

CALIFORNIA COASTAL COMMISSION

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



W11d

Appeal Filed: 12/30/19
 49th Working Day: 3/11/20
 SI Found: 2/13/20
 Staff: D. Venegas - V
 Staff Report: 1/27/22
 Hearing Date: 2/9/22

STAFF REPORT: APPEAL – DE NOVO REVIEW

APPEAL NUMBER: A-4-MAL-19-0218

APPLICANT: SLP Properties LLC

APPELLANT: Commissioner Padilla and Commissioner Uranga

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Coastal Development Permit No. 17-119, Variance No. 19-038 Demolition Permit No. 18-010 approved by the Malibu Planning Commission on December 2, 2019

PROJECT LOCATION: 30708 & 30050 Pacific Coast Highway, City of Malibu, Los Angeles County (APNs: 4469-026-009 & 4469-027-901)

PROJECT DESCRIPTION: Demolition of an existing 3,153 sq. ft. single-family residence, removal of unpermitted development (two accessory structures totaling 530 sq. ft., concrete patios, stairs, and lawn area), construction of a new 5,730, sq. ft. single-family residence, 660 sq. ft. attached garage, swimming pool and spa, decks, permeable driveway, driveway gate, 394 cu. yds. of grading, replacement of the onsite wastewater treatment system, habitat restoration, and an offer to dedicate a lateral public access easement. The applicant also requests a variance for the reduction of the required 100-foot buffer from an Environmentally Sensitive Habitat Area (Trancas Creek).

STAFF RECOMMENDATION: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve the de novo coastal development permit (CDP) application, pursuant to revisions to the project proposed by the applicant and subject to nineteen special conditions described below, on the basis that the project conforms to the public access and recreation, coastal hazards, environmentally sensitive habitat areas, water quality, and scenic resource protection policies of the certified City of Malibu Local Coastal Program (LCP), as well as the public access and recreation policies of the Coastal Act.

The proposed project includes the demolition of an existing 3,153 sq. ft. two-story single family residence originally constructed in 1968; the removal of unpermitted development, including two accessory structures (totaling 530 sq. ft.), concrete patios, stairs, and a grassy lawn area; the construction of a new 5,730 sq. ft., two-story single family residence, with attached garage, swimming pool, spa, decks, permeable driveway, upgrade and replacement of the existing onsite wastewater treatment system (OWTS); grading; habitat restoration; and an offer to dedicate a lateral public access easement. The topography of the subject property gently descends from Pacific Coast Highway to the ocean. The property is vulnerable to coastal hazards and flooding and is a part of the Broad Beach Geologic Hazard Abatement District (BBGHAD). However, there is no shoreline protective device on the property and sandy beach/dune habitat exists seaward of the existing residence. The subject site is an infill lot within the existing residential Broad Beach community and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south.

As originally proposed, the residence design would not have minimized risks from coastal hazards over its expected life since only 18 inches (1.5 ft.) of sea level rise was analyzed in the applicant's original coastal hazards and wave uprush analysis. Further, as originally proposed, the seaward extent of the residence and the onsite wastewater treatment system (OWTS) were not as far landward as feasible, and retaining walls were originally proposed that would have potentially functioned as a shoreline protective structure.

As a part of the de novo coastal development review, the applicant provided an updated wave uprush study and coastal engineering report for the project site that uses updated sea level rise projections consistent with the most current Commission's Sea Level Rise Policy Guidance. Based on the consultant's analysis using the updated sea level rise projection of 6.15 feet, the report concludes that the residence as now proposed will be safe from hazards for the estimated project life, and recommends that the minimum elevations for the proposed finished floor of the residence be no lower than +21.0 feet NAVD88 (North American Vertical Datum of 1988). The applicant made several modifications to the proposed project and submitted revised project plans which include

the elimination of previously proposed perimeter retaining walls; siting the proposed OWTS further landward; and raising the proposed bottom of the lowest horizontal structural member from +14.5 ft. NAVD88 to +17.5 ft. NAVD88 and the proposed minimum finished floor elevation of the deck and habitable space from +19.5 ft. NAVD88 to +21.0 ft. NAVD88. Furthermore, the proposed residence is now sited 4 feet further landward than the residence approved by the City, and the proposed deck is now sited 2 feet further landward than approved by the City. As such, the proposed structure is sited as far landward as is feasible to minimize the risks from storm wave action and beach erosion, and will be safe from wave uprush without the need for a shoreline protection device over the estimated project life, consistent with the Malibu LCP. Additionally, the applicant is proposing to offer to dedicate an easement for lateral public access and passive recreational use along the shoreline.

Unpermitted development has occurred on the subject site and on adjacent public lands, including the construction of two accessory structures on-site on the northern side of the property, and along the eastern property line and off-site, the planting of a grassy lawn area and construction of concrete patios and stairs. The applicant proposes to remove all unpermitted development and restore the area that has been disturbed by the unpermitted development along the eastern property line and off-site with appropriate native plant species suited to the adjacent habitat type as part of this application to resolve the violations of the Coastal Act. In addition to restoring the areas that have been impacted by the unpermitted development, in order to fully resolve the violations described herein, the applicant has proposed to enhance the habitat of the creek bank in the vicinity of the violations by removing all non-native species and the applicant also proposes to remove invasive ice plant on the dunes seaward of the residence. To ensure the applicant's proposal is effectively implemented, **Special Condition Seventeen (17)** requires the applicant to submit a final habitat restoration and monitoring plan, and implement the approved plan within 30 days of removal of the unpermitted development. Removal of the unpermitted development must occur prior to the completion of construction pursuant to **Special Condition Eighteen (18)**.

The shoreline is a dynamic environment and although the proposed residence has been sited and designed to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. To address the possibility that the structure will not be constructed in a manner adequate to ensure structural stability relative to increased future wave action, sea level rise, and tidal events, **Special Condition Two (2)** has been required to ensure that no future shoreline protective device will be constructed on site to protect the proposed development and to require the landowner to remove the development if a government agency orders that portions of structures or entire structures may not be occupied due to hazards or property ownership issues identified in this report.

In addition, the public trust boundary may migrate landward over the life of the development in response to rising sea levels and it is important to ensure that the development remains on private land over time. Staff recommends **Special Condition**

Two (2) which specifies that in the event that the public trust boundary migrates landward such that any portion of the approved development encroaches onto public trust lands based on a Mean High Tide Line (MHTL) survey, the applicant shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development. Imposing a condition requiring a current MHTL survey prior-to-issuance of the permit, and periodic MHTL surveys every five years thereafter, will help provide evidence that the development is located on, and remains on, private property, as required by **Special Condition Sixteen (16)**.

Because the risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. **Special Condition Three (3)**, will ensure that the applicant is aware of and acknowledges the nature of the hazards that exist on the site, and that may adversely affect the stability or safety of the development it protects, and will effectuate the necessary assumptions of those risks by the applicant. This condition will also ensure that the applicant is aware of the ambulatory nature of the seaward property boundary, and that this boundary may move with sea level rise. It further ensures that future property owners will be made aware of the risks and limitations placed on the development by this permit, so that any future owners can properly assess risks before purchasing property.

Lastly, staff recommends **Special Conditions 1-19** to ensure consistency with the hazards and shoreline processes, environmentally sensitive habitat areas, public access and recreation, visual resources, water quality and marine resources, and other development standards, policies of the certified City of Malibu LCP, and the public access and recreation policies of the Coastal Act.

The motion and resolution to act on this recommendation follow below on **page 6**.

Table of Contents

I. MOTION AND RESOLUTION ON DE NOVO REVIEW	6
II. PROCEDURAL HISTORY AND STANDARD OF REVIEW.....	6
III. STANDARD CONDITIONS.....	7
IV. SPECIAL CONDITIONS.....	7
V. FINDINGS AND DECLARATIONS.....	21
A. PROJECT DESCRIPTION AND SETTING	21
B. BACKGROUND AND PERMIT HISTORY	23
C. UNPERMITTED DEVELOPMENT.....	24
D. SHORELINE DEVELOPMENT AND COASTAL HAZARDS.....	25
E. ENVIRONMENTALLY SENSITIVE HABITAT AREA.....	40
F. PUBLIC ACCESS AND RECREATION	48
G. WATER QUALITY AND MARINE RESOURCES	53
H. VISUAL RESOURCES	58
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT	62

EXHIBITS

[Exhibit 1 Vicinity Map](#)

[Exhibit 2 Aerial Photo](#)

[Exhibit 3 Parcel Map](#)

[Exhibit 4 Project Plans](#)

[Exhibit 5 Final Local Action Notice and City Resolution](#)

[Exhibit 6 CoSMos Sea Level Rise Model Maps](#)

I. MOTION AND RESOLUTION ON DE NOVO REVIEW

MOTION: *I move that the Commission approve Coastal Development Permit Number A-4-MAL-19-0218 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote by a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the public access and recreation policies of the Coastal Act and the policies of the certified Local Coastal Program for the City of Malibu. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impact of the development on the environment.

II. PROCEDURAL HISTORY AND STANDARD OF REVIEW

The project that is the subject of this appeal was approved by the City of Malibu Planning Commission on December 2, 2019. The City's Notice of Final Action for the project was received by Commission staff on December 16, 2019 (Exhibit 5). Commission staff provided notice of the ten-working day appeal period, which began on December 16, 2019 and ended on December 31, 2019. An appeal of the City's action was filed by Commissioners Steve Padilla and Roberto Uranga on December 30, 2019, during the appeal period. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on January 22, 2020.

On February 13, 2020 the Commission found that the City's action approving the proposed development raised a substantial issue with respect to the project's conformance with the City of Malibu's certified Local Coastal Program regarding coastal hazards, shoreline development, environmentally sensitive habitat areas, public access, and the public access policies of the Coastal Act. The Commission is now required to hold a de novo hearing on the merits of the project, which is the subject of this staff report.

For the Commission's "de novo" review of the application, the standard of review for the proposed development is, in part, the policies and provisions of the City of Malibu Local

Coastal Program. In addition, pursuant to Section 30604(c) of the Coastal Act, all proposed development located between the first public road and the sea (such as the project site) including those areas where a certified LCP has been prepared, must also be reviewed for consistency with the public access and recreation policies of the Coastal Act. The de novo hearing was previously scheduled for the November 2021 hearing but was postponed by the applicant on November 16, 2021. The de novo hearing is currently scheduled for the February hearing by request of the applicant.

III. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

IV. SPECIAL CONDITIONS

1. **Plans Conforming to Geotechnical and Coastal Engineer's Recommendations**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports, which are listed in Appendix A (Substantive File Documents). These recommendations, including recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant(s) prior to commencement of development.

The final plans approved by the consultant(s) shall be in substantial conformance with the plans approved by the City relative to foundation, construction, grading, drainage, and height of the structure. Any substantial changes in the proposed development approved by the City that may be required by the consultant(s) shall require an amendment to this permit or a new Coastal Development Permit.

