellant states that the City's analysis incorrectly interpreted the "two-thirds rule" to allow area under covered decks to be included in calculations for the proposed project's compliance with the "two-thirds rule". The "two-thirds rule" refers to Section 3.6(K)(2) of the LIP that states that "any portion of the structure above 18 feet in height shall not exceed 2/3rds the first floor area". Citing a City staff interpretive memo dated

March 12, 2008, the City stated that term “area” should be interpreted as the TDSF, which includes covered areas that extend more than six feet from a building. The memo stated that the volume of the covered areas extending more than six feet from a building shall be included when calculating the two-thirds provision for a proposed structure in order to prevent a box-like appearance. Commission staff notes that the memo is not a part of the certified LCP, thus, it is not the appropriate standard of review for any action by the Commission.

Commission staff interprets “first floor area” in the text of LIP Section 3.6(K)(2) with respect to the two-thirds provision to only include the interior floor area of the first floor and without including non-enclosed areas whether or not they are covered. This interpretation is bolstered by the fact that patio and deck areas are considered accessory structures under the City’s LCP that must be removed when they become threatened by coastal hazards. However, the two-thirds provision in the City’s LCP is an aesthetic standard for multi-level residential structures that exceed 18 feet in height in order to prevent a box-like appearance and to protect views from adjacent *private* properties. Only public views to and along the ocean and scenic coastal areas, rather than private views, are protected as a coastal resource under the Coastal Act. Since the approved additions would be located on the landward side of the house and significantly below the elevation of Pacific Coast Highway, no scenic public views would be affected by the proposed additions. Therefore, no significant coastal resource issue is raised with respect to the two-thirds provision or other visual resource policies of the certified LCP.

The appellant also states that the City erroneously calculated the allowable TDSF on the site by failing to exclude the area of the revetment with slopes equal to or greater than 1:1 on site in the calculation of the net parcel size. In the City Council hearing on July 13, 2020, City staff explained that the revetment area would not be excluded from the net parcel size calculation, since the revetment is a structure that sits on the lot, not the land of the lot itself. Commission staff concurs with the City’s explanation that the exclusion does not apply to the area of the existing revetment. Furthermore, even if the City did erroneously calculate the allowable TDSF due to this interpretation, no coastal resource would be impacted by this error. As such, this contention does not raise a substantial issue with respect to allowable TDSF.

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 appellant relative to the appealable development’s conformity to the policies contained in the certified LCP and the public access policies of the Coastal Act. In this case, the appeal raises issues related to shoreline development, coastal hazards, and visual resources 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 significant question.” (Cal. Code Regs., Title 14, Section 13115(b).) Section 13115(c) of the Commission’s regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the City did not rely upon the best available science regarding projected sea level rise to analyze coastal hazard risks. Further, Commission staff believes that the City erred in interpreting the "first floor area" in the text of LIP Section 3.6(K)(2) with respect to the two-thirds provision to include the covered outdoor areas rather than only including the interior floor area. Thus, this factor supports finding substantial issue. However, because the approved project is nonetheless consistent with the applicable hazards provisions of the LCP due to the unique factual circumstances of the development (i.e. siting, design, size), and because the two-thirds rule primarily protects private views, this factor does not weigh heavily in support of finding substantial issue.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the approved project involves the interior and exterior remodeling of and addition of 366 sq. ft. of habitable space to the second floor and 793 sq. ft. of covered deck space to the first floor of an existing 2,547 sq. ft., two-story, single-family residence. The approved additions to the existing residence do not constitute substantial redevelopment of the structure and would not serve to extend the useful life of the structure. The proposed additions are not large in size and the resulting residence would be similar in size to nearby structures. For these reasons, this factor weighs heavily against finding substantial issue.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project additions are on the landward side of the residence, will not be impacted by projected sea level rise over the life of the development, and do not rely on shoreline protection. In addition, the improvements will not impact any scenic public views or any other significant coastal resources. As such, significant coastal resources would not be affected by this decision. Therefore, this factor weighs heavily against finding substantial issue.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the precedential value of the City's decision for future interpretation of its LCP could be significant because there are several beachfront and bluff-top residential communities where new development and redevelopment raise issue regarding coastal hazards, shoreline processes, and public access. Beachfront development is required to be sized, sited, and designed to minimize risks from hazards. If new development on beachfront properties (such as the subject project) is not required to be consistent with these LCP policies, cumulative impacts of residential development along the Malibu coastline could result in an increased risk of hazards and degradation of coastal resources over time. Additionally, decision-making not based on the best available science with regard to sea level rise projections could have precedential value. In this case, the approved project is consistent with the applicable

hazards provisions of the LCP even though the City's findings were not based on the sea level rise best available science because of the unique factual circumstances of the development (i.e. siting, design, size). Thus, this factor supports finding substantial issue, but not heavily.

The final factor in evaluating whether the appeal raises a substantial issue is if it raises only local issues, or those of regional or statewide significance. In this case, the subject development raises issues associated with shoreline hazards for coastal residences, which are expected to increase over time from sea level rise. These are important issues common to jurisdictions throughout the Coastal Zone, and planning for sea level rise and shorefront adaptation are issues of top importance statewide. Therefore, this appeal does have regional and statewide significance and this factor weighs in favor of finding substantial issue.

In conclusion, the second and third factors weigh heavily against finding a substantial issue. The first, fourth, and fifth factors weigh toward finding a substantial issue. However, since the second and third factors outweighs the first, fourth, and fifth factors, the Commission finds that, 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 records adequately support its position that the proposed project is consistent with the applicable LCP policies. Although there lacks strong factual and legal support for the local government's decision, the subject decision may have precedential value in the interpretation of the City's LCP policies, and the appeal raises issues of regional and statewide significance, the extent and scope of the development is small and there are no significant coastal resources affected by the decision. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds on which it was filed.

APPENDIX 1

Substantive File Documents

Certified City of Malibu Local Coastal Plan; Malibu Planning Commission Agenda Report for Coastal Development Permit No. 17-071 and Site Plan Review No. 17-036 dated February 6, 2020; Malibu City Council Agenda Report for Appeal No. 20-003 dated July 2, 2020; Wave Uprush Study/Coastal Engineering Report for 33608 Pacific Coast Highway, dated March 21, 2018, prepared by David C. Weiss Structure Engineer & Associates; California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. Adopted August 12, 2015. Updated November 7, 2018; California Coastal Commission Residential Adaptation Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs. Revised March 2018; National Research Council (NRC). 2012. Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp. Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017; Intergovernmental Panel on Climate Change (IPCC). 2007. Climate Change 2007: Ocean Protection Council (OPC). 2013. State of California Sea-Level Rise Guidance Document. Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update.