

RESOLUTION NO. 20-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, DENYING APPEAL NO. 19-007 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 16-038 FOR THE CONSTRUCTION OF A NEW 2,963 SQUARE FOOT, TWO-STORY SINGLE-FAMILY RESIDENCE WITH A 434 SQUARE FOOT ATTACHED TWO-CAR GARAGE, SPA AND ASSOCIATED EQUIPMENT, DECKS, PILE-SUPPORTED RETAINING WALL, LANDSCAPING, HARDSCAPING, GRADING, AND CONSTRUCTION OF A NEW ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, INCLUDING VARIANCE NO. 16-017 FOR CONSTRUCTION ON SLOPES STEEPER THAN 1.5 TO 1 AND VARIANCE NO. 18-045 FOR HEIGHT OF A RETAINING WALL IN EXCESS OF SIX FEET FOR UP TO NINE FEET LOCATED IN THE SINGLE-FAMILY MEDIUM ZONING DISTRICT WITHIN THE LA COSTA OVERLAY DISTRICT AT 21490 PASEO PORTOLA STREET (PERRIN)

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

SECTION 1. Recitals.

A. On June 21, 2016, an application for Coastal Development Permit (CDP) No. 16-038 was submitted to the Planning Department by Jose Fulginiti on behalf of property owner, Richard K. Perrin. The application was routed to the City Biologist, City Environmental Health Administrator, City Public Works Department, City geotechnical staff, Los Angeles County Waterworks District No. 29 (WD29), and the Los Angeles County Fire Department (LACFD) for review.

B. On July 21, 2017, Planning Department staff conducted a site visit to document site conditions and surrounding area.

C. On June 8, 2018, a Notice of Coastal Development Permit Application was posted on the subject property.

D. On January 15, 2019, the CDP application was deemed complete for processing.

E. On February 5, 2019, an updated Notice of Coastal Development Permit Application was re-posted on the subject property.

F. On February 19, 2019, Planning Department staff conducted a site visit to document story pole installation, site conditions, and surrounding area.

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

H. On April 1, 2019, the Planning Commission held a public hearing on the subject item and continued the item to a date uncertain to permit the applicant additional time to revise the plans to avoid a variance to exceed the required 40-foot lateral project with portions of the residence over 18 feet in height.

I. On July 12, 2019, staff conducted a story pole inspection after story poles reflecting the revised project plans were erected.

J. On July 25, 2019, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

K. On August 19, 2019, the Planning Commission continued the item to the September 3, 2019 Planning Commission meeting.

L. On September 3, 2019, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record. The Commission adopted Planning Commission Resolution No. 19-20 to approve the project, subject to conditions.

M. On September 24, 2019, Mr. James E. Moore, Mrs. Tracy E. Moore and Ms. Rody Castroll, the appellants, filed an appeal to Planning Commission's decision.

N. On May 14, 2020, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a radius of 500 feet from the subject property and all interested parties.

O. On June 8, 2020, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

## SECTION 2. Appeal of Action.

The appeal filed by the appellants contends that the findings or conditions are not supported by the evidence, or decision is not supported by the findings, there was a lack of fair or impartial hearing and the decision was contrary to law. In the associated Council agenda report, Planning Department staff analyzed and addressed appellants' contentions.

## SECTION 3. Findings for Denying the Appeal.

Based on evidence in the record and in the Council agenda report for the subject project, the City Council hereby makes the following findings of fact denying the appeal and finds that substantial evidence in the record supports the required findings for approval of the project, and the findings support the decision. In addition, the analysis, findings of fact, and conclusions set forth by staff in the agenda report and Planning Commission staff report, as well as the testimony and materials considered by the Planning Commission and City Council are incorporated herein as though fully set forth.

In regard to the specific grounds for appeal, the appellants contend that the findings or conditions are not supported by the evidence, the Planning Commission decision was not supported by the findings, there was a lack of fair or impartial hearing and the decision was contrary to law. The Council hereby adopts staff's analysis and conclusions from the staff report regarding each of the asserted grounds for appeal and the reasons the appeal is denied. In summary:

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- (1) The appellants contend the applicant should have been required to indemnify neighboring property owners does not provide a ground for denial of the project, and would not be appropriate for the City to impose. In addition, evidence in the record shows that with the implementation of the geotechnical engineer's recommendations the proposed project will not increase instability of the site or decrease the site's structural integrity.
  - (2) The appellants contend that the two variances are necessary due to the size of the proposed residence and a smaller residence would eliminate the need for variances. Evidence in the record demonstrates that the variances are related to the siting and design of the septic system's micro-dosed subsurface drip field to achieve the minimum required factors of safety for slope stability, which are not related to the size of the proposed residence.
  - (3) The appellants contend that the proposed development expands near the westerly ravine. The proposed footprint expands toward the west compared to the original residence destroyed by fire. However, evidence in the record demonstrates that the proposed footprint is located within slopes flatter than 1.5 to 1, which is consistent with the applicable La Costa Overlay District standards.
  - (4) The appellants contend that the proposed project does not comply with the Los Angeles County Fire Department (LACFD) five-foot wide walkway requirement. The applicant revised the walkway along the west to place the steps on grade thereby eliminating the need for a retaining wall. The applicant also provided a site plan showing the five-foot wide access around the residence in compliance with the LACFD. The applicant has also provided an LACFD Review Sheet approved by the LACFD.
  - (5) The appellants contend that the drip field does not comply with the standard requirement for subsurface drip dispersal in areas with slopes between 30 and 45 percent. The proposed onsite wastewater treatment system is an alternative system, which permits deviations from a standard system. Alternative systems are used on parcels where site and soil conditions will not support a standard system and are characterized as having increased (i.e., more stringent) design and performance criteria. Evidence in the record demonstrates the proposed drip field meets the standards for an alternative system.
  - (6) The appellants contend that the portion over six feet in height of the south-facing retaining wall results in an adverse visual impact from PCH. The segment of the retaining wall in excess of six feet in height is located behind an existing mature tree which helps visually obstruct this portion of the wall. Even though the retaining wall will be visible from other angles along PCH and the existing tree may be removed or trimmed in the future, the wall is compatible with the surrounding built environment and a condition of approval was added by the Planning Commission to plant and maintain a vertical living wall or other similar landscaping along the south face of the retaining wall to help visually screen the wall from PCH.
  - (7) The appellants contend that the depth of pilings supporting the retaining wall was not determined in advance and pilings that are too long may fail. City geotechnical staff, the City's experts, and project geotechnical engineers are satisfied that the recommended depth of proposed friction piles will meet all requirements and no additional conditions are required.
  - (8) The appellants contend that the after-the-fact approved grading was not restored to pre-existing condition. Evidence in the record demonstrates the slope was restored to match pre-existing conditions. The restored grading is located entirely within the proposed development and drip area. If the proposed project is approved, the restored area will be regraded and recompacted to meet the specifications of the project geotechnical engineer.

(9) The appellants contend that the onsite posting sign was outdated. Evidence in the record demonstrates the posting sign was proper and the neighbors were lawfully notified of the project and hearings.

(10) The appellants contend that the proposed project is an unfair burden on surrounding properties due to the site's geotechnical conditions. The project geotechnical engineer determined that the project, as designed and with the incorporation of the geotechnical recommendations, will not adversely affect neighboring properties. The underlying ancient landslide encompasses a larger area than the subject property and City LCP standards as well as building code standards require that projects be designed to ensure no adverse impacts to surrounding properties occur from the development. The project has been designed and conditioned in accordance with these requirements. In fact, the substantial stabilizing piles and engineering to be installed on the site will likely improve the stability of the neighborhood rather than negatively impact it.

(11) The appellants contend that there was a lack of a fair or impartial hearing based on conversations with a member of the Planning Commission. Evidence in the record demonstrates the appellants have not provided substantial evidence that would show a lack of a fair or impartial hearing.

In summary, potential issues related to construction are resolved civilly by the affected parties and the City is not responsible or liable for enforcing private property damages. As discussed in the City Council agenda report, a variance for construction on steep slopes cannot be avoided and a smaller house does not necessarily mean a shorter retaining wall. Furthermore, the drip field is designed to have a reduced setback to the retaining wall and the house is designed to comply with all applicable development standards and is similar in size to many other homes on the same street. The house is sited outside of slopes equal to or steeper than 1.5 to 1 and the plans have been revised to remove a retaining wall along the westerly property line and instead placed the Fire Department-compliant walkway steps on grade.

The proposed septic system is an alternative system, which permits deviations from a standard system when the applicant demonstrates to the City Environmental Health Administrator that the system can produce continuous and long-range result based on extensive field and test data. The increase in the steepness of slope for the proposed drip field area was acceptable to the project geotechnical engineer and approved by City staff as its micro-dosing capability minimizes the amount of effluent into a landslide area. The proposed retaining wall has been conditioned to be landscaped and a two-tier retaining wall is not expected to be a significant visual improvement over the proposed design. The project geotechnical engineer recommends that the depth of the friction piles to reach a minimum of 10 feet into the sedimentary bedrock, or deeper if specified by the project civil/structure engineer. As recommended, the project geotechnical engineer determined that the project will not adversely affect neighboring properties.