2. No Future Shoreline Protective Device and Development Removal

- A. By acceptance of the permit, the applicant acknowledges that the development authorized by this permit- including the single-family residence, attached garage, foundation, and deck- constitutes new development under the Coastal Act, and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act, as incorporated into the certified City of Malibu LCP. Thus, by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law, including Public Resources Code Section 30235 or any analogous provision of the City of Malibu LCP.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that they are required to remove all or a portion of the development authorized by the permit, and restore the site, if:
1. The City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, landslide, sea level rise, elevated groundwater, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of shoreline protective devices;
 2. Essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
 3. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 4. The development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowner shall obtain a coastal development permit for removal of approved development and recoverable debris unless the City of Malibu and/or Coastal Commission, as applicable based on permitting authority, provides a written determination that no coastal development permit is legally required.

C. By acceptance of this permit, the applicant further agrees that the development approval does not permit encroachment onto public trust lands and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. In the event that the public trust boundary migrates landward such that any portion of the approved development encroaches onto public trust lands, based on a Mean High Tide Line (MHTL) survey prepared in compliance with State Lands Commission survey standards (including, but not limited to, a MHTL survey prepared pursuant to Special Condition 16), the permittee or successor in interest shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development, unless the Executive Director grants additional time for good cause. The permit amendment application shall include a complete evaluation of all feasible alternatives to modify the residential development to ensure that it is located entirely on private property and provides the required 10 foot setback from the MHTL. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative for addressing shoreline protection, public access, and sensitive resource issues under the Coastal Act and the City of Malibu Local Coastal Program. Failure to submit a timely permit amendment application shall constitute a violation of the terms and conditions of this coastal development permit.

3. Coastal Hazard Risk

By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:

- A. Coastal Hazards: That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, fluvial flooding, groundwater inundation, and the compounding effects of each of these hazards and as influenced by sea level rise and climate change;
- B. Assume Risks: To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such coastal hazards in connection with this permitted development;
- C. Waive Liability: To unconditionally waive any claim of damage or liability against the City and Coastal Commission, and their officers, agents, and employees for injury or damage from such coastal hazards;
- D. Indemnification: To indemnify and hold harmless the City and Coastal Commission and their officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards;

- E. Shifting Property Boundaries and Permit Intent: The boundary between public land (tidelands) and private land may shift with rising seas, the structure(s) may eventually be located on public trust lands, the development approval does not permit encroachment onto public trust land; any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain (pursuant to Special Condition 2), and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval. The intent of this permit is to allow for the approved project to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains reasonably safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards, and for only as long as the approved project remains on private property;
- F. Disclosure: All documents related to any future marketing and sale of the subject property, including but not limited to marketing materials, sales contracts, deeds, and similar documents shall notify buyers of the terms and conditions of this Coastal Development Permit; and
- G. Property Owner Responsible: That any adverse effects to property caused by the permitted project shall be fully the responsibility of the owner of the property on which the permitted project is located.
- H. Essential Services: Sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage, drainage, or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable;
- I. Removal Trigger: The structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to Special Condition Two (2).

4. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. A-4-MAL-19-0218. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to any future development on any portion of the parcel. Accordingly, any future improvements to any of the property, including but not limited to the single family residence, garage (including conversion of the structure to habitable space), foundations, deck, driveway, new or replacement landscaping, hardscape, and grading other than as provided for in the approved plans, shall require an amendment to Coastal Development Permit No. A-4-MAL-19-0218 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government based on permitting authority.

5. Deed Restriction/Recordation of Notice of Terms of CDP

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant’s entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. Lateral Public Access Easement Offer to Dedicate

Prior to issuance of the Coastal Development Permit, in order to effectuate the property owner's offer to dedicate an easement for lateral public access and passive recreational use along the shoreline, the property owner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for lateral public access and passive recreational use along the shoreline. The easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the dripline of the structure. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of California, binding all successors and assigns, and this offer shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of both the property owner's entire parcel and the easement area. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property.

7. View Corridor

By acceptance of this permit, the applicant agrees to maintain a view corridor a minimum of nine feet, six inches wide extending the width of the property, which may be split to provide a contiguous view corridor of no less than four feet, nine inches on each side of the approved structure. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street. Any fencing across the view corridor shall be permanently maintained as visually permeable. Tinted or frosted glass, and louvered or slatted screen fences are not permitted. Any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.

8. Erosion Control, Drainage and Polluted Runoff Control Plans

Prior to issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director: a) a *Local Storm Water Pollution Prevention (SWPPP) Plan* to control erosion and contain polluted runoff during the construction phase of the project; and b) a *Stormwater Management Plan (SWMP)* for the management and treatment of post-construction storm water and polluted runoff. The plans shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works, and include the information and measures outlined below.

- A. Local Storm Water Pollution Prevention Plan (SWPPP), for the construction phase of the project, shall include at a minimum the following:
 1. Property limits, prior-to-grading contours, and details of terrain and area drainage
 2. Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations
 3. Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)
 4. Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed
 5. Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction.
 6. Details for the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.
 7. Information on potential flow paths where erosion may occur during construction
 8. Proposed erosion and sediment prevention and control best management practices (BMPs), both structural and non-structural, for implementation during construction, such as:
 - i. Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
 - ii. Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.

- iii. Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
 - iv. Prevent blowing dust from exposed soils.
9. Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:
- i. Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials.
 - ii. Site washout areas more than fifty feet from a storm drain, open ditch, or surface water and ensure that runoff flows from such activities do not enter receiving water bodies.
 - iii. Provide sanitary facilities for construction workers.
 - iv. Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.
- B. Storm Water Management Plan (SWMP), for the management of post construction storm water and polluted runoff shall at a minimum include the following:
- 1. Site design and source control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.4.1 of the Malibu LIP)
 - 2. Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
 - 3. Potential flow paths where erosion may occur after construction
 - 4. Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
 - 5. Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development, including, but not limited to:
 - i. Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the 100-year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the Caltrans "Hydraulic Design and Procedures Manual"). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for 2-year, 10-year and 100-year flow rates, and the required storage volume of the basin/facility is to be based upon 1-inch of rainfall over the proposed impervious surfaces plus 1/2-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street &

- gutter, shall be sized to cumulatively convey a 100 year clear flow storm event to the detention facility, or;
- ii. Demonstrating by submission of hydrology/hydraulic report by a California Registered Civil Engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;
 - iii. Constructing necessary off-site storm drain improvements to satisfy the above, or;
 - iv. Other measures accomplishing the goal of mitigating all offsite/downstream impacts.

9. Construction Responsibilities

- A. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit to the Executive Director a Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:
1. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 2. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers. No machinery shall be allowed in the intertidal zone at any time.
 3. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 4. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 5. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day. All construction debris shall be removed from the beach daily and at the completion of development.
 6. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
 7. Debris shall be disposed of at a permitted disposal site or recycled at a permitted recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required

before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

8. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil. No stockpiling of dirt or construction materials shall occur on the beach.
 9. All grading shall be properly covered and sandbags, ditches, or other Best Management Practices (BMPs) shall be used to prevent runoff and siltation
 10. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 11. The discharge of any hazardous materials into any receiving waters shall be prohibited.
 12. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 13. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work
 14. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- B. The final Construction Best Management Practices Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

10. On-Site Wastewater Treatment System (OWTS)

Prior to the receipt of the Certificate of Occupancy for the residence, the applicant shall submit for the review and approval of the Executive Director verification that they have

obtained a valid Standard Operating Permit from the City for the proposed OWTS. This permit shall comply with all of the operation, maintenance and monitoring provisions applicable to OWTS's contained in Chapter 18 of the Malibu Local Implementation Plan (LIP).

11. Structural Appearance

Prior to issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. A-4-MAL-19-0218. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. 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. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. A-4-MAL-19-0218 if such changes are specifically authorized by the Executive Director as complying with this special condition.

12. Lighting Restriction.

By acceptance of this permit, the applicant acknowledges and agrees that the only exterior, night lighting that is allowed on the site is the following:

- A. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas, on the site. This lighting shall be limited to fixtures that are directed downward and shall use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Executive Director.
- B. Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.
- C. The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

No light source will be directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area, and no lighting around the perimeter of the site, the beach area or for aesthetic purposes shall be allowed.

13. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach located adjacent to the subject site is private or otherwise not open to the public, or (b) contains similar messages that attempt to prohibit public use of this portion of the beach.

14. Public Rights

- A. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.
- B. This permit does not authorize the development to physically interfere with any public access rights that may exist at any future date.

15. City of Malibu Conditions

The applicant shall comply with all of the City of Malibu conditions attached to the City's approval of CDP No. 17-119 as listed in Resolution No. 19-62 (Exhibit 5 of this staff report), except as specifically modified by this approval and any subsequent amendments to the permit. Any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit evidence of such condition compliance for the review and approval of the Executive Director.

16. Mean High Tide Line (MHTL) Surveys and Monitoring

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval:

- A. One printed copy and one digital copy of a new MHTL survey of the subject property subject to the criteria in Subpart C below.
- B. An MHTL monitoring plan that includes surveying the MHTL on the subject property at least every 5 years following the initial MHTL survey required in Subpart A above. Each survey shall be prepared subject to the criteria in Subpart C below. The MHTL monitoring plan shall specify that the landowner shall submit each 5-year MHTL survey no later than December 31st of each fifth year after the date of receipt, by the Executive Director, of the initial survey required by Subpart A. This means that after the initial MHTL survey, a new survey will be conducted and submitted every 5 years thereafter. The landowner shall implement the approved MHTL monitoring plan in accordance with this condition. Any proposed changes to the final approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission

approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

C. The surveys required in Subparts A and B above shall be subject to the following criteria. Such surveys of the subject property shall be based on field data collected within 12 months of the date submitted, that may include multiple surveys from more than one season in a given survey year, but must include at least one survey during winter months (December – March). Such surveys shall be at the landowner’s expense and shall be conducted in consultation with the California State Lands Commission (CSLC) staff. Prior to submitting each survey, it must be approved by the CSLC as compliant with CSLC survey standards.

Such surveys shall:

1. Use either the published Mean High Water elevation from a National Oceanic and Atmospheric Agency published tide station closest to the project or a linear interpolation between two adjacent tide stations, depending on the most appropriate approach in light of tidal regime characteristics;
2. Use the most current tidal epoch;
3. Use local, published control benchmarks to determine elevations at the survey site. Control benchmarks are the monuments on the ground that have been precisely located and referenced to the local tide stations and vertical datum used to calculate the Mean High Tide elevation;
4. Match elevation datum with tide datum;
5. Reference all elevations and contour lines to the official U.S. Vertical Datum in effect at the time of the survey (currently NAVD88, but soon to be updated by the National Geodetic Survey); and
6. Note survey date, datum, and MHTL elevation.

17. Final Habitat Restoration and Enhancement Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, a final Habitat Restoration and Enhancement Plan (the “Restoration Plan”) for the area along the eastern property line and off-site property owned by County of Los Angeles (as shown on Exhibit 4) where unpermitted accessory development is proposed to be removed. The Restoration Plan shall be prepared by a qualified biologist or environmental resource specialist and satisfy the requirements specified below. Prior to submittal to the Executive Director, the Restoration Plan shall be prepared in consultation with, and reviewed and approved by, the adjacent property owner (Los Angeles County Department of Beaches and Harbors).

