

CALIFORNIA COASTAL COMMISSION

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



F9a

Appeal Filed:	8/15/2022
49th Day:	Waived
Staff:	GG - V
Staff Report:	8/25/26
Hearing Date:	9/11/26

STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE & DE NOVO REVIEW

APPEAL NO.:	A-4-MAL-22-0045
APPLICANT:	31340 Broad Beach Road LLC
APPELLANTS:	Commissioner Harmon and Commissioner Brownsey
LOCAL GOVERNMENT:	City of Malibu
LOCAL DECISION:	Coastal Development Permit No. 19-007, Variance No. 20-010, Minor Modification Review No. 20-005, Demolition Permit No. 19-010 and Offer-to-Dedicate No. 21-001 approved by the Malibu Planning Commission on July 18, 2022
PROJECT LOCATION:	31340 Broad Beach Road, City of Malibu, Los Angeles County (APN: 4470-016-011)
PROJECT DESCRIPTION:	Demolition of the existing 2,400 square-foot residence and carport, and construction of a new 5,254 square-foot single-family residence, including a 742 square-foot two-car attached garage, plus 1,009 square feet of covered areas, landscaping and hardscape, grading and retaining walls, and installation of a new onsite wastewater treatment system, including a six-foot-high privacy wall beginning at the building stringline, a 10-foot-wide public view corridor, an offer to dedicate a lateral public access easement, and a 50 percent reduction of the front yard setback.
STAFF RECOMMENDATION:	Substantial Issue Exists; Approval of De Novo CDP with Conditions
MOTION & RESOLUTION:	Page 5

NOTE: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo hearing will occur immediately thereafter, during which time the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

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

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which appeal number A-4-MAL-22-0045 has been filed because the approved project is not consistent with the Malibu LCP in the following ways: the development would be vulnerable to coastal hazards over its expected life but development would not be located as far landward as feasible; the City’s findings failed to demonstrate whether the proposed development avoids the need for future shoreline protection; the City did not require the applicant to analyze a range of siting and design alternatives (e.g., an easily removable at-grade deck) that would avoid the need for structures that may function as shoreline protective devices as beach conditions change and that eliminate or mitigate adverse impacts to local shoreline sand supply and public access; and the approved deck and privacy wall would interfere with the implementation of a previously required public access pathway associated with CDP No. 4-15-0390 (i.e., the springing license for a ten-foot access path inland of the revetment in the event that access is not available seaward of the revetment) and could adversely affect public access opportunities due to impacts on shoreline processes and beach width over time. The **motion** and **resolution** for “no substantial issue” findings (for which a “no” vote is recommended) are found on page 5

It should be noted that the property is a part of the Broad Beach Geologic Hazard Abatement District (BBGHAD). On October 9, 2015, the Commission approved CDP No. 4-15-0390 for the retention of the approximately 4,150-foot-long emergency rock revetment and implementation of a beach nourishment program and dune habitat restoration along Broad Beach. A portion of this revetment is present on the subject property. One condition of approval of CDP No. 4-15-0390 required the property owner to enter into an agreement with the Commission and the BBGHAD in the form of an irrevocable temporary springing license to provide for lateral public access over the revetment and over a strip of land extending ten feet inland of the landward edge of the revetment for a public access pathway if at any time there are less than ten feet of dry sandy beach providing for lateral public access extending seaward of the seaward face of the approved revetment. Although the permit was approved in 2015, it has not yet been issued because the BBGHAD is still working to satisfy all of the required prior-to-issuance special conditions.

With respect to the de novo CDP, the applicant has worked with Commission staff to (1) provide additional information to address the issues raised in the subject appeal, and (2) revise the proposed project to address the LCP consistency issues raised by the appeal. The applicant provided revised project plans modifying the location and design of the pile-supported deck and privacy wall, reducing the width of the rear terrace, increasing the setback between development and the existing revetment, and revising the project to address Commission staff's concerns regarding the building stringline. These revisions were incorporated into the proposed de novo project and are discussed in greater detail below.

Commission staff is recommending approval of the proposed project with 13 special conditions. The special conditions address coastal hazards, future shoreline protective devices and future development, construction and water quality, exterior lighting, lateral public access, signage, visual resources, and recordation of the terms and conditions of the permit. As conditioned, the proposed development is consistent with the applicable policies of the certified City of Malibu LCP. Therefore, staff recommends that the Commission approve Coastal Development Permit No. A-4-MAL-22-0045, as conditioned. The motion and resolution for approval of the de novo CDP are provided on **page 5**.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS	5
A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE DETERMINATION.....	5
B. MOTION AND RESOLUTION FOR DE NOVO COASTAL DEVELOPMENT PERMIT	5
II. STANDARD CONDITIONS	6
III. SPECIAL CONDITIONS	6
IV. APPEAL JURISDICTION AND PROCEDURES	15
C. APPEAL PROCEDURES	15
1. Appeal Areas	15
2. Grounds for Appeal	15
3. Substantial Issue Determination	15
4. De Novo Permit Hearing	16
D. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL	16
V. FINDINGS AND DECLARATIONS - SUBSTANTIAL ISSUE	16
A. PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING	16
B. BACKGROUND AND PERMIT HISTORY	18
C. SUMMARY OF APPEAL CONTENTIONS	19
D. ANALYSIS OF SUBSTANTIAL ISSUE	19
1. Shoreline Development and Coastal Hazards	20
2. Public Access	25
3. Factors Considered in Substantial Issue Analysis	27
VI. DE NOVO COASTAL DEVELOPMENT PERMIT ANALYSIS	29
Appeal Background and Coordination	30
Shoreline Development and Coastal Hazards	30
Public Access	38
Visual Resources	43
Water Quality	46
California Environmental Quality Act	50
APPENDIX A	51

EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Aerial Photo
Exhibit 3.	Appeal by Commissioners Brownsey and Harmon
Exhibit 4.	Project Plans for City of Malibu CDP No. 19-007
Exhibit 5.	Final Local Action Notice & City Resolution
Exhibit 6.	Revised Project Plans

I. MOTIONS AND RESOLUTIONS

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE DETERMINATION

Motion:

I move that the Commission determine that Appeal No. A-4-MAL-22-0045 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff Recommendation to Find Substantial Issue:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by the majority of the Commissioners present. A tied vote results in a finding that a Substantial Issue is raised.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-4-MAL-22-0045 raises a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

B. MOTION AND RESOLUTION FOR DE NOVO COASTAL DEVELOPMENT PERMIT

Motion:

I move that the Commission **APPROVE** Coastal Development Permit Number A-4-MAL-22-0045 pursuant to the staff recommendation.