The after-the-fact approved grading has been resolved with restorative grading inspected and signed off by City of Malibu Building inspection staff. Soil compaction will be addressed as the area will be recompacted to accommodate the drip field area above it.

The posting sign was updated and replaced prior to the final Planning Commission meeting and the neighbors were properly notified as a public hearing notice was mailed to all property owners and occupants within 500 feet of the subject parcel. The underlying ancient landslide encompasses a larger area than the subject property and City LCP standards as well as building code standards require that projects be designed to ensure no adverse impacts to surrounding properties occur from

the development. The project has been designed and conditioned in accordance with these requirements. The Planning Commission hearing was properly noticed and the appellants did not provide any substantial evidence demonstrating a bias or unfair hearing.

In conclusion, the appellants have not provided evidence that the findings or conditions are not supported by the evidence, or decision is not supported by the findings, there was a lack of fair or impartial hearing and the decision was contrary to law. As discussed in this resolution, the Planning Commission resolution, the agenda reports and the record, the decision is consistent with the Malibu Municipal Code (MMC) and LCP standards and is not contrary to law. Further, evidence in the record supports the findings required for the project, as discussed below.

#### SECTION 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed project. The City Council found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to Sections 15303(a) and (e) - New Construction. The City Council has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

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

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the City Council adopts the analysis in the agenda reports, incorporated herein, the findings of fact below, and approves CDP No. 16-038 to construct a new 2,963 square foot, two-story single-family residence, with a 434 square foot attached two-car garage, spa and associated equipment, decks, pile-supported retaining wall, landscaping, hardscaping, grading, and construction of a new alternative onsite wastewater treatment system (AOWTS), including Variance (VAR) No. 16-017 for construction on slopes steeper than 1.5 to 1 and VAR No. 18-045 for height of a retaining wall in excess of six feet for up to nine feet located within the Single-Family Medium Density (SFM) zoning district within the La Costa Overlay District at 21490 Paseo Portola Street.

The project is consistent with the LCP zoning, grading, cultural resources, water quality, and wastewater treatment system standards requirements. The project, as conditioned, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

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

1. The project is located in the SFM residential zoning district within the La Costa Overlay District, which is an area designated for residential uses. The project has been reviewed and approved for conformance with the LCP by the Planning Department, City Biologist, City Environmental Health Administrator, City Public Works Department, City geotechnical staff, WD29, and the LACFD. As discussed herein, based on submitted reports, project plans, visual analysis, and detailed site investigation, the proposed project with the inclusion of the variances, as conditioned, conforms to the LCP and MMC in that it meets all applicable residential development standards.

2. Evidence in the record demonstrates that, as conditioned, the project will not result in adverse environmental impacts. There is no evidence that an alternative project would substantially lessen any potential significant adverse impacts of the development on the environment. Therefore, the project will not result in potentially significant adverse impacts on the physical environment and is the least environmentally damage alternative.

**B. Variance Findings for Construction on Steep Slopes (LIP Section 13.26)**

VAR No. 16-017 from the development standards contained in LIP Section 3.4.1(B)(6) will allow for construction of pile-supported retaining wall and Fire Department-compliant walkway steps on slopes steeper than 1.5 to 1.

1. Exceptional characteristics exist on the subject property that limit the size and location of the proposed development on the subject property. The site contains steep descending slopes and a prehistoric landslide has been mapped on the site. The proposed construction on steep slopes includes only those improvements associated with the slope stability, including the pile-supported retaining wall designed by the consulting geotechnical engineer to protect against erosion and slope failure, and steps to comply with Fire Department requirements. Development on steep slopes are unavoidable in that the subject site and nearby residence are characterized by steep slopes and adjacent properties exhibit development on slopes steeper than 1.5 to 1. Therefore, strict application of the code would deprive the property owner of the ability to develop the property in a manner similar to neighboring properties.

2. The proposed variance will allow for the installation of a pile-supported retaining wall and on-grade steps on slopes steeper than 1.5 to 1. The granting of the proposed variance will substantially improve the safety and welfare by protecting the subject property and neighboring properties from potential slope failure and Fire Department access. The project, as designed and conditioned, will not be detrimental to the public interest safety, health or welfare, nor detrimental or injurious to the property.

3. The proposed project consists of a single-family residence and associated development similar to development on neighboring properties. Approval of the variance will grant relief from a technical development standard, which if strictly applied, would limit single-family development on the subject property and be detrimental to the safety of those on the subject property and surrounding properties. Therefore, the granting of the variance will not constitute a special privilege to the applicant or the property owner.