The removal of unpermitted development and habitat restoration shall occur no more than one year from the date of coastal development permit issuance. The applicant

shall commence implementation of the approved Habitat Restoration and Enhancement Plan within the 30 day period after the removal of unpermitted development pursuant to Special Condition Eighteen (18), below. The Executive Director may grant additional time for good cause. The plan shall identify the species, extent, and location of all plant materials to be removed or planted and shall incorporate the following criteria:

A. Technical Specifications

The Final Restoration Plan shall provide for the following:

- i. All areas disturbed as a result of placement and removal of the unpermitted concrete patios, walls, stairs, and lawn area along the eastern property line and off-site property owned by the County of Los Angeles shall be restored and revegetated with native plant species appropriate to the habitat type. All invasive and non-native plant species shall also be removed from the area between the proposed residence and the base of the slope to the lagoon. In addition, the final plan shall include the proposed removal of ice plant on the dunes seaward of the residence.
- ii. The Restoration Plan shall specify restoration goals and specific performance standards to judge the success of the restoration effort. Interim and final success criteria shall include, as appropriate: species diversity, percent cover of vegetation, percent cover of dominant species and definition of dominants, for example. The success criteria may be based on appropriate reference sites identified for the habitat type or from the peer-reviewed literature. The Restoration Plan shall also provide information on removal methods for non-native and invasive species, salvage of existing vegetation, revegetation methods, and vegetation maintenance. Non-native and invasive plant species shall be removed by hand removal and/or mechanical control methods only, and herbicide use shall be prohibited.
- iii. The Restoration Plan shall further include details regarding the types, sizes, and location of plants to be placed within the revegetation area. Only native plant species appropriate for a riparian environment and which are endemic to the Santa Monica Mountains shall be used, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled "Recommended List of Plants for Landscaping in the Santa Monica Mountains" dated February 5, 1996, revised 2007. All plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized or maintained. The Restoration Plan shall also include a detailed description of the process, materials, and methods to be used to meet the approved goals, performance standards, the preferable time of year to carry out restoration activities, and a description of the interim supplemental watering requirements that will be necessary.

B. Monitoring Program

- i. A monitoring program shall be implemented to monitor the habitat restoration/revegetation for compliance with the specified guidelines and performance standards. The applicant shall submit, upon completion of the initial planting, a written report prepared by a qualified resource specialist, for the review and approval of the Executive Director, documenting the completion of the initial planting/revegetation work. This report shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) documenting the completion of the initial planting/revegetation work.
- ii. Five years from the date of initial planting, the applicant shall submit for the review and approval of the Executive Director, a Habitat Restoration Monitoring Report, prepared by a qualified biologist or resource specialist, that certifies the restoration is in conformance with the Restoration Plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.
- iii. If the monitoring report indicates the vegetation and restoration is not in conformance with, or has failed to meet, the performance standards specified in the Restoration Plan approved pursuant to this permit, the applicant, or its successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified biologist or resource specialist and shall specify measures to remediate those portions of the original Restoration Plan that have failed or are not in conformance with the original approved plan.

18. Removal of Unpermitted Development

PRIOR TO THE COMPLETION OF CONSTRUCTION, the applicant shall remove the unpermitted accessory structures (totaling 530 square feet) adjacent to the northern property line and the unpermitted concrete patios, stairs, walls, and lawn area located on the eastern portion of the property and that encroaches onto adjacent public land. Prior to removal of the unpermitted off-site encroachments, the applicant shall obtain permission from Los Angeles County Department of Beaches and Harbors to perform the work on County property. The removal of the unpermitted development shall occur within one year from the date of coastal development permit issuance, unless additional time is granted by the Executive Director for good cause.

19. Condition Compliance

WITHIN 180 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND SETTING

The project site is located on a 0.44-acre beachfront parcel located at 30708 Pacific Coast Highway on Broad Beach in the western portion of the City of Malibu (Exhibits 1-3). The subject site is currently developed with a two-story single-family residence and associated development. The existing residence was originally constructed in 1968.

The topography of the subject property gently descends from Pacific Coast Highway to the ocean. The property is vulnerable to coastal hazards and flooding and is a part of the Broad Beach Geologic Hazard Abatement District (BBGHAD). However, there is no shoreline protective device on the property and sandy beach/dune habitat exists seaward of the existing residence. The subject site is an infill lot within the existing residential Broad Beach community and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south. The nearest vertical public access to the beach is located approximately 0.60 miles to the north of the subject site at a Broad Beach vertical accessway and 350 feet south of the project site at Zuma Beach County Park. The subject parcel is zoned Single-Family Medium Density (SF-M).

The subject beachfront property is immediately adjacent to Trancas Creek/Lagoon, which is identified as an Environmentally Sensitive Habitat Area (ESHA) on the Malibu LCP ESHA and Marine Resource Map. According to the biological assessment prepared for the subject property, the site contains existing vegetation along the eastern property line, which includes exotic and invasive plant species that extend beyond the property line onto the sandy bank of Trancas Creek to the east. The California Department of Transportation (Caltrans) owns and maintains Trancas Creek Bridge, which is the stretch of Pacific Coast Highway that traverses Trancas Creek immediately east of the project site (Exhibit 2). Caltrans has an approved coastal development permit (CDP No. 19-080) from the City of Malibu for the Trancas Creek Bridge replacement project. The bridge replacement project will replace the existing deteriorated bridge with a wider and longer bridge and restore portions of Trancas Creek/Lagoon.

On December 2, 2019, the City of Malibu Planning Commission approved a CDP (CDP No. 17-119) for demolition of an existing single family residence and associated development and construction of a new 5,440 square foot, two-story single family residence, a 680 square foot attached garage, swimming pool, spa, decks, side yard perimeter walls, permeable driveway, driveway gate, and other associated development, upgrade and replacement of the existing onsite wastewater treatment system (OWTS), and 394 cu. yds. of associated grading. As a component of the local CDP, the City also granted a variance for the reduction of the required 100-foot buffer from an environmentally sensitive habitat area (Trancas Creek). Furthermore, the project includes the demolition of two unpermitted accessory structures adjacent to the

northern property line, totaling 530 square feet. In addition, the applicant proposes to remove an existing lawn area and concrete patio that encroaches onto adjacent property not owned by the applicant.

The City's approval was appealed to the Coastal Commission on December 30, 2019. On February 12, 2020, the Commission determined that a substantial issue existed with respect to the grounds on which Appeal No. A-4-MAL-19-0218 was filed because the approved project was inconsistent with the shoreline development, coastal hazards, environmentally sensitive habitat areas, public access and recreational policies and provisions of the City's certified LCP and the public access policies of the Coastal Act.

Following the Commission's substantial issue hearing, the applicant met with Commission staff to discuss the ways by which the issues raised by the appeal could be resolved in the de novo CDP review. Based on several discussions with Commission staff to address the coastal resource issues, the applicant has made several modifications to the proposed project and submitted revised project plans (Exhibit 4) for the de novo coastal development permit. These modifications include the elimination of previously proposed perimeter retaining walls; siting the proposed onsite wastewater treatment system (OWTS) further landward than approved by the City; and raising the proposed bottom of the lowest horizontal structural member from +14.5 ft. NAVD88 (North American Vertical Datum of 1988) to +17.5 ft. NAVD88 and the proposed minimum finished floor elevation of the deck and habitable space from +19.5 ft. NAVD88 to +21.0 ft. NAVD88. Furthermore, the proposed residence is now sited 4 feet further landward than the residence approved by the City, and the proposed deck is now sited 2 feet further landward than approved by the City. Additionally, the applicant is proposing to offer to dedicate an easement for lateral public access and passive recreational use along the shoreline.

As part of the project, the applicant proposes demolishing two unpermitted accessory structures (totaling 530 sq. ft.) located on the northern portion of the subject property and demolishing unpermitted concrete patios, stairs, and removal of a grassy lawn area immediately adjacent to Trancas Creek, which encroaches onto the adjacent property owned by Los Angeles County Department of Beaches and Harbors, prior to the completion of construction. The applicant also proposes to restore the area disturbed due to the placement and removal of the unpermitted development with appropriate native plant species appropriate to the habitat type and to remove non-native species from the creek bank and to remove invasive ice plant on the dunes seaward of the residence.

As now revised, the proposed project includes the demolition of an existing 3,153 sq. ft. two-story single family residence and associated development, removal of accessory structures (totaling 530 sq. ft.), concrete patios, stairs, and grassy lawn area, all of which are unpermitted, and construction of a new 5,730 square foot, two-story single family residence, a 660 square foot attached garage, swimming pool, spa, decks, permeable driveway, driveway gate and other associated development, upgrade and replacement of the existing onsite wastewater treatment system (OWTS), habitat restoration, and 394 cu. yds. of associated grading (355 cu. yds. of fill, 39 cu. yds. of cut, 37 cu. yds. of export, and 353 cu. yds. of import); granting of a variance for the

reduction of the required 100-foot buffer from an Environmentally Sensitive Habitat Area (Trancas Creek) and an offer to dedicate lateral public access easement.

B. BACKGROUND AND PERMIT HISTORY

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

In response to shoreline erosion, in 2008, and again in 2009, homeowners on Broad Beach began constructing large sand bag walls to protect their properties. Although some of these homeowners obtained emergency coastal development permits from the City of Malibu, the majority of the homeowners constructed these sand bag seawalls without the benefit of either an emergency coastal development permit or a regular coastal development permit from either the City of Malibu or the Coastal Commission. In January 2010, the Trancas Property Owners Association obtained emergency permits from both the California Coastal Commission (CDPs 4-10-003-G and 4-10-029-G) and the City of Malibu for the temporary authorization of a 4,150 linear ft. long rock revetment on 79 of the properties at Broad Beach, extending from 31346 -30760 Broad Beach Road. The Broad Beach property owners formed the Broad Beach Geologic Hazard Abatement District (BBGHAD) to abate or mitigate the coastal hazards affecting their properties by assessing themselves to finance a beach replenishment program along with the revetment to assure protection of their homes and rebuild Broad Beach for public benefit. The BBGHAD includes 121 separate private properties (the emergency rock revetment is located on 79 properties).

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

It's important to note that no revetment is present nor approved on the subject property at 30708 Pacific Coast Highway; however, beach nourishment and dune habitat restoration were authorized on the property as part of CDP No. 4-15-0390. Although the permit was approved in 2015, the permit has not yet been issued because the BBGHAD is still working to satisfy all of the required prior-to-issuance special conditions of the permit. The permit authorization has not expired because the BBGHAD has obtained

time extension approvals from the Commission in order to allow more time to satisfy the remaining prior-to-issuance special conditions of the permit. Furthermore, the proposed project does not include any development in the location approved for beach nourishment and/or dune habitat restoration, and therefore the proposed project will not preclude or interfere with the development approved in CDP No. 4-15-0390.