Staff Recommendation for 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 an affirmative vote by a majority of the Commissioners present.

Resolution:

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 impacts on the development on the environment.

II. 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 applicant 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. No Future Shoreline Protective Device

By acceptance of the permit, the applicant acknowledges that the development authorized by this permit- including the single-family residence, attached garage, foundation, and patio/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.

2. 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;

3. 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.

4. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. A-4-MAL-22-0045. 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-22-0045 from the Commission or shall require a coastal development permit from the Commission or from the City of Malibu based on permitting jurisdiction.

5. 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 public access or sandy beach. 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.

6. Lighting Restriction

By acceptance of this permit, the applicant acknowledges and agrees that the only exterior, night lighting that is allowed 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 the beach or ocean area, and no lighting around the perimeter of the site, the beach area or for aesthetic purposes shall be allowed.

7. 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. 19-007 as listed in Resolution No. 20-49 (Exhibit 5 of this staff report), except as specifically modified by this approval and any subsequent amendments to CDP A-4-MAL-22-0045. 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

8. 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.

9. Erosion Control and Drainage Plans

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:
 - a. Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
 - b. Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.
 - c. Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
 - d. 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:
 - a. Control the storage, application, and disposal of pesticides, petroleum and other construction and chemical materials.
 - b. 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.
 - c. Provide sanitary facilities for construction workers.
 - d. 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 17.5.1 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:
 - a. 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;

- b. 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;
- c. Constructing necessary off-site storm drain improvements to satisfy the above, or;
- d. Other measures accomplishing the goal of mitigating all offsite/downstream impacts

10. Sign Restriction

No signs shall be posted on the property subject to this permit which restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, or deed restricted areas that grant public access). Any sign which purports to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

11. 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.

12. 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.

13. 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-22-0045. 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-22-0045 if such changes are specifically authorized by the Executive Director as complying with this special condition.

IV. APPEAL JURISDICTION AND PROCEDURES

C. APPEAL PROCEDURES

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

1. Appeal Areas

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

In this case, the project site is located on Broad Beach Road, in the City of Malibu (Exhibits 1 and 2). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for the area extends between the first public road and the sea, which includes the subject property. As such, the City's coastal development permit for the subject project is appealable to the Commission.

2. Grounds for Appeal

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

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue questions, proponents and opponents will have three minutes per side, at the Chair's discretion, to address whether the appeal raises a substantial issue.

Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issue and that the Commission will therefore not review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

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

D. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was approved by the City of Malibu Planning Commission on July 18, 2022. The City's Notice of Final Action for the project was received by Commission staff on August 2, 2022 (Exhibit 5). Commission staff provided notice of the ten working day appeal period, which began on August 2, 2022 and ended on August 16, 2022. An appeal of the City's action was filed by Commissioners Donne Brownsey and Meagan Harmon on August 15, 2022, during the appeal period (Exhibit 3). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on September 8, 2022. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be October 27, 2022; however, pursuant to Section 30625(a), the applicant waived the 49-working-day time limit for Commission action on the appeal.

V. FINDINGS AND DECLARATIONS - SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING

The Malibu Planning Commission approved the subject CDP for the demolition of an existing 2,400 sq. ft. single-family residence and 772 sq. ft. carport and construction of a new 5,254 sq. ft. single-family residence with a 742 sq. ft. attached garage and 1,009 sq. ft. undercroft, a 9-foot high transparent windbreak, 6-foot high privacy wall along the side property line, patio/deck on a new pile and grade beam foundation system, spa,

outdoor kitchen, landscaping, hardscape, grading, retaining walls, and replacement of the onsite wastewater treatment system on a 0.40 acre beachfront parcel located at 31340 Broad Beach Road in the western portion of the City of Malibu (Exhibit 4). The City also approved a 10-foot-wide public view corridor, divided into 5-foot-wide portions along each side of the property, a deck stringline modification, and an offer to dedicate a lateral beach access easement. The subject parcel is zoned Single Family Medium Density (SF-M).

The subject property is a beachfront parcel within the existing residential Broad Beach community and is developed with an existing single-family residence. The site is directly adjacent to a vertical public beach accessway maintained by the County of Los Angeles and is subject to coastal hazards, including wave uprush, flooding, erosion, and anticipated sea level rise. The topography of the subject property gently descends from Pacific Coast Highway to the ocean. The property is vulnerable to coastal hazards and flooding and is a part of the Broad Beach Geologic Hazard Abatement District (BBGHAD). The subject site is an infill lot within the existing residential Broad Beach community, and is bordered by residentially developed lots to the east and west, Broad Beach to the south, and Broad Beach Road to the north. The nearest vertical public access to the beach is located immediately adjacent to the east of the subject site at a Broad Beach vertical accessway. The subject project (involving demolition of the existing residential structure and construction of an entirely new residence) constitutes a substantial redevelopment of the subject site. The existing residence was originally constructed in the 1950s.

On July 18, 2022, the City of Malibu Planning Commission approved the subject Coastal Development Permit (No. 19-007) for the project described above, subject to conditions of approval. The City-approved project included demolition of the existing residence (No. 19-010) and associated development and construction of the new single-family residence and associated improvements described above (No. 19-007), as well as a deck stringline modification (No. 20-005), an offer to dedicate a lateral beach access easement, Variance No. 20-010, and Minor Modification No. 20-009.

Following the Planning Commission's approval, the City's Notice of Final Action was received by Commission staff on August 2, 2022. Commission staff subsequently established the required 10-working-day appeal period which began on August 2, 2022, and ended on August 16, 2022. On August 15, 2022, Commissioner's Harmon and Brownsey filed an appeal of the City's CDP action. 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 by Commission staff on September 8, 2022. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would have been October 27, 2022 however, pursuant to Section 30625(a), the applicant waived that time limit on September 13, 2022 in order to allow additional time to coordinate with Commission staff on the issues raised in the appeal.