4. As previously stated, granting the requested variance will allow the necessary improvements to stabilize the hillside on the subject site and prevent slope failure, which is necessary to protect the proposed residence and surrounding residences. The variance will also permit on-grade steps along the westerly side yard to comply with Fire Department access around the proposed residence. Granting the variance would therefore not be contrary to or in conflict with the general purposes and intent of LIP Chapter 13, nor the goals, objectives, and policies of the LCP.

5. The variance request is for development on slopes steeper than 1.5 to 1 to protect against slope failure and to provide a Fire Department-compliant walkway for the construction of a new residence in the SFM zoning district. Further, the proposed single-family residence is consistent with the property's residential zoning designation. The variance request does not authorize a use or activity that is not expressly authorized by the zoning regulations for the subject property.

6. The subject site is physically suitable for the proposed variance in that the proposed project was specifically designed to prevent slope failure and to provide the proper safety measures to stabilize the hillside as recommended by the project's consultant geotechnical engineer. The proposed project has been reviewed and approved by the City geotechnical staff and City Public Works Department as being physically suitable for the proposed variance because a home could not be developed on the site without the pile-supported retaining wall, which improve slope stability.

7. The variance complies with all requirements of state and local laws.

**C. Variance for Height of Retaining Wall in Excess of Six Feet (LIP Section LIP Section 13.26)**

VAR No. 18-045 from the development standards contained in LIP Section 3.4.1(B)(9) will allow for construction of a retaining wall taller than six feet in height.

1. The subject parcel has exceptional physical constraints such as steep slopes and subsurface landslide debris that limit the type of septic system that can be used and placement of development. Without the proposed variance for a nine-foot in height retaining wall, the septic system's drip field for the proposed single-family residence would not be feasible. Therefore, the strict application of the zoning ordinance would deprive the property of a single-family residence, which is a privilege enjoyed by other properties in the vicinity and under the identical zoning classification.

2. The proposed variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zones. The proposed retaining wall will help achieve the minimum required factors of safety for slope stability. Therefore, it is expected to improve site's stability and would be less detrimental or injurious to the property and proposed improvements.

3. The proposed variance will not constitute a special privilege to the applicant or property owner in that the proposed retaining wall is necessary to protect the septic system's micro-dosed subsurface drip field for the proposed single-family residence.

4. The primary goal of the retaining wall height is to provide an area large enough for a micro-dosed subsurface drip field necessary with a maximum slope of 2 to 1 for the proposed residence. The proposed variance will not be contrary to or in conflict with the LCP and no visual impacts are anticipated as a result of the proposed nine-foot in height retaining wall. Instead, the proposed wall will minimize impacts on slopes stability consistent with LCP policies.

5. The variance complies with all requirements of state and local laws.

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

1. Based on an analysis of the project's visual impacts, it was determined that the proposed development is not expected to have significant adverse scenic or visual impacts. While visible from PCH, the proposed structure will be partially obscured because the structure will be notched into the hillside, is surrounded by existing two-story residences, and screened by mature landscaping. Furthermore, the proposed development is similar to past and current development along this stretch of Pacific Coast Highway and, as designed, will not encroach into blue water

views. Therefore, the project as conditioned, will not have significant adverse scenic or visual impacts due to project design, location or other reasons.

2. The project has been designed and conditioned to not have significant adverse scenic or visual impacts. The project has been conditioned to include limitations on lighting and colors of the materials used to prevent any visual impacts to scenic areas and primary views.

3. As previously discussed in Section A, the project is the least environmentally damaging feasible alternative. The proposed new single-family residence is sited on the property to limit landform alteration and potential impacts to steep slopes within the southern portion of the property.

4. The project, as designed and conditioned, is not expected to adversely affect scenic and visual resources and no feasible alternatives would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

5. The proposed project will have less than significant visual impacts to public views from Pacific Coast Highway and will not impact sensitive resources. The proposed development is sited to eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies.

#### **E. Hazards (LIP Chapter 9)**

1. Geotechnical reports geotechnical reports and addenda prepared by CalWest Geotechnical Engineers indicate that a prehistoric landslide has been mapped on the site and subsurface landslide debris exist on the subject site. The pile-supported retaining wall is designed to stabilize the site and prevent slope failure. The proposed development is suitable for the intended use provided that the certified engineering geologist and/or geotechnical engineer's recommendations and governing agency's building codes are followed. Thus, the project will not serve to increase the instability or integrity of the site due to geologic, flood, fire, project design or location.

2. Based on substantial evidence contained within the record and subject to