C. UNPERMITTED DEVELOPMENT

Unpermitted development has occurred at the subject site without the required coastal development permit, and, thus, the unpermitted development activities constitute violations of the Coastal Act. The unpermitted development includes the installation of two accessory structures (totaling 530 sq. ft.) adjacent to the northern property line on the subject property, portions of which extend onto adjacent public property; construction of concrete patios, concrete stairs; and planting non-native vegetation including a grass lawn area along the eastern property line immediately adjacent to Trancas Creek, which is identified as Environmentally Sensitive Habitat Area (ESHA) under the Malibu LCP. This development also encroaches onto an adjacent property owned by the Los Angeles County Department of Beaches and Harbors (Zuma County Beach).

Commission enforcement staff opened an enforcement case and on January 6, 2022, enforcement staff sent a Notice of Violation letter to the applicant that described the above-mentioned unpermitted development. In that letter, staff explained that to resolve the violations and avoid future enforcement action, the applicant could include a proposal to remove the unpermitted development and restore the site as part of this permit application. In a subsequent meeting with Commission staff, the applicant agreed to expand this application by adding a proposal to remove the unpermitted development described above, and to undertake restoration of the area along the eastern property line and off-site property owned by County of Los Angeles where unpermitted development is proposed to be removed. In order to fully resolve the violations at issue, the applicant is also proposing, in addition to removing the unpermitted development and restoring the disturbed area, to remove non-native plant species from the creek bank and to remove ice plant from dunes that are seaward of the residence.

In order to implement the applicant's proposal, **Special Condition Eighteen (18)** requires the removal of the unpermitted accessory structures (totaling 530 sq. ft.) and the unpermitted concrete patios, stairs, walls, and grassy lawn area located on the eastern portion of the property and that encroaches onto adjacent public land. In addition, to ensure that the removal of unpermitted development and restoration of the removal areas is implemented in a timely manner, **Special Condition Seventeen (17)** requires the applicant to submit a final habitat restoration, enhancement, and monitoring plan prior to permit issuance, and to implement the approved plan within 30 days of removal of the unpermitted development. Furthermore, **Special Condition Nineteen (19)** requires the applicant to fulfill all of the Special Conditions that are a prerequisite to the issuance of this permit, within 180 days of Commission action.

Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies and provisions of the certified Malibu Local Coastal Program and the public access and recreation policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations). Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit and undertaking the approved work will result in resolution of the violations described herein.

D. SHORELINE DEVELOPMENT AND COASTAL HAZARDS

Coastal Act Section 30235, as incorporated into the certified LCP, states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Coastal Act Section 30250, as incorporated into the certified LCP, states (in applicable part):

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

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

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or

surrounding area or in any way require the construction of protective device that would substantially alter natural landforms along bluffs and cliffs.

Land Use Plan Policy 4.16 states:

All applications for new development on a beach, beachfront or blufftop property shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effects of said development in relation to the following:

- a. The profile of the beach;
- b. Surveyed locations of mean high tide lines acceptable to the State Lands Commission;
- c. The availability of public access to the beach;
- d. The area of the project site subject to design wave uprush;
- e. Foundation design requirements;
- f. The need for a shoreline protection structure over the life of the project;
- g. Alternatives for protection of the septic system;
- h. The long term effects of proposed development on sand supply;
- i. Future projections in sea level rise; and
- j. Project alternatives designed to avoid or minimize impacts to public access.

Land Use Plan Policy 4.22 states:

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. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.

Land Use Plan Policy 4.23 states:

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

Land Use Plan Policy 4.33 states:

All new beachfront and blufftop development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development.

Land Use Plan Policy 4.35 states:

All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.

Land Use Plan Policy 4.36 states:

New development on or along the shoreline or coastal bluff shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.

Land Use Plan Policy 4.37 states:

Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.

Local Implementation Plan Section 3.6, in applicable part, states:

G. Beachfront Yards/Setbacks. Notwithstanding the above requirements, the following yard requirements apply to beachfront lots:

1. Front. 20 feet maximum or the average of the two immediate neighbors, whichever is less.

2. Side. 10% of lot width on each side, with a 3 feet minimum and 5 feet maximum, except as required for view corridors under Section 6.5 (E)(2) of the Malibu LIP.
3. Rear. Setbacks for infill development are determined by the stringline rule. Separate setback standards apply to dwellings and decks, as indicated below. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible.
 - a. Dwellings. For a dwelling, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast dwelling. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast dwelling.
 - b. Decks and patios. For a deck or patio, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast deck or patio. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast deck or patio.
 - c. All infill development shall be set back a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. The location of the mean high tide shall be determined in consultation with the State Lands Commission.

...

- J. Site of Construction. Structures may be constructed on slopes greater than 3:1 but less than 2 1/2:1 subject to the provisions of Section 13.27 of the Malibu LIP (Site Plan Review).

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.
- B. New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full protected 100 year economic life of the development. If complete

avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and sited as far landward as possible to the maximum extent practicable. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

...

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

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

...

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

Coastal Act Section 30253, which is incorporated as a policy of the LUP, and Local Implementation (LIP) Section 10.4 (H) mandates that new development shall minimize risks to life and property in areas of high geologic and flood, and fire hazard and shall not require the construction of protection devices that would substantially alter natural landforms. LIP Section 10.4 provides that the siting and design of new shoreline development shall take into account anticipated future changes in sea level, including an acceleration of the historic rate of sea level rise. Further, LUP Policy 4.23 and LIP Section 10.4 (B) requires that new development on a beach or oceanfront bluff shall be

sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the life of the development and if complete avoidance of hazard areas is not feasible, all new development shall be elevated above the base flood elevation and sited as far landward as possible. Lastly, LUP Section 10.4 (L) states that “accessory structures, including but not limited to patios, stairs, recreational facilities, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards”.

The proposed project is for the demolition of an existing 3,153 sq. ft., two-story, single-family residence and associated development, and the construction of a new 5,730 sq. ft., two-story, single-family residence with a 660 sq. ft. attached garage, swimming pool, spa, decks, permeable driveway, and replacement of the existing onsite wastewater treatment system, demolition of unpermitted structures totaling 530 sq. ft., and 394 cu. yds. of associated grading on a 0.44-acre beachfront parcel on Broad Beach in the City of Malibu. The subject site is an infill lot within the existing residential Broad Beach community and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south. The property is vulnerable to coastal hazards and flooding and is part of the Broad Beach Geologic Hazard Abatement District.

Sea Level Rise

Sea level has been rising for many years. As an example in the Santa Monica Bay area, the historic rate of sea level rise, based on tide gauge records, has been 1.8 mm/yr. or about 7 inches per century¹. In the past century, average global temperature has increased by about 0.8°C (1.4°F), and average global sea level has increased by 7 to 8 in (17 to 21 cm) (IPCC 2013). Recent reports developed by the California Ocean Protection Council (OPC) project that by the year 2100, sea-levels may rise by approximately 3.1 to 6.8 feet in the area near the project site under the higher-end scenarios, with the potential for rapid ice loss to result in an extreme scenario of 9.8 feet of sea-level rise (Griggs et al., 2017; OPC 2018). Recent observations of sea level along parts of the California coast have shown some anomalous trends, however; there is a growing body of evidence that there has been an increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In 2013, the Ocean Protection Council (OPC) adopted the National Research Council (NRC) report, “Sea level rise for the Coasts of California, Oregon, and Washington: Past Present and Future”, as best available science for the State of California, and recommended in its 2013 State Sea Level Rise Guidance that state agencies and others use these projections in their planning processes. The Coastal

¹ Lyles, S.D., L.E. Hickman and H.A. Debaugh (1988) Sea Level Variations for the United States 1855 – 1986. Rockville, MD: National Ocean Service.

Commission also adopted the NRC report as best available science in its 2015 Sea Level Rise Policy Guidance. Two subsequent OPC reports have updated the best available science, including the Rising Seas in California: An Update on Sea level rise Science, released in April 2017 by a working group of OPC's Science Advisory Team, and the State of California Sea-Level Rise Guidance: 2018 Update. The OPC's most recent projections in its statewide sea-level rise guidance are that in this area sea-levels may rise between 3.5 and 6.15 feet by the year 2095 (the anticipated duration of the proposed project) under the higher emission scenarios, though there is a risk of more significant sea-level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because climate models that predict future climate conditions include inherent uncertainties stemming from uncertainties about the climate system, which is an area of developing science. Additionally, researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades—large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while “business as usual” emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea level rise are tracking along the higher projections) as well as the inherent uncertainty regarding the exact rate of future sea level rise, the Coastal Commission Sea Level Rise Guidance recommends that we avoid relying on the lower projections in planning and decision making processes. The OPC has also recommended that medium/high-risk aversion be used to inform decision-making for less adaptive, more vulnerable projects or populations that will experience medium to high consequences as a result of underestimating sea-level rise, such as residential development. In the case of the proposed project, this means looking at 6.15 feet of sea level rise over the 75-year anticipated duration of the project.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore in many locations, which will result in increased flooding, erosion, and storm impacts to coastal areas. On a relatively flat beach, with a slope of 40:1, a simple geometric model of the coast indicated that every centimeter of sea level rise will result in a 40 cm landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a seawall, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently.

Accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may be more vulnerable in the future.

In addition to increased flooding, erosion, and storm impacts, sea level rise may also lead to groundwater rise, which may result in earlier, more severe, or longer-term hazards, especially for buried infrastructure and areas with shallow water tables and adjacent to streams/creeks, such as the subject property. Research indicates that sea level rise is likely to raise groundwater levels and push saltwater into fresh groundwater; however, the degree of impact will vary greatly depending on local conditions. Importantly, rising ground water could constrain the types of adaptation strategies that can be protective; for example, while shoreline armoring may be effective to address overland flooding and inundation from sea level rise, it may not protect against groundwater rise impacts, depending on the characteristics of the site.

Coastal Act Section 30235 acknowledges that shoreline armoring, including seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” methods designed to forestall erosion also alters natural landforms and natural shoreline processes. Accordingly, Section 30235 only permits the approval of shoreline protective works when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion (and when designed to address impacts on local shoreline sand supply). The provision is so limited because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Shoreline armoring or protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season. As an unarmored shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of rock revetments and seawalls to protect private property fixes the inland limit of the shoreline and prevents any landward migration of the shoreline inland of the structure. As the sea level rises, the dry beach area will narrow and eventually the mean high tide line will intersect the structure on a regular basis. The intertidal zone (the distance between the high water mark and low water mark) will narrow and eventually these two will both intersect the structure. As the distance between the high water mark and low water mark becomes narrower, a seawall effectively eliminates lateral access opportunities

along the beach as the entire area below the fixed high tideline is inundated. The ultimate result of a fixed tideline boundary (which would otherwise normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark over time) is a reduction or elimination of the area of sandy beach available for public access and recreation.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile that result from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the nearshore sand bar. The lack of an effective bar deepens the nearshore profile and can allow higher wave energy on the shoreline whereby materials may be swept up by the larger waves and carried far offshore where they are no longer available to nourish the beach. This affects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads can cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonally-eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach could also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy and more wave energy will be reflected off the face of the seawall or revetment rocks.