B. BACKGROUND AND PERMIT HISTORY

The existing residence on the subject property was originally constructed in the 1950s and pre-dates the effective date of the Coastal Act and Proposition 20. Broad Beach was historically a wide beach which supported an active dune system. However, in recent decades, Broad Beach has been subject to periodic erosional events which appear to have increased in both frequency and duration and have endangered existing residential development located along portions of the beach that were historically considered safe.

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

On October 9, 2015, the Commission approved Coastal Development Permit No. 4-15-0390 requested by the BBGHAD for retention of the approximately 4,150 foot long emergency rock revetment and relocation of the downcoast approximately 1,600 linear feet of the as-built rock revetment further landward; implementation of a beach nourishment program involving deposition of 300,000 cu. yds. of sand on the beach from inland sand quarries during the first year, with major renourishments of up to approximately 300,000 cu. yds. of sand and interim renourishment of up to 75,000 cu. yds. of sand allowed when certain triggers are reached, periodic sand backpassing operations to occur no more than once per year, and dune habitat restoration from 30708 Pacific Coast Highway to 6526 Lechuza Point Road at Broad Beach. A condition of approval of CDP No. 4-15-0390 required the property owner to enter into an agreement with the Commission and the BBGHAD in the form of an irrevocable temporary springing license to provide for lateral public access over the revetment and over a strip of land extending ten feet inland of the landward edge of the revetment for a public access pathway if at any time there are less than ten feet of dry sandy beach providing for lateral public access extending seaward of the seaward face of the approved revetment on, or within 100 feet upcoast or downcoast of, any part of the licensor's parcel (Special Condition 14. Conditional Lateral Public Access over Revetment and Adjacent Pathway). The public access pathway required by Special Condition 14 is intended to provide an alternative route for lateral public access if erosion or other shoreline changes reduce the amount of dry sandy beach available seaward of the revetment. If the triggering conditions described above occur, public access would be provided over the revetment and along the 10-foot-wide strip of land

immediately landward of the revetment. Thus, development located within this area could obstruct or otherwise interfere with the ability to implement the required pathway in the future.

It's important to note that a portion of this revetment is present on the seaward side on the subject property at 31340 Broad Beach Road. 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.

Early Coordination

Prior to the City's final action on the subject project, Commission staff provided City staff with a comment letter on July 17, 2020 regarding the subject project and potential LCP and Coastal Act inconsistencies that were raised prior to City approval.

C. SUMMARY OF APPEAL CONTENTIONS

The appeal filed by Commissioners Brownsey and Harmon is included as Exhibit 3. The appeal contends that the approved project is not consistent with the policies and provisions of the City of Malibu's certified LCP related to shoreline development, coastal hazards, and public access, and with the public access policies of the Coastal Act. Specifically, the appellants assert that the approved residence and associated accessory development are not sited and designed to minimize risks associated with coastal hazards over the anticipated life of the development, are not located as far landward as feasible, and may require future shoreline protection. The appellants further contend that the approved stringline modification and six-foot-high privacy wall are inconsistent with the applicable shoreline development standards of the Malibu LCP, and that the approved pile-supported deck and privacy wall would interfere with implementation of the previously approved Broad Beach Geologic Hazard Abatement District public access improvements and adversely affect lateral public access opportunities (i.e., the springing license for a ten-foot access path inland of the revetment in the event that access is not available seaward of the revetment). Accordingly, the appellants assert that the City failed to adequately demonstrate that the approved project is consistent with the applicable shoreline development, coastal hazards, and public access policies of the certified LCP. The specific policy inconsistencies raised in the appeal are discussed in further detail below.

D. ANALYSIS OF SUBSTANTIAL ISSUE

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

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

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

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

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

1. Shoreline Development and Coastal Hazards

The appellants contend that the project, as approved by the City, fails to conform with the following LCP policies and provisions relating to coastal hazards and shoreline development. Specifically, the appellants raise issues with respect to consistency with the Land Use Plan (LUP) policies and Local Implementation Plan (LIP) provisions (cited below) that require new development to avoid impacts to beaches and to be sized, sited and designed to minimize risks from hazards without the need for shoreline protective devices. The appellants further contend that the City improperly approved a building stringline modification that is inconsistent with LIP Section 10.4(G), resulting in development extending farther seaward than permitted, and that the approved six-foot-high privacy wall is inconsistent with LIP Section 3.6(G)(8).

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

New development shall:

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

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

Land Use Plan Policy 4.23 states:

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

Local Implementation Section 3.6(G)(8), in applicable part, states:

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

8. Fences. Fences shall not project seaward of the structure stringline, with the exception of any required safety railing around decks that is a maximum of 42 inches in height, and fencing constructed of transparent material such as plexiglass.

Local Implementation Section 10.4, in applicable part, states:

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

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

affecting the property as well as hazards that can be anticipated over the life of the structure.

...

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

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

...

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

The project approved by the City of Malibu is for the demolition of an existing 2,400 sq. ft. single-family residence and 772 sq. ft. carport, and the construction of a new 5,254 sq. ft. single-family residence with a 742 sq. ft. attached garage and 1,009 sq. ft. undercroft, 9-foot high transparent windbreak, 6-foot high privacy wall along the side property line, deck on a new pile/grade beam foundation system, spa, outdoor kitchen, landscaping, planter walls, hardscape, grading, retaining walls, and replacement of the onsite wastewater treatment system on a 0.40-acre beachfront parcel on Broad Beach in the City of Malibu. The approved project also includes a building stringline modification, a ten-foot-wide public view corridor, and an offer-to-dedicate a lateral beach access easement. The subject site is an infill lot within the existing residential Broad Beach community and is bordered by residentially developed lots to the east and west, Broad Beach to the south, and Broad Beach Road to the north. The property is

vulnerable to coastal hazards and flooding and is part of the Broad Beach Geologic Hazard Abatement District.