Application to this Project

In this case, the project constitutes a complete redevelopment of the subject site, and any new development must conform to the policies and standards of the LCP. Consistent with LUP Policy 4.16, the City required the preparation of a Coastal Hazards and Wave Run-up Study for the project. The Wave Uprush Study/Coastal Engineering Report for 30708 Pacific Coast Highway, prepared by Pacific Engineering Group, dated December 17, 2017, and which the City relied upon in their action, analyzed the proposed development in relation to coastal hazards under an 18-inch (1.5 ft.) sea level rise projection (assuming no shoreline protection devices) and provided a recommended finished floor elevation. The study analyzed sea level rise by adding 18 inches (1.5 ft.) of sea level rise to the highest observed still water elevation and analyzing wave run up from there. At the time of this study, the Commission's 2015 Sea Level Rise Policy Guidance recommended the use of region-specific sea level rise projections contained in the National Research Council (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. So, the applicant's 2017 Wave Uprush Study/Coastal Engineering Report used an estimated sea level rise projection at the low end of this range.

Further, the City's final action on the subject project was not until December 2019 during which time newer scientific studies established new sea level rise projections. As previously mentioned above, in August 2018 the Commission's Sea Level Rise Guidance was updated to reflect new best available science with new sea level rise projections. The new best available science on sea level rise indicates that in this area, under the high emission scenarios, sea levels may rise between 3.05 ft. (17 % estimated probability) and 6.15 feet (<1% estimated probability) by the year 2095, which is significantly higher than the level analyzed in the original Wave Uprush Study/Coastal Engineering Report dated December 17, 2017. More specifically, the updated Guidance states that because residential structures have moderate capacity to adapt to sea level rise and relatively high consequences if impacted by sea level rise, it is appropriate to use the 6.15 foot sea level rise scenario to inform decision-making, reflecting medium/high risk aversion. The difference in sea level rise projection between the projection used in the original Wave Uprush Study and Coastal Engineering Report for the approved project (1.5 feet) and the updated and best available sea level rise science (6.15 feet) is more than 4.65 feet, which is significant and would change the conclusions of the analysis about the required setback, finished floor elevation, and the safety of the proposed structure from extreme events and sea level rise.

The U.S. Geologic Survey Coastal Storm Modeling System (CoSMoS), a regional sea level rise modeling tool, includes projected changes to the average mean high water (MHW) shoreline. It also provides predictions of wave runup and flooding that may be used to get a sense of the potential effects from wave conditions. According to CoSMoS sea level rise models, the project site is susceptible to flooding with 6.6 ft. of sea level rise (the closest available projection to 6.15 ft., which is the maximum projection under a medium/high risk aversion scenario) and no storm scenario, which may occur before the anticipated end of the structure's expected life (Exhibit 6). If the range of sea level rise projections for this site (3.05-6.15 ft.) is combined with the 100-year storm scenario in CoSMoS, the potential inundation, shoreline retreat, and beach loss is extreme (Exhibit 6).

As a part of the de novo coastal development review, the applicant provided an updated Wave Uprush Study/Coastal Engineering Report to Commission staff in April 2020 which analyzed the proposed project relative to a 6.15 ft. sea level rise projection to reflect best available science and recommended new finished floor elevations. The updated Wave Uprush Study by Pacific Engineering Group, dated April 15, 2020 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 +15.48 ft. NAVD88 at a distance approximately 42 feet seaward of the Pacific Coast Highway right-of-way line (approximately where the proposed garage is located). Additionally, the updated report recommended a minimum finished floor elevation for habitable space and deck of +21.0 ft. NAVD88, and a bottom of lowest horizontal structural member elevation of +17.5 ft. NAVD88. With these elevation recommendations and recommendations for engineering

design, the report concludes that the residence will be relatively safe from hazards over the proposed 75-year project life and, with lower than anticipated sea level, the residence could be safe for up to 100-years.

As a result of the updated Wave Uprush Study/Coastal Engineering Report, the applicant has modified the project to site the onsite wastewater treatment system further landward by approximately 25 feet and has raised the minimum finish floor elevation for habitable space and deck of the residence (from +19.5 ft. NAVD88 to +21.0 ft. NAVD88) and the bottom of lowest horizontal structural member elevation (from +14.5 ft. NAVD88 to +17.5 ft. NAVD88) to be consistent with the recommendations provided in the updated Wave Uprush Study. Furthermore, the applicant is no longer proposing perimeter retaining walls that were located within the maximum expected wave uprush limit line and would have potentially functioned as a seawall/shoreline protective structure.

Although the proposed residence has been designed on caissons at an elevation to withstand wave forces without shoreline protection and the new residence will not be located further seaward than the existing residence, the new residence would be larger than the existing residence and a portion of the approved residence and associated accessory development would still be located within the maximum expected wave runup limit and uprush elevation. Storm waves could flow under the structure, waves can occur under the structure and some wave splash could impact the proposed residence. Hazards conditions associated with sea level rise have a level of uncertainty, as beaches are dynamic areas and our understanding of climate change and sea level rise is constantly evolving. Therefore, the proposed new development on a beachfront property may be threatened by sea-level rise at some point in the future and require a shoreline protective device or other adaptation measure, if maximum wave runup is higher than anticipated and the rate of erosion accelerates faster than projected or if there are changes in the frequency or effectiveness of beach nourishment activities or changes to sediment management in the area.

Therefore, if new development along the shoreline is to be found consistent with the LCP, the most landward feasible location must be explored to minimize hazards. Shoreline structures must also be located as far landward as feasible to protect public access along the beach. In this case, the structure approved by the City was not sited as far landward as is feasible to minimize the risks from storm wave action and beach erosion as is required in the City's LCP.

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access and minimize wave hazards, as well as minimize adverse effects to coastal processes, shoreline sand supply, and public views, LUP Policy 4.30 and LIP Section 10.4(G) state that in existing developed areas where new beachfront development is found to be infill, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structure on either side of the subject lot. Similarly, a proposed deck or other accessory structure shall not extend seaward of a stringline drawn between the nearest corners of the nearest deck or other accessory

structure on either side. The structure and deck approved by the City extended further seaward than the nearest adjacent corner of the structure and deck, respectively, of the adjacent upcoast property at 30712 Pacific Coast Highway.

Following the determination of substantial issue, the applicant has modified the proposed development to comply with the LCP's building and deck stringline policies (LUP Policy 4.30 and LIP Section 10.4(G)). Specifically, the applicant has modified the project to site the residence 4 feet further landward than the residence approved by the City, and to site the proposed deck 2 feet further landward than approved by the City. As modified, the proposed project is consistent with the building and deck stringlines with the nearest adjacent corner of the adjacent upcoast property at 30712 Pacific Coast Highway. The proposed project is also consistent with the LCP requirement of LUP Policy 4.30 and LIP Section 3.6(G) to be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. In this case, the State Lands Commission determined that the 1928 MHTL is the most landward surveyed MHTL and the proposed project is situated more than 10 ft. from the MHTL, consistent with the 10-foot minimum setback requirement of the LCP, including LUP Policies 4.23 and 4.30, and LIP Sections 3.6 (G)(3) and 10.4(G).

Additionally, the proposed residence includes a front yard setback of 20 ft., and side yard setbacks of at least 4 ft., 9 in., consistent with the standards in LIP Section 3.6(G). As revised based on the updated wave uprush study, the proposed residence takes into account anticipated future changes in sea level, consistent with LUP Policy 4.22 and LIP Section 10.4 (A). Since complete avoidance of hazard areas is not feasible on the site, the proposed residence is proposed to be elevated at or above the FEMA base flood elevation of 21 feet, consistent with LUP Policy 4.23. The proposed residence is sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development, consistent with LUP Policy 4.33 and LIP Section 10.4 (H). No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure, consistent with LIP Section 10.4(L).

As previously stated, the applicant has submitted an updated Wave Uprush Study/Coastal Engineering Report dated April 15, 2020, and prepared by Pacific Engineering Group, for the proposed project, which evaluated the safety and stability of the project site in relation to the proposed development. This report included a number of coastal engineering recommendations in order to minimize adverse effects on coastal processes and to ensure the structural stability of the proposed development. The proposed residence will be constructed on driven piles and elevated high enough to allow storm waves to run under and around the structure. Specifically, the bottom of the lowest structural member will be +17.5 feet NAVD88. In the event of a storm event with significant wave run-up, the project's design will prevent the need for a shoreline protective device. In addition, the proposed onsite wastewater treatment system has been sited as far landward as feasible and also will not require a shoreline protective device over the expected life of the development according to the updated Wave Uprush Study/Coastal Engineering Report. In the event that sea level rise and wave runup exceeds the levels noted in the updated Wave Uprush Study/Coastal Engineering

Report performed for the applicant, **Special Condition Two (2)** prevents the installation of future armoring to protect the proposed structure.

Given the project site's proximity to Trancas Creek, the site may experience fluvial (riverine) flooding in addition to marine flooding, potentially at the same time. According to the updated Wave Uprush Study/Coastal Engineering Report, the proposed residence is elevated sufficiently above all flood waters from Trancas Creek and safely supported on a deepened concrete pile foundation to prevent damage from any erosion or any change in the flow direction of Trancas Creek during a 100-year flood event. The elevation of the centerline of Pacific Coast Highway adjacent to the subject site varies from +19.68 ft. NAVD88 to +19.86 ft. NAVD88. The elevation of the PCH centerline at the Trancas Creek Bridge is +20.35 ft. NAVD88. Per the October 28, 2016 Preliminary FEMA map #06037C1514G the 100-year Base Flood Elevation (BFE) for the portion of Trancas Creek adjacent to the subject site is elevation +16.0 ft. NAVD88. The 100-year BFE for Trancas Creek landward of the PCH Bridge abatement is elevation +17.0 ft. NAVD88. The minimum elevation of the bottom of the lowest horizontal structural members for the residence and pool are +17.5 ft. NAVD88. This allows for a clearance of 0.5 ft. to 1.0 ft. above the 100-year base flood elevations (BFE). The minimum finish floor elevation (FFE) for the residence is +21.0 ft. NAVD88. At the proposed minimum FFE there is a 4.0 ft. to 5.0 ft. freeboard above the Trancas Creek 100-year Base Flood Elevations. The updated report concludes that with a minimum FFE at +21.0 ft. NAVD88, the proposed residence is sufficiently raised above flood water from both the ocean wave uprush and the Trancas Creek 100-year flood events. In the event that Trancas Creek flows onto and erodes the subject property, the proposed residence, pool, and decks will be sufficiently supported and elevated to allow flood waters to flow under these structures unimpeded. Additionally, since the proposed onsite wastewater treatment system is buried, full exposure of the system will only occur if the beach profile fronting and adjacent to the OWTS has eroded.