Coastal Act Section 30253, which is incorporated as a policy of the LUP, and Local Implementation (LIP) Section 10.4 (H) mandate that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and shall not require the construction of protection devices that would substantially alter natural landforms. LIP Section 10.4 provides that the siting and design of new shoreline development shall take into account anticipated future changes in sea level including an acceleration of the historic rate of sea level rise. Further, LUP Policy 4.23 and LIP Section 10.4 (B) require 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 full project 100 year economic life of the development and if complete avoidance of hazard areas is not feasible, all new development shall be elevated above the base flood elevation and sited as far landward as possible. Lastly, LIP 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 approved project would be vulnerable to coastal hazards over its expected life. The subject property is located directly on Broad Beach and is subject to wave run-up, flooding, erosion, and future sea level rise. Although the City-approved residence is located generally landward of the existing residence, the approved project represents substantial redevelopment of the site and includes a larger residence and associated development extending toward the shoreline. The coastal engineering analysis prepared for the project evaluates future conditions using 8.5 feet of sea level rise and assumes that the existing revetment does not provide protection to the proposed development. Under this scenario, the analysis identifies a wave uprush elevation of approximately 19.72 feet NAVD88 and indicates that all but approximately the most landward 15 feet of the property may ultimately be affected by wave uprush. Furthermore, a wall and pile-supported deck on the seaward side of the residence were approved that would be located within the maximum expected wave uprush limit line that raises concern that the permanent structural elements of the deck could effectively function as shoreline protection as the shoreline retreats and wave action reaches the structure. The siting of these structures fails to minimize the project’s risk related to coastal hazards, as the approved development would be increasingly impacted by wave uprush and increased wave action due to anticipated sea level rise.

The City’s action fails to demonstrate whether the approved development (including all accessory development such as decks, etc.) is sited as far landward as possible and is sited and designed to minimize risks from wave run-up, flooding and beach erosion hazards in consideration of anticipated sea level rise without shoreline protection for the economic life of the development, consistent with the above noted shoreline development provisions of the Malibu LCP (LUP Policy 4.23, and LIP Section 10.4). Further, the City failed to analyze a range of siting and design alternatives that would avoid the need for structures that may function as shoreline protective devices as beach

conditions change and that site development as far landward as feasible. As such, the Commission finds that there is not adequate factual and legal support for the City's position that the proposed project will minimize risks from coastal hazards in compliance with the above-mentioned policies and provisions of the certified LCP regarding shoreline development and coastal hazards.

The appellants also contend that the City did not properly apply the stringline provisions of the certified LCP and as a result, allowed portions of the approved development to extend further seaward than is allowable under the LCP. Specifically, LUP Policy 4.30 and LIP Section 10.4 (G) state that in existing developed areas where new beachfront development is found to be infill, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structure on either side of the subject lot. Similarly, a proposed deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest decks, patios, or accessory structures on either side. In this case, the City approved Stringline Modification Review No. 20-005 to allow the proposed residence to extend approximately 3.5 feet seaward of the otherwise applicable building stringline. Rather than using the nearest adjacent corner of the residence on the upcoast property at 31346 Broad Beach Road, the City-approved stringline was drawn using an alternative, more seaward corner of that residence. As a result, the approved project extends farther seaward than would be permitted if the stringline were drawn using the nearest adjacent residential structure corners, as required by LIP Section 10.4(G). Commission staff raised this concern prior to the City's action and advised that the applicable stringline should be based on the nearest adjacent building corners and should be considered the maximum allowable seaward extent of development.

The City-approved project also includes a pile supported deck on the seaward side of the residence. As discussed above, the deck would be located within the area to be affected by wave uprush and would therefore be increasingly exposed to wave action as sea level rises. LIP Section 10.4(G) separately requires decks and other accessory structures to remain landward of the applicable accessory stringline, while LIP Section 10.4(L) requires accessory structures to be constructed and designed so that they may be removed or relocated if threatened by erosion or wave hazards. Given the coastal hazard constraints of the site, the applicable building and accessory structure stringlines represent only the maximum potential seaward extent of development, and further landward siting may be necessary to satisfy the LCP's requirements that development minimize exposure to coastal hazards and avoid reliance on shoreline protection.

In addition, the City-approved project includes a six-foot-high privacy wall extending seaward of the building stringline. LIP Section 3.6(G)(8) specifically provides that fences on beachfront lots must not extend seaward of the required structure stringline, except for required transparent safety railings around decks not exceeding 42 inches in height. Thus, the approved six-foot-high privacy wall is inconsistent with this beachfront development standard and further increases the amount of permanent private development extending toward the shoreline.

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

The applicant and its agents met several times with Commission staff to discuss the appeal grounds and coordinate alternative project designs that could achieve consistency with the policies and provisions of the LCP. While staff recommends that the grounds of the appeal do raise substantial issue, the applicant agreed to make revisions to the project approved by the City of Malibu. The applicant retained a new architectural firm to modify the project and submitted revised plans to be considered through the Commission's de novo CDP review.

2. Public Access

The appellants assert that the project, as approved by the City, fails to conform with the LCP and Coastal Act policies and provisions relating to the protection and preservation of public access to the coast. Specifically, the appellants contend that the approved pile-supported deck, privacy wall, and other seaward accessory development are located within the area of the required 10-foot-wide public pedestrian pathway inland of the revetment discussed above and would interfere with implementation of future public access improvements.

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 12.7.1 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.

The approved project would place portions of the residence and associated accessory development farther seaward than permitted under the applicable building and accessory structure stringlines. As discussed in the Shoreline Development and Coastal Hazards Section above, the City approved a building stringline modification that allowed the residence to extend approximately 3.5 feet seaward of the otherwise applicable building stringline, and the approved six-foot-high privacy wall also extended seaward of the structure stringline. These components would increase the seaward extent of private development on a narrow beachfront parcel and could reduce the area available for existing and future public access and recreation as the shoreline migrates landward with erosion and sea level rise. The approved wall is also inconsistent with LIP Section 3.6(G)(8), which limits fences associated with beachfront development from projecting seaward of the structure stringline, except for transparent safety railings. These effects would negatively impact public access opportunities, in contradiction of the public access and recreation policies of the certified LCP. As discussed in detail above, the CDP decision did not adequately address siting and design alternatives necessary to ensure the development is located as far landward as feasible to avoid impacts to shoreline development and public access. In order to minimize potential adverse impacts to public access, the City should have analyzed feasible design alternatives that sited the development as landward as possible. Therefore, substantial issue is raised regarding the approved development’s consistency with the above cited public access and recreation policies and provisions of the City’s LCP and the Coastal Act.

3. Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the appealable development’s conformity to the policies contained in the certified LCP and the public access policies of

the Coastal Act. In this case, the appeal cites shoreline development, coastal hazards, and public access policies and provisions of the Malibu LCP and the public access policies of the Coastal Act. The Commission's regulations indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the City's action does not demonstrate that the approved development has been sited and designed to minimize the risks of coastal hazards and protect public access to the beach. Specifically, the City approved a project that includes development seaward of the maximum expected wave uprush limit line, a six-foot-high privacy wall and pile supported deck within the area of the required public access pathway inland of the revetment, and a modified building stringline that raises questions regarding consistency with the applicable shoreline development standards. In addition, the record does not adequately demonstrate that the approved development is sited as far landward as feasible or designed to minimize risks from coastal hazards and avoid future shoreline protection over the economic life of the development. Therefore, the City has not provided an adequate degree of factual and legal support for its decision that the proposed development is consistent with the certified LCP related to shoreline development, coastal hazards, and public access protection policies, as explained in detail above.

The second factor is the extent and scope of the development as approved. As described above, the approved project involves the demolition of an existing 2,400 square foot residence and construction of a two-story, 5,254 sq. ft. residence on a beachfront residential lot. Although this lot is not particularly large and the development type is consistent with the surrounding area, the extent and scope of the approved development has implications for future development projects along the Malibu coastline both currently and into the future, as substantial redevelopment increases the amount of development exposed to shoreline hazards. Although consistent with nearby structures, the proposed home and accessory development is quite large, and the scope of development is relatively significant given its location adjacent to an eroding beach shoreline. Given the sensitive location of this development, the extent of development approved here is significant enough to warrant finding substantial issue.

The third factor is the significance of coastal resources affected by the decision. In this case, the project site is in a beachfront residential community and immediately adjacent to the beach. Development in such a location has the potential to adversely impact shoreline processes, the ability to site development to minimize risks from coastal hazards, and public access, which are all significant coastal resources. Public access, particularly in shorefront areas subject to sea level rise, is a very important coastal resource, and one that supports finding substantial issue.

The fourth factor is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the precedential value of the City's decision for future interpretation of its LCP is significant because there are several beachfront residential communities where substantial redevelopment could raise similar resource issues. As described above, under the certified LCP, beachfront development is required to be sized, sited and designed to minimize risks from hazards. If redevelopment of beachfront property (such as the subject project) is not required to be consistent with these LCP policies, cumulative impacts of residential development along the Malibu coastline could result in an increased risk of hazards and degradation of coastal resources over time. Specifically, the City's approval of a modified building stringline, seaward accessory development, and development within an area required to provide for a future public access path landward of the revetment could influence the manner in which similar redevelopment projects are reviewed in the future. In addition, the City's interpretation of the LCP's requirements regarding landward siting of development, minimization of coastal hazards, and protection of public access may affect future redevelopment proposals on similarly situated beachfront properties. Resolution of this appeal will therefore affect the manner in which future redevelopment of homes on beachfront lots occur in the City. This is an important precedent not just for the City, but also statewide.

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

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

VI. DE NOVO COASTAL DEVELOPMENT PERMIT ANALYSIS

The standard of review for this CDP application is the City of Malibu certified LCP and the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings and previously cited policies above are incorporated herein by reference.

Appeal Background and Coordination

As described above, the City-approved project was appealed by Commissioners Harmon and Brownsey. Following the appeal, the applicant waived the 49-day appeal hearing requirement in order to coordinate with Commission staff to resolve the issues raised by the appeal. The waiver was received on September 13, 2022. With respect to the de novo CDP, the applicant has worked with Commission staff to provide additional information not included in the City's record in a manner that addresses the appellants' contentions and to revise the proposed project to address the appeal contentions and the associated LCP consistency concerns.

During the de novo review process, the applicant submitted revised project plans and additional information addressing the Commission staff's concerns regarding the seaward extent of the development, the applicable building and deck stringlines, the location and design of the privacy fence, and the size and configuration of the seaward deck and terrace. The revised plans relocate and reduce portions of the seaward accessory development, revise the building and deck stringlines so that the proposed development does not extend seaward of the applicable stringlines, and revise the six-foot-high privacy fence so that it begins at the building stringline. The applicant also submitted additional information regarding the onsite wastewater treatment system and coastal hazard considerations. Other than these changes, described in more detail below, the proposed residence considered in this de novo CDP review is substantially the same development as originally approved by the Malibu Planning Commission.

Shoreline Development and Coastal Hazards

Coastal Act Section 30250(a), 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:

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

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

Coastal Act Section 30270, as incorporated into the certified LCP, states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

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.

Local Implementation Section 3.6(G)(8), inapplicable part, states:

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

8. Fences. Fences, shall not project seaward of the structure stringline, with the exception of any required safety railing around decks that is a maximum of 42 inches in height, and fencing constructed of transparent material such as plexiglass.

Local Implementation Section 10.4, in applicable part, states:

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

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

...

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

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

...

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

The certified City of Malibu LCP contains policies and provisions, as detailed above, including in LUP Chapter 4, LIP Section 3.6 and 10.4, and Coastal Act Section 30253, as incorporated in the LCP that regulates new shoreline development. These policies and provisions mandate that new development shall minimize risks to life and property in area of high geologic, flood, and fire hazard and shall not require the construction of protective devices that would substantially alter natural landforms. For beachfront development such as the subject project, these risks include those from rising sea levels. When coastal hazards cannot be avoided, new development needs to include provisions to ensure that hazard risks are minimized for the life of the development without shoreline protection, including through future modification, relocation, or removal when they become threatened by natural hazards, including sea level rise. Shoreline protective devices 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 and the system is located as far landward as feasible.

The project is located on the beach on the ocean side of Pacific Coast Highway (PCH) on Broad Beach Road in the western portion of the City of Malibu. The project site is vulnerable to coastal hazards and flooding and is a part of the Broad Beach Geologic Hazard Abatement District (BBGHAD). The Malibu coastline area, including the subject site, is susceptible to flooding and/or wave damage from storm waves, storm surges, and high tides. The proposed project involves the demolition of the existing residence and construction of a new single family residence and associated development, and therefore constitutes redevelopment of the site. As such, the proposed new development must conform to the applicable coastal hazard and shoreline development policies of the certified LCP.