To ensure that all recommendations of the coastal engineering consultant have been incorporated into the proposed development, **Special Condition One (1)** requires the applicant to agree to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports and that final plans approved by the consultant(s) shall be in substantial conformance with the final plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultant shall require an amendment to the permit, or a new Coastal Development Permit.

New development on beachfront parcels must be designed in a manner that will not require the construction or use of a shoreline protective device that would alter the natural landforms or shoreline processes or otherwise cause impacts inconsistent with relevant Coastal Act or LCP policies. Although the project has been designed to not require a shoreline protective device based on the hazard and sea level rise conditions included in the wave uprush study/coastal engineering report, it's important to state that new development such as this is not entitled to shoreline protection under the Coastal Act or LCP, and the Commission would not approve this project if it required a shoreline protection device now or at any point in the future. The shoreline is a dynamic

environment and although the proposed residence has been designed to ensure structural stability relative to wave action and a projected 6.15 feet sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. In particular, the science of understanding and predicting sea level rise is rapidly changing, and the predictions of what will constitute the “worst case” sea level rise scenario have continued to worsen over the past decade or two. This trend and uncertainty support using a precautionary approach when approving shorefront development.

In order to be consistent with Coastal Act Section 30253 and LUP Policies 4.33 and 4.37, and LIP Section 10.4(H), the applicant must waive any right to construct a shoreline protective device to protect the development in the future, as outlined in **Special Condition Two (2)**. Further, this condition requires the landowner to remove the development if (a) any government agency has ordered that the structure is not to be occupied due to coastal hazards, or requires the structure to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (d) the development requires new shoreline protective devices that conflict with LCP or relevant Coastal Act policies. In this case, the applicant has defined the proposed project to be relatively safe from hazards over the proposed 75-year project life (approximately 2095) and, with lesser amounts of sea level rise, the residence could be safe for up to 100-years. Since Malibu LUP Policies 4.22 and 4.23 and LIP Section 10.4 require beachfront development to account for hazards associated with anticipated sea level rise over a 100-year structure life (which would be closer to 2121), **Special Condition Two (2)** also requires the permittee to ensure the proposed development accounts for hazards that go beyond those designed for the anticipated hazards through 2095.

In addition, the public trust boundary may migrate landward in response to rising sea levels and it is important to ensure that the development remains on private land over time. The Commission finds that **Special Condition Two (2)** is necessary to address the concerns related to the ambulatory Mean High Tide Line. **Special Condition Two (2)** specifies that in the event that the public trust boundary migrates landward, if any portion of the approved development encroaches onto public trust lands based on a Mean High Tide Line (MHTL) survey, the applicant shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development. The Malibu shoreline has been widened beyond its historic position due to beach nourishment and the construction of sand retaining structures. With limited recent sediment augmentations, shoreline erosion has been observed throughout parts of the Malibu shoreline and can be expected to increase in the future with rising sea level. With time and no significant nourishment, the shoreline could move landward to a position under the residence or adjacent to the road. This can reduce the public beach area and limit public access. Imposing a condition requiring a current MHTL survey prior-to-issuance of the permit (since the most recent survey was from 2017), and periodic MHTL surveys every five years thereafter, will provide evidence that the

development is located on, and remains on, private property, as required by **Special Condition Sixteen (16)**.

Additionally, **Special Condition Fourteen (14)** clarifies that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property and prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

Moreover, the proposed development is located along the shoreline in the City of Malibu that has historically been subject to substantial damage as a result of storm and flood occurrence; therefore, ample evidence exists that all beachfront areas in the City of Malibu area are subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion and flooding. Additionally, the banks of Trancas Creek directly adjacent to the eastern property line of the property have a history of bank erosion. The subject site, even after completion of the proposed project, will continue to be subject to the high degree of risk posed by the hazards of oceanfront and creek-side development in the future. The Coastal Act and LCP recognize that development, even as designed and constructed to incorporate the recommendations of the applicant's coastal engineer, may still involve the acceptance of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

Thus, in this case, the Commission finds that due to the possibility of tsunami, storm waves, surges, coastal flooding, fluvial flooding, groundwater inundation, and erosion, the applicant shall assume these risks as a condition of approval. Because the risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission and the City for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition Three (3)**, will show that the applicant is aware of and acknowledges the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the development it protects, and will effectuate the necessary assumptions of those risks by the applicant. This condition will also ensure that the applicant is aware of the potentially ambulatory nature of their seaward boundary, and that this boundary may move with sea level rise. It further ensures that future property owners will be made aware of the risks and limitations placed on the development by this permit, so that any future owners can properly assess risks before purchasing property. In general, disclosing risks to current and future property owners helps ensure that property owners will plan with these hazards in mind and will help set reasonable expectations for future development potential and investments. Similarly, requiring property owners to assume the risks of developing in hazardous locations will help avoid the need to spend public funds on disaster recovery for private development and will ensure future owners are aware of limits on the use of shoreline armoring that harms coastal resources. These conditions help carry out LCP policies related to minimizing risks to life and property in areas of high flood hazard, as well as the mandate to ensure that new development is located in areas able to accommodate it, including over time as conditions change (see

Coastal Act Section 30250). Additionally, **Special Condition Five (5)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In addition, in order to ensure that no additions or improvements are made to the property without due consideration of potential hazards, the Commission finds it necessary to require a future development restriction, which requires the applicant to obtain an amended or new coastal development permit if additions or improvements to the site are proposed in the future, as detailed in **Special Condition Four (4)**.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with shoreline development and coastal hazard policies of the certified City of Malibu LCP, including Coastal Act policies incorporated therein.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREA

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

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

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

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

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Land Use Plan Policy 3.1 states:

Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that

establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.

Land Use Plan Policy 3.8 states:

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

Land Use Plan Policy 3.10 states:

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

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

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

Land Use Plan Policy 3.23 states:

Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide

distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.

Land Use Plan Policy 3.28 states:

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

Land Use Plan Policy 3.32 states:

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

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

New development adjacent to the following habitats shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers except as provided in Section 4.6.1 (E) or (F) of the Malibu LIP. The following buffer standards shall apply: A. Stream/Riparian New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

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

Any coastal development permit application for a use other than one permitted in the ESHA overlay district, in which the uses permitted in this district would preclude construction of a residence on an undeveloped legal parcel, shall be subject to the provisions of this section. The uses of the property and the siting, design, and size of any development approved in ESHA or ESHA buffer, shall be limited, restricted, and/or conditioned to minimize impacts to ESHA on and adjacent to the property, to the maximum extent feasible. Where all feasible

building sites are ESHA or ESHA buffer, the City may only permit development as specified below in Sections 4.7.1 through 4.7.4 of the Malibu LIP in order to provide the owner with an economically viable use of the property. In no case shall the approved development exceed the following maximum standards.

4.7.1. Development Area

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

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

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

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

In this case, the entire parcel is situated within the 100-foot stream ESHA buffer. According to the biological assessment prepared for the subject property (Biological Resources Assessment for 30708 Pacific Coast Highway, dated December 26, 2017, prepared by E Read and Associates, Inc.), the subject site contains existing exotic and invasive plant species including myoporum, iceplant, and palm trees which surround the existing residence and are found along the eastern property line. The applicant proposes to remove the existing exotic and invasive plant species from the project site and plant approximately 440 sq. ft. of drought tolerant California native grass on the front yard of the property next to the driveway (Exhibit 4).

In addition, the biological assessment did not observe any dune habitat or other sensitive habitat on the property and the City's action indicates that dune habitat does not exist on the property. However, in the Commission's action on CDP No. 4-15-0390 for the Broad Beach rock revetment and beach nourishment project, the Commission has found there to be dune habitat on the portion of the property that is seaward of the existing residential development. Although the dune system on the subject property and adjacent properties along Broad Beach have been highly disturbed from past residential development, unpermitted landscaping, yard improvements, and wave erosion, the Commission found that coastal dunes such as those on the project site are rare and therefore meet the definition of environmentally sensitive habitat areas (ESHA).

As stated previously, the entire subject parcel lies within the 100-foot stream ESHA buffer of Trancas Creek. The parcel is zoned Single-Family Residential Medium (SF-M), and residential development is a permitted use within this zone. LIP Section 4.7 states where all feasible building sites are ESHA or ESHA buffer, development is only permitted in order to provide the owner with an economically viable use of the property. Further, LIP Section 4.7.1 restricts the allowable development area in ESHA or ESHA buffer to 10,000 sq. ft. or 25 percent of the parcel size, whichever is less. The maximum allowable development area under Section 4.7.1, given the subject lot area of 19,308 square feet, is 4,827 square feet. The applicant's proposed 4,276 square feet development footprint conforms to the development area limitation of 25 percent of the parcel area to allow for an economically viable use of the property located within ESHA buffer.

The proposed development is set back 4 ft. 9 in. from the edge of the bank of Trancas Creek (stream ESHA). LIP Section 4.7 further requires new development in ESHA or ESHA buffer to be sited, designed, and sized to minimize impacts to ESHA to the maximum extent feasible. The proposed residence does not extend beyond the area that is already disturbed by existing development on the site. Therefore, none of the proposed new development will be situated any closer to ESHA than the existing already disturbed area. As such, the approved development will have no impacts on ESHA. Additionally, while the project is located within the required 100-foot stream ESHA buffer, there are no alternative development locations that could provide the required 100-foot ESHA buffers or significantly increase the ESHA buffers. Therefore, the proposed project is sited and designed to minimize impacts to ESHA to the maximum extent feasible, consistent with Land Use Plan Policy 3.23 and LIP Section

4.7, and will protect ESHA from significant disruption of habitat values consistent with Land Use Plan Policy 3.8 and Coastal Act Section 30240.

Since the proposed development does not comply with the 100-foot buffer from Trancas Creek and dune ESHA, the applicant requests a variance to modify the ESHA buffer pursuant to LUP Policy 3.28. Under LUP Policy 3.28, variances or modification to buffers or other ESHA protection standards shall not be granted, except where there is no other feasible alternative for siting the development and it does not exceed the limit on allowable development pursuant to LUP policies 3.10-3.13. Furthermore, LIP Section 13.26.5 details the findings that must be made in order to approve a variance.

Local Implementation Plan (LIP) Section 13.26.5 states, in part:

... The Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, only if it makes all of the following findings of fact supported by substantial evidence that:

- A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surrounding such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.
- B. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.
- C. The granting of the variance will not constitute a special privilege to the applicant or property owner.
- D. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.
- E. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.
- F. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 12 of the Malibu LIP.
- G. The variance request is consistent with the purpose and intent of the zones(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.
- H. The subject site is physically suitable for the proposed variance.
- I. The variance complies with all requirements of state and local law.
- J. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

In this case, there are special circumstances applicable to the subject property, in that the property is immediately adjacent to Trancas Creek and dune ESHA and the required 100-foot buffer from the creek encompasses the entire project site and the 100-foot buffer from the adjacent dunes would encompass a significant portion of the site. There is no way to develop the property without encroaching into the ESHA buffers. The neighboring developed property immediately west of the project site is also entirely located within the 100-foot buffer from the creek. Strict application of the zoning requirement would deprive the property of privileges enjoyed by other properties in the vicinity. The granting of the variance will not be detrimental to the public interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and Single Family – Medium (SF-M) zone district in which the property is located. The granting of the variance will not constitute a special privilege to the applicant or property owner in that the neighboring properties to the west, which are developed with single-family residences, also include development and fuel modification within the ESHA buffer. In addition, the proposed single-family residence is consistent with the uses permitted in the applicable zoning designation. Therefore, granting of the variance will not constitute a special privilege to the applicant or property owner.