Sea Level Rise

Sea level rise (SLR) will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 1.1°C, and global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent

decades, with the global rate of SLR tripling since 1971 (IPCC, 2021). There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. While planning coastal development under this uncertainty presents challenges, it is widely documented that underestimating SLR could result in costly damages and adverse outcomes to coastal resources. Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that SLR will change coastal landscapes and hazard conditions. Not only will siting and design decisions regarding proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but such decisions will also affect the way that coastal resources protected under the Coastal Act respond to changing sea levels over time.

With SLR, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach space and, in most locations on the open coast, a change in the location of public trust tidelands subject to the public trust doctrine. SLR will also cause coastal groundwater tables to rise in some locations, potentially emerging from the ground to cause flooding, as well as impacts such as damage to development and infrastructure, saltwater intrusion into aquifers, and changing liquefaction risks. Importantly, rising groundwater 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 SLR, it may not, depending on the characteristics of the site, protect against groundwater rise impacts. Coastal resources such as beaches and wetlands could also disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline. Such losses will impact public access, recreation, public views, habitats and other coastal resources – all of which are protected under the Malibu LCP and the Chapter 3 policies of the Coastal Act that are incorporated into the LCP. Further, loss of these public resources could have significant implications from an environmental justice standpoint, since coastal open spaces and habitats provide opportunities for all to visit and enjoy the California coast, and their loss would disproportionately burden those who cannot afford to live near the coast. Section 30270 of the Coastal Act requires the Commission to take into account the effects of SLR in coastal resource planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of SLR; and Section 30604(h) empowers the Commission to take environmental justice into consideration when acting on coastal development permits. Sections 30253 and 30250 provide standards for safety of new development and require new development to occur in areas able to accommodate it, respectively, while Section 30235 places limits around approvable protective devices.

Therefore, to be consistent with the LCP, proposed development must be sited, designed, and conditioned in such a way that minimizes SLR hazards and considers the impact of the development upon coastal resources over its full anticipated life, avoiding

and mitigating those impacts as appropriate. Currently, the best available science on SLR projections in California is provided in the State of California Sea Level Rise Guidance (OPC 2024). The state guidance adopts the same framework and approach used by the Federal government and provides five sea level rise scenarios that have been regionalized for California-specific use. The state guidance also includes a decision framework to guide selection of appropriate sea level scenarios, primarily recommending evaluation of the intermediate, intermediate high, and/or high scenarios depending on the context of the planning effort/project. This information is reflected in the Coastal Commission's Sea Level Rise Policy Guidance (CCC 2024).

Shoreline Armoring

Coastal Act Section 30235, as incorporated as a policy of the LUP, 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 requires 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 moves 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. 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, the 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 can allow such high wave energy on the shoreline that material may be lost far offshore where it is 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 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 would 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 subject property is located directly adjacent to the shoreline and is therefore subject to existing and future coastal hazards. The City's approval allowed portions of the residence and associated accessory development to extend further seaward than the LCP-required building and accessory structure stringlines. During the Commission's de novo review, the applicant revised the project to reduce the seaward extent of development to conform the project to the LCP's shoreline siting requirements.

As approved by the City, portions of the proposed residence and associated development were located seaward of the applicable building stringline. Specifically, the City approved Stringline Modification Review No. 20-005 to allow the residence to extend approximately 3.5 feet seaward of the building stringline. The approved stringline was drawn using an alternative corner of the residence on the adjacent upcoast property at 31346 Broad Beach Road rather than the nearest adjacent corner as required by LIP Section 10.4(G). In addition, the City-approved project included a six-foot high privacy wall extending seaward of the building stringline. These features resulted in development extending farther seaward than would be permitted using the nearest adjacent building corners and raised concerns regarding whether the project was sited as far landward as feasible and designed to minimize exposure to coastal hazards.

Following the filing of the appeal, the applicant revised the proposed project to address these concerns. The revised plans eliminate the previously approved building stringline modification and revise the siting and configuration of the residence such that the proposed residence does not extend seaward of the building stringline drawn between

the nearest adjacent corners of the enclosed residential structures on the adjoining properties. The applicant's architect revised the project plans (**Exhibit 6**) to depict the proposed deck landward of the applicable accessory structure stringline drawn between the nearest adjacent deck corners. Thus, the revised residence and deck do not extend farther seaward than the applicable building and accessory structure stringlines. The revised plans also modify the six-foot-high privacy wall along the side property line. As approved by the City, the privacy wall extended seaward of the building stringline. The revised plans relocate the wall so that it begins at the building stringline and does not extend farther seaward. The revised plans also depict the privacy wall as a six-foot-high wood wall rather than the previously approved solid concrete wall.

As mentioned above, the City-approved plans extend approximately 3.5 feet seaward of the building stringline. Due to the Commission's concerns, the revised plans also modify the configuration of development on the site in response to the concerns regarding the seaward extent of the development. As discussed above, LIP Section 10.4 requires new beachfront development to be sized, sited, and designed to minimize risks from wave run up, flooding, beach erosion, and anticipated sea level rise without reliance on shoreline protection. The coastal engineering analysis prepared for the project evaluates future coastal hazards using 8.5 feet of sea level rise and assumes that the existing shoreline revetment is not present to protect the proposed development. Under this scenario, the analysis identifies wave uprush elevation of approximately 19.72 feet NAVD88 and indicates that all but approximately the most landward 15 feet of the property may ultimately be affected by wave uprush. The proposed residence has therefore been designed on piles and elevated such that wave uprush may pass beneath the structure under extreme conditions.

In addition, 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 adaptation if the rate of erosion and wave uprush 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. New development which may require a protective device in the future cannot be allowed due to the adverse impact such devices have upon, among other things, public access, visual resources, and shoreline processes (though the Commission notes that the existing revetment on the project site was approved as part of a community-wide shoreline protective device that protects many older residences that were not designed or built to current standards, including that they are not on pile/caisson supported foundations that can withstand wave uprush). To minimize the project's impacts on shoreline processes and ensure that the new development is consistent with the LCP, development must be sited as far landward as feasible and designed to avoid reliance on shoreline protection.

Furthermore, the shoreline is a dynamic environment and, although the proposed residence has been designed and conditioned to minimize risks associated with wave action, flooding, erosion, and anticipated sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on the site will change

and that the residence could be subject to greater wave action and tidal events in the future. As discussed above, the coastal engineering analysis indicates that under evaluated future sea level rise scenario, wave uprush may extend across most of the subject property. Thus, notwithstanding the revised siting of the development and the pile-supported design of the residence, the proposed development will be subject to coastal hazards over its life.

Because future shoreline conditions cannot be predicted with certainty, **Special Condition One (1)** requires that no future shoreline protective device shall be constructed to protect the proposed residence. This condition ensures that future changes in shoreline conditions do not result in shoreline armoring that would adversely affect shoreline processes, beach area, and public access.

In addition, because the subject property is located in an area subject to wave uprush, flooding, erosion, and sea level rise, the applicant must acknowledge and assume the risks associated with coastal hazards and to waive liability against the Commission for damages resulting from such hazards, as required by **Special Condition Two (2)**. In addition, the proposed development has been evaluated through coastal engineering, geologic, geotechnical, and soils investigations that contain recommendations regarding the design and construction of the proposed development. to ensure that the development is constructed in accordance with the recommendations relied upon in the Commission's hazard analysis, **Special Condition Three (3)** requires the applicant to comply with the recommendations contained in the submitted coastal engineering, geology, geotechnical, and/or soils report identified in Appendix A. Future construction on the property has the potential to negatively impact the coastal resources of the area, and in order to ensure that no additions or improvements are made to the property without due consideration of the hazard exposure or seaward encroachment, the Commission finds it necessary to require a future development restriction, which requires the applicant to obtain an amended or new coastal 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, as conditioned, the proposed development has been designed and sited to minimize risks from coastal hazards, will not require the construction of a future shoreline protective device, and will not adversely affect shoreline processes or coastal resources. The Commission further finds that Special Conditions One (1) through Four (4) are necessary to ensure that the proposed development is consistent with the applicable coastal hazard policies of the certified City of Malibu LCP.

Public Access

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

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and

recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas for overuse.

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

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

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

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

(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) Adequate access exists nearby, or,

(3) Agricultural would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private *association agrees to accept responsibility for maintenance and liability of the accessway.*

...

Land Use Plan Policy 2.5 states:

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

City of Malibu Local Implementation Plan Section 12.6.1 (Lateral Public Access) states, in part:

A condition to require an offer to dedicate an easement or a grant of easement for lateral access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 12.4 of the Malibu LIP shall provide the public with the permanent right of lateral public access and passive recreational use along the shoreline (or public recreational area, bikeway, or bluff- top area, as applicable); provided that in some cases controls on the time, place and manner of uses, such as limiting access to pass and repass or restricting hours of use, may be justified by site characteristics including sensitive habitat values or fragile topographic features or by the need to protect the privacy of residential development.

City of Malibu Local Implementation Plan Section 12.6.7 states, in part:

An access dedication (offer to dedicate or grant of easement) required pursuant to Section 12.4 of the Malibu LIP shall be described, in the condition of approval of the permit or other authorization for development in a manner that provides the public, the property owner, and the accepting agency with the maximum amount of certainty as to the location of the accessway. As part of the condition of approval, easements shall be described as follows: (1) for lateral access: along the entire width of the property from the mean high tide line landward to a point fixed at the most seaward extent of development (as applicable): the toe of the bluff, the intersection of sand with toe of revetment, the vertical face of seawall, or other appropriate boundary such as dripline of deck. On beachfront property containing dune ESHA the required easement for lateral public access shall be located along the entire width of the property from the mean high tide line landward to the ambulatory seaward most limit of dune vegetation; (2) for blufftop access or trail access: extending inland from the bluff edge or along the alignment of a recreational trail; (3) for vertical access: extending from the road to the mean high tide line (or bluff edge)

City of Malibu 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. ...

City of Malibu Local Implementation Plan Section 12.9.D states:

No signs shall be posted on a beachfront or on public beach unless authorized by a Coastal Development Permit. Signs shall not restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, or deed restricted areas that grant public access). Signs on beachfront properties which purport to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

Because the project is located between the first public road and the sea, the standard of review for the Commission's de novo review of this CDP application includes the policies and provisions of the City of Malibu certified LCP as well as the public access and recreation policies of the Coastal Act. Coastal Act Section 30210 and Coastal Act Section 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects except in very limited circumstances, such as where it would be inconsistent with public safety, military security, or protection of sensitive resources. Section 30221 of the Coastal Act protects oceanfront land for recreational uses. The policies that limit use of shoreline protective devices (cited in the Shoreline Development and Coastal Hazards subsection of Section E, above) also address public access because such protective devices may arrest the landward migration of the shoreline, and the corresponding migration of the publicly accessible intertidal zone, 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 at recreational sites will continue to significantly increase over the coming years.

The project site is located on the beach on Broad Beach Road and is adjacent to a vertical public accessway. Lateral public access along the beach directly behind the existing residential developments along Broad Beach Road also exists at certain tide conditions. As part of the proposed project description, the applicant proposed to record an offer-to-dedicate an easement for lateral public access and passive recreational use along the shoreline located along the entire width of the property from the ambulatory mean high tide line landward to the dripline of the structure, consistent with Malibu LUP Policy 2.64. As discussed in the Shoreline Development and Coastal Hazards section above, the applicant has revised the project following the Commission's determination of substantial issue to reduce the seaward extent of development and conform the proposed residence and deck to the applicable building and accessory structure stringlines. These revisions would reduce encroachment of private development toward the shoreline and help preserve the area available for existing and future public access and recreation. In order to implement the applicant's proposal and ensure protection of public access over the life of the development, **Special Condition Eight (8)** requires the applicant to execute and record an irrevocable offer to dedicate a lateral public access and passive recreational use along the shoreline consistent with Malibu LUP Policy 2.71 and LIP Sections 12.6.1 and 12.6.7.