The LUP and LIP contain several policies and standards to ensure that allowing the project's encroachment into the ESHA buffers will still allow for the protection and preservation of ESHA. The subject parcel is located entirely within the 100-foot stream ESHA buffer and encroaches into the 100-foot buffer from the adjacent dunes. There are no new ESHA impacts from the proposed residence as it does not expand beyond the area that is already disturbed, there is no other feasible alternative to site development and the development does not exceed the maximum size allowed for the development area. Accordingly, the project will not be contrary to or in conflict with the general purposes and intent of the zoning provisions nor contrary to or in conflict with the goals, objectives and policies of the LCP.

Additionally, the subject property is zoned SF-M which allows for residential development. The project will consist of a replacement single-family residence. The new residence is proposed in the same location as the existing residence to be demolished however, the new residence will occupy a larger footprint than the existing residence. The subject site is suitable for the construction of a new single-family residence and the variance complies with all requirements of state and local law. Construction of the proposed project will comply with all building code requirements and will incorporate all recommendations from applicable City and County agencies.

Furthermore, the banks of Trancas Creek follow the subject property's eastern property line, and there is a history of bank erosion along the eastern property line. To minimize bank erosion and flooding hazards, the subject property owner has attempted to alter the drainage course in the past through unpermitted grading and placement of sandbags. Coastal Act Section 30236, which has been incorporated into the certified LCP, and LUP Policy 3.32 states that channelizations or other substantial alterations of streams shall be prohibited except for necessary water supply projects, flood protection for existing development, or the improvement of fish and wildlife habitat. The project

approved by the City included a perimeter retaining wall along the eastern property line that would have likely altered the natural drainage course of Trancas Creek. Following the determination of substantial issue, the applicant has modified the proposed development to eliminate the perimeter retaining walls from the project. As now revised, the proposed project has been sited and designed to avoid alteration of Trancas Creek and, therefore Coastal Act Section 30236 and LUP Policy 3.32 are no longer applicable to the project. Additionally, as previously stated, in the event that Trancas Creek flows onto and erodes the subject property, the proposed residence, pool, and decks will be sufficiently supported and elevated to allow floodwaters to flow under these structures unimpeded.

Additionally, the unpermitted concrete patio, concrete stairs, and grassy lawn area are adjacent to and encroach within the 100-foot stream ESHA buffer from Trancas Creek. In addition to being unpermitted, the concrete patios, concrete stairs, and grassy lawn area are not uses that depend on those ESHA resources, thus they are not consistent with Coastal Act Section 30240. As previously mentioned above, the applicant has proposed to remove the unpermitted development and restore, with appropriate native plant species, the area along the eastern property line and off-site property (owned by Los Angeles County Department of Beaches and Harbors) that was disturbed by the placement of the unpermitted development. The applicant also proposes to remove invasive ice plant on the dunes seaward of the residence. In order to implement the applicant's proposal, it is necessary to require that a final habitat restoration, enhancement, and monitoring plan is prepared; thus, the Commission imposes **Special Condition Seventeen (17)**. Specifically, **Special Condition Seventeen (17)** requires the applicant to submit a final habitat and monitoring plan, prepared by a biologist or environmental resource specialist, for the area along the eastern property line and off-site property where unpermitted development is proposed to be removed. The plan shall provide for revegetation of areas disturbed as a result of placement and removal of the unpermitted development with native plant species appropriate to the habitat type. The plan shall also include the removal of exotic and invasive vegetation from the vicinity of the restoration, as well as the proposed removal of ice plant on the dunes seaward of the residence. Furthermore, the plan shall be prepared in consultation with, and reviewed and approved by, the adjacent property owner (Los Angeles County Department of Beaches and Harbors).

In conclusion, the proposed project is consistent with the applicable ESHA policies and provisions of the certified LCP. As described in detail above, even though portions of the project are located within the required ESHA buffer, there are no alternative development locations that could provide the required buffer or significantly increase the existing buffer. Therefore, the proposed project is sited and designed to conform to the provisions of Section 4.7 of the Malibu LCP, and the variance requested by the applicant to modify the ESHA buffer as allowed under LUP Policy 3.28 is allowable. The project is consistent with the maximum square footage allowable required by the LCP, and is sited and designed to protect ESHA from significant disruption of habitat values.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the environmentally sensitive habitat areas policies and provisions of the certified Malibu LCP.

F. PUBLIC ACCESS AND RECREATION

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

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas for overuse.

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

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) Adequate access exists nearby, or,
- (3) Agricultural would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

...

Land Use Plan Policy 2.5 states:

New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational

opportunities shall be implemented prior to or concurrent with construction of the approved development.

Land Use Plan Policy 2.63 states:

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

Land Use Plan Policy 2.64 states:

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

Local Implementation Plan Section 12.4. states

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

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

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

C. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a blufftop trail or an inland

trail acquired through use or a public right of access through legislative authorization.

D. New development on any site where a trail, blufftop access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.

Local Implementation Plan Section 12.7.1 states, in applicable part:

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

...

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

In addition, the policies that limit the use of shoreline protective devices (cited in the shoreline development and coastal hazards section, above) also address public access because such protective devices affect public access, as described more below. Further, the public has rights in tidelands that currently lie seaward of the proposed development, but which may come to be located closer to, or even under, the proposed development at some point in the future. The Coastal Commission has a duty, under the public trust doctrine and the Coastal Act, to ensure that new development does not impair trust resources by, for example, impeding current or future public access. The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to significantly increase over the coming years.

The project site is an infill lot within the existing residential Broad Beach community and is bordered by residentially developed lots to the north, and Trancas Creek/Lagoon and Zuma Beach County Park to the south. Zuma Beach County Park, which is heavily used by beachgoers, is located approximately 150 ft. to the east of the subject site. The area of Broad Beach seaward of the subject parcel is also subject to significant use by beachgoers who access the beach from Zuma Beach County Park or from the two Los Angeles County-owned public vertical accessways along Broad Beach. Furthermore, there are several lateral public access easements located on lots near the project site. The applicant has offered to dedicate a lateral public access easement as part of the proposed project.

In this case, the proposed project, involving the construction of a new residence on a beachfront lot and pile-support pool and deck, would occupy sandy beach. Given the narrow width of Broad Beach, particularly coupled with projected sea level rise, it is likely that the proposed development will be subject to wave action that will affect the beach profile, and thereby impact the public's ability to gain access to the beach. Furthermore, this beach will continue to narrow in the future due to sea level rise, when the shoreline moves inland, if the structure is not removed before then, the structure will eventually be located on public trust lands and will impede the public's access to and along the beach.

For all new development between the nearest public roadway and the sea, including the construction of new single-family residences or shoreline protection devices, the Malibu LCP requires that lateral public access along the beach be provided in order to mitigate adverse effects the proposed development will have on the public's ability to access and use public tidelands and coastal resources. The applicant is proposing an offer-to-dedicate a lateral public access easement, consistent with what is required by the Malibu LCP, that would provide for public access along the entire beach under all tidal conditions as measures seaward from the deck dripline to the ambulatory mean high tide line. In order to ensure that the applicant's offer-to-dedicate a lateral public access easement is effectively implemented, **Special Condition Six (6)** requires that prior to the issuance of the coastal development permit amendment, the landowner record a document which irrevocably offers to dedicate a lateral access easement for lateral public access and passive recreation between the mean high tide line and the dripline of the structure.

As described above, new development on beachfront parcels should be designed in a manner that will not require the construction or use of shoreline protective devices. Construction of a shoreline protective device to protect the proposed development would arrest the landward migration of the shoreline, and the corresponding migration of the publicly accessible intertidal zone. This would make access to and along the sea difficult, if not impossible. Courts have also found that shoreline armoring can constitute trespass on public tidelands if the armoring blocks the migration of the tidelands and prevents the tidelands trustee from gaining property that should rightfully be theirs. *United States v. Milner* (9th Cir. 2009) 583 F.3d 1174, 1189-1190. As previously discussed in detail in subsection (C) above, shoreline armoring or protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature

of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season.

Therefore, in order to protect shoreline processes, natural landforms, the ambulatory nature of the shoreline, and continued public access to the shoreline, the Commission finds that it is necessary to ensure that no shoreline protective device will ever be built to protect the new proposed structure. As such, **Special Condition Two (2)** requires the applicant to waive the right to build a new shoreline protective device to protect new development authorized by this Coastal Development Permit.

Furthermore, the shoreline is a dynamic environment and, although the proposed residence has been designed and conditioned to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. Because it is not possible to ensure that the structure is constructed in a manner adequate to ensure structural stability relative to increased future wave action, sea level rise, and tidal events, **Special Condition Two (2)** ensures that no future shoreline protective device will be constructed on site to protect the proposed development, and requires the landowner to remove the development if a government agency orders that portions or all of the structures may not be occupied due to hazards identified in this report.

Next, **Special Condition Fourteen (14)** clarifies that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property and prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future. **Special Condition Fourteen (14)** also clarifies that the permit does not authorize the development to physically interfere with any public access rights that may exist at any future date. This ensures that the permit and development may not be used as evidence that public agencies have waived any public rights on tidelands or other public rights-of-way. The permit also only authorizes the development for so long as it remains on private property; thus, if any portion of the development came to be located on public trust lands, the permittee would need to either remove that development or apply to the Commission for a CDP to retain it and to the State Lands Commission or other trustee agency for a lease or other appropriate instrument allowing the encroachment to remain.

Further, **Special Conditions Three (3)** and **Fourteen (14)**, respectively, clarify that the permit only authorizes the development for as long as it remains on private property and ensures that the home does not physically impede public access to the shore, as that shoreline may exist in the future. These conditions are necessary in order to allow the public trust tidelands to migrate inland over time and ensure that the home does not impede future public access to or along the shore, thus assuring continued public access and use of coastal areas, as required by the LCP and Coastal Act. Merely

requiring the home to be designed to withstand coastal hazards does not address this issue, which is why these additional conditions are required for LCP and Coastal Act consistency.

Finally, the Commission notes that numerous unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. Therefore, **Special Condition Thirteen (13)** provides that no signs shall be posted on the property subject to this permit which either (a) explicitly or implicitly indicate that any portion of the beach located seaward of the subject site is private or (b) contain messages that attempt to prohibit public use of the public beach. **Special Condition Five (5)** ensures that future owners will be made aware of the various conditions and limitations on the development so that they can appropriately take them into consideration when planning for possible purchase or planning later development.