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, thereby adversely affecting public access along the beach. As discussed in the Shoreline Development and Coastal Hazards analysis above, shoreline armoring or other protective devices can directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line, particularly during high tides, storm events, and as sea level rises.

In past permit actions, the Commission has found that adverse impacts to shoreline processes from shoreline protective devices are greater the more frequently that they are subject to wave action. As such, the Malibu LCP requires (and the Commission has required in past permit actions) that all new development on a beach be located as far landward as possible in order to reduce adverse impacts to the sand supply and public access/recreation resulting from the development. In this case, as discussed above, the applicant has revised the proposed development to reduce its seaward encroachment and bring the residence and associated accessory development into conformance with the applicable building and accessory stringlines.

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..

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. In order to avoid any impacts to public access from the future placement of such signs, consistent with Malibu LIP Section 12.9.D, **Special Condition Ten (10)** provides that no signs shall be posted on the property which restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, or deed restricted areas that grant public access). Additionally, any signs on the property that purport to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

Therefore, the Commission finds that the proposed project, with revisions proposed for de novo review and as conditioned, is consistent with the public access and recreation policies of the certified City of Malibu LCP and the Coastal Act.

Visual Resources

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

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

City of Malibu 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.

City of Malibu Land Use Plan Policy 6.12 states, in part:

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

- a. Ensuring visual compatibility with the character of surrounding areas...

City of Malibu Land Use Plan 6.18 states, in 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.

City of Malibu 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 sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.

Coastal Act Section 30251, which is incorporated into the certified Malibu LCP, requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas and to be visually compatible with the character of the surrounding areas. The Malibu LCP further requires new development to minimize impacts to visual resources through appropriate siting and design and includes requirements intended to protect public views of the ocean.

The Commission notes that the visual quality of the Broad Beach area in relation to public views from Broad Beach Road has been significantly degraded from past residential development. Broad Beach Road 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 Broad Beach Road. 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 Broad Beach Road and the ocean. Specifically, the 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 Broad Beach Road. 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 Broad Beach Road 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. As approved by the City, the project included a ten-foot-wide public view corridor, divided into five-foot wide corridors along each side of the property, consistent with LUP Policy 6.18.

In addition, the proposed project includes a six-foot-high privacy fence along the side property line. Malibu LIP Section 3.6(G)(8) provides that fences associated with beachfront development shall not project seaward of the structure stringline, except for transparent safety railings around decks not exceeding 42 inches in height. Because the subject property is adjacent to a public beach accessway and Broad Beach, fences and walls have the potential to affect the visual character of the surrounding area. The revised plans relocate the six-foot-high wooden privacy fence beginning at the building stringline rather than extending seaward of the structure stringline, consistent with the applicable visual resource and beachfront development policies of the Malibu LCP.

Although the proposed project includes a view corridor consistent with the applicable LCP requirements, protection of that corridor must be maintained for the life of the development. **Special Condition Twelve (12)** requires the applicant to maintain a view corridor a minimum of nine feet, six inches wide across the property, which may be divided into two contiguous view corridors of no less than four feet, nine inches on each side of the approved structure.

The visual character of the proposed residence is also affected by the colors, exterior materials, and glazing used on the structure. To ensure that the development remains

visually compatible with the surrounding coastal setting and does not create excessive glare or contrast when viewed from public viewing areas, **Special Condition Thirteen (13)** requires the applicant to submit a final color palette and material specification for all exterior surfaces for review and approval by the Executive Director.

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 Broad Beach Road or the beach and ocean area, as specified in **Special Condition Six (6)**.

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 LCP.

Water Quality

The Commission recognizes that new development in Malibu 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 3.126 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 3.141 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.

The project includes construction of a pile-supported foundation and accessory improvements; replacement of the onsite wastewater treatment system, retaining walls, and approximately 986 cubic yards of grading. 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 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.

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 appropriate measures to prevent erosion, sedimentation, and pollution of surface and ocean waters associated with construction and grading activities. In this case, the proposed project involves the demolition of the existing residence and associated development and construction of a new residence, pile-supported foundation and accessory improvements, replacement of the onsite wastewater treatment system, retaining walls, and approximately 986 cubic yards of grading (266 cu. yds. cut, 720 cu. yds. fill). To ensure that the proposed development maintains the biological productivity and quality of coastal waters, **Special Condition Five (5)** requires implementation of construction best management practices, including measures to prevent construction materials, debris, sediment, and pollutants from entering the sandy beach, intertidal zone, or coastal waters. In addition, **Special Condition Nine (9)** requires preparation and implementation of erosion control, drainage, and stormwater management plans for the construction and post-construction phases of development. The required plans include measures to minimize erosion and sedimentation, control runoff, provide for onsite infiltration where feasible, and ensure that drainage is conveyed in a non-erosive manner.

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 Seven (7)** 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 Seven (7)** 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.

Finally, to ensure that the terms and conditions of this permit remain effective and provide notice to future owners of the property, **Special Condition Eleven (11)** requires the applicant to execute and record a deed restriction identifying the development authorized by this permit and imposing all Standard and Special Conditions of the permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction will ensure that the requirements necessary to maintain the project's consistency with the certified Malibu LCP and applicable Coastal Act policies remain applicable to the property and any successors in interest.

California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires 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 15303 – New Construction or Conversion of Small Structures, 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 through 13 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 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 A

Substantive File Documents

Certified City of Malibu Local Coastal Plan

Malibu Planning Commission Agenda Report for CDP No. 19-007, Variance No. 20-010, Minor Modification No. 20-009, Stringline Modification Review No. 20-005, Demolition Permit No. 19-010, and Offer-to-Dedicate No. 21-001 dated July 18, 2022;

July 18, 2022 City of Malibu Planning Commission.

Coastal Development Permit No. 4-15-0390 (Broad Beach Geologic Hazard Abatement District)

David C. Weiss Structural Engineer & Associates, Inc., *Coastal Engineering Report*, dated January 19, 2019; *Coastal Engineering Report*, dated September 26, 2020; and *Response to City of Malibu Coastal Engineering Review*, dated April 24, 2021;

Land Phases, Inc., *Report of Update Engineering Geologic Study*, dated November 21, 2018; Calwest Geotechnical, Inc., *Update Geotechnical Engineering Report*, dated November 30, 2018