Thus, the Commission finds that the proposed project, as conditioned, is consistent with the public access and recreation policies of the certified Malibu LCP and the Coastal Act.

G. WATER QUALITY AND MARINE RESOURCES

The Commission recognizes that new development in Malibu and the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

Coastal Act Section 30230, as incorporated into the certified LCP, states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Coastal Act Section 30231, as incorporated into the certified LCP, states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow,

encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Furthermore, the following LUP water quality policies are applicable:

Land Use Plan Policy 3.100 states:

New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.

Land Use Plan Policy 3.102 states:

Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.

Land Use Plan Policy 3.110 states:

Beachfront development shall incorporate BMPs designed to minimize or prevent polluted runoff to the beach and ocean waters.

Land Use Plan Policy 3.110 states:

New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.

Land Use Plan Policy 3.111 states:

New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.

Land Use Plan Policy 3.125 states:

Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.

Land Use Plan Policy 3.126 states:

Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.

Land Use Plan Policy 3.127 states:

OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.

Land Use Plan Policy 3.140 states:

New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems.

Land Use Plan Policy 3.141 states:

Applications for a coastal development permit for OSTS installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTS on groundwater level, quality of nearby surface drainages, and slope stability. Where it is shown that the OSTS will negatively impact groundwater, nearby surface waters, or slope stability, the OSTS shall not be allowed.

As described above, the proposed project includes the demolition of an existing residence and the construction of a new, larger single family residence on a beachfront parcel in the Broad Beach area of Malibu. Furthermore, the project site is directly adjacent to Trancas Creek. The construction of impervious surfaces, such as the proposed residential development, allows for less infiltration of rainwater into the soil, thereby increasing the rate and volume of runoff, causing increased erosion and

sedimentation. Additionally, the infiltration of precipitation into the soil allows for the natural filtration of pollutants. When infiltration is prevented by impervious surfaces in beachfront areas, pollutants in runoff are quickly conveyed to the ocean. Thus, new development can cause cumulative impacts to coastal water quality by increasing and concentrating runoff and pollutants. The proposed project will result in an increase of impervious surface on site, which in turn decreases the infiltrative function and capacity of existing permeable land and sand on the project site. The Commission finds that this reduction in permeable surface leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak water discharge is increased, and the peak occurs much sooner after precipitation events. Additionally, grading, excavations and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion of disturbed soils and in sedimentation of the ocean.

In addition, pollutants commonly found in runoff associated with new development include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter; fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use; nutrients from wastewater discharge, animal waste and crop residue; and bacteria and pathogens from wastewater discharge and animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation which provides food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the preparation of a Storm Water Management Plan (SWMP) for all projects that require a coastal development permit. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to minimize or prevent adverse effects of the project on water quality. Therefore, pursuant to the requirements of the Malibu LCP, and to ensure the proposed project will maintain the biological productivity and the quality of coastal waters, the Commission finds it necessary to require the preparation of a SWMP for the subject site, that utilizes site design, source control and treatment control BMPs, as specified in **Special Condition Eight (8)**.

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will, during construction, maintain the biological productivity and the quality of coastal waters. The Malibu LCP requires that a Local Storm Water Pollution Prevention Plan (SWPPP) be prepared for all development that requires a Coastal Development Permit and a grading or building permit, and it be applied to the construction phase of the project. The SWPPP includes measures and BMPs to prevent erosion, sedimentation and pollution of surface and ocean waters from construction and grading activities. In this case, the proposed project does involve grading and construction that requires grading and building permits. Therefore, pursuant to the Malibu LCP and to ensure the proposed development will maintain the biological productivity and the quality of coastal waters during the construction phase of the project, the Commission finds it necessary to require the applicant to submit a Local SWPPP for the subject site, consistent with the requirements specified in **Special Condition Eight (8)**.

Finally, the proposed development includes the construction of a new alternative on-site wastewater treatment system (OWTS) to serve the residence. The Malibu LCP includes a number of policies and standards relative to the design, siting, installation, operation and maintenance of OWTSs to ensure these systems do not adversely impact coastal waters. The proposed OWTS was previously reviewed and approved in concept by the City of Malibu Environmental Health Department, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. In addition, in order to ensure the OWTS is maintained and monitored in the future to prevent system failures or inadequate system performance, the Malibu LCP includes policies and standards requiring the regular maintenance and monitoring of the OWTS. Therefore, the Commission finds that it is necessary to require the applicant to submit verification that they have obtained a monitoring, operation, and maintenance permit from the City, as outlined in **Special Condition Ten (10)**. Finally, the City of Malibu Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources.

In addition, construction activities related to the proposed development have the potential to negatively impact the surrounding marine environment. The introduction of waste or construction debris into the marine environment could create deleterious impacts to coastal waters and could stem from activities such as stockpiling of materials or cleaning of construction equipment on or adjacent to the beach. In order to ensure that adverse impacts to the marine environment are avoided and work is carried out in a manner that will sustain the biological productivity of coastal waters, the Commission finds it necessary to require the applicant to include construction best management practices in the project. **Special Condition Nine (9)** requires that the project applicant comply with specific construction standards and best management practices. **Special Condition Nine (9)** further requires that no construction materials, debris or waste shall be placed or stored where it may be subject to wave erosion and dispersion, that all debris resulting from construction activities shall be removed from the beach prior to the

end of each work day; no machinery or mechanized equipment shall be allowed in the intertidal zone; and all excavated beach sand shall be redeposited on the beach.

Further, the Commission finds that the Conditions attached to the City's approval of the project include numerous provisions that pertain to other aspects of water quality and serve to ensure the project's consistency with the City's LCP. Thus, **Special Condition Fifteen (15)** requires the applicant to submit evidence of compliance with the City's conditions, except as specifically modified by this approval and any subsequent amendments to the project description. **Special Condition Fifteen (15)** provides that any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required.

The Commission finds that based on the above findings, the proposed project, as conditioned, will maintain marine resources and the biological productivity and the quality of coastal waters, and is consistent with the applicable policies of the Malibu LCP.

H. VISUAL RESOURCES

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identified Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

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

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, 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 subordinated to the character of its setting.

In addition, the following LCP policies are applicable in this case:

Land Use Plan Policy 6.1 states:

The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.

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

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 6.13 states:

New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscaping. The use of highly reflective materials shall be prohibited.

Land Use Plan Policy 6.18 states, in applicable part:

For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:

- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on beachfront lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views.
- c. No portion of any above ground structure shall extend into the view corridor.
- d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- e. In the case of development that is proposed to include two or more parcels,

...

Land Use Plan Policy 6.23 states:

Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and

concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sport courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.

In this case, the project site is located on Broad Beach, a built-out area of Malibu primarily consisting of residential development. The Commission notes that the visual quality of the Broad Beach area in relation to public views from Pacific Coast Highway (PCH) has been significantly degraded from past residential development. PCH is a major coastal access route, not only utilized by local residents but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the ocean and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single-family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. Specifically, Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from PCH. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. Such development, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

In order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, LUP Policy 6.18 requires that buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site, the remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots 50-feet or less in width, in which case the view corridor may be split to provide a contiguous view corridor of no less than 10% of the lot width on each side, to provide for unobstructed public views of the beach and ocean from Pacific Coast Highway over a portion of the site to mitigate the adverse effects to public views that result from new development along the coast. The proposed development includes the required view corridor on the property consistent with the view corridor requirement of the LCP. In order to be consistent with Coastal Act Section 30251 and LUP Policy 6.18, the applicant must maintain the proposed public view corridor of no less than 20% of the width of the lineal frontage of the subject site, as outlined in **Special Condition Seven (7)**. Furthermore, in accordance with LUP Policy 6.18, **Special Condition Seven (7)** requires fencing across the view corridor to be permanently maintained as visually permeable. And any landscaping in the view corridor shall include only low-growing species that will not obscure or block bluewater views.

LUP Policy 6.13 requires new development in scenic areas visible from scenic roads or public viewing areas to incorporate colors and exterior materials that are compatible with the surrounding landscape. The proposed project is located in a scenic area and will be visible from a scenic highway. Therefore, in order to ensure that the proposed project is consistent with the requirements of the Malibu LCP, the Commission requires

the applicant to use colors compatible with the surrounding environment and non-glare glass, consistent with LUP Policy 6.13, as detailed by **Special Condition Eleven (11)**.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. Further, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. LUP Policy 6.23 of the Malibu LCP specifically restricts exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area in order to eliminate the adverse individual and cumulative visual impacts associated with the lighting of such areas visible from public areas. In order to mitigate any potential future visual impacts of the proposed project, and to be consistent with Malibu LUP Policy 6.23, the Commission finds it necessary to require that exterior lighting be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area, as specified in **Special Condition Twelve (12)**.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the applicable scenic and visual resources protection policies, including Section 30251 of the Coastal Act, of the Malibu LIP.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations require Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The City prepared a categorical exemption pursuant to CEQA Section 15301 – Existing Facilities, and found that the project is listed among classes of projects that have been determined not to have a significant adverse effect on the environment.

The Commission incorporates its findings on consistency with the City's certified LCP at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the applicable policies of the certified LCP. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. Special Conditions 1-19 are required to assure the project's consistency with Section 13096 of the California Code of Regulations.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment, and that the project, as conditioned, will not have any significant impacts on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of the certified LCP and conforms to CEQA.

APPENDIX 1

Substantive File Documents

Certified City of Malibu Local Coastal Plan; Coastal Commission Appeal No. A-4-MAL-19-0218; Malibu Planning Commission Agenda Report for CDP No. 17-119 dated November 21, 2019; Malibu Comment Letter 30708 Pacific Coast Highway, December 2, 2019 Planning Commission, dated November 27, 2019; Coastal Development Permit No. 4-15-0390 (Broad Beach Geologic Hazard Abatement District); Biological Resource Assessment for 30708 Pacific Coast Highway, Malibu, dated December 26, 2017, prepared by E Read and Associates, Inc.; Wave Uprush Study/Coastal Engineering Report for 30708 Pacific Coast Highway, dated December 18, 2017, prepared by Pacific Engineering Group; Wave Uprush Study/Coastal Engineering Report for 30708 Pacific Coast Highway, dated April 15, 2020, prepared by Pacific Engineering Group; Wave Uprush Study/Coastal Engineering Report Responses to CCC Staff Review Questions, for 30708 Pacific Coast Highway, dated March 15, 2021, prepared by Pacific Engineering Group; Trancas Creek Erosion (2019) and Recommendations for 30708 Pacific Coast Highway, dated April 17, 2019, prepared by Pacific Engineering Group; California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. Adopted August 12, 2015. Updated November 7, 2018; California Coastal Commission Residential Adaptation Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs. Revised March 2018; National Research Council (NRC). 2012. Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp. Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017; Intergovernmental Panel on Climate Change (IPCC). 2007. Climate Change 2007: Ocean Protection Council (OPC). 2013. State of California Sea-Level Rise Guidance Document. Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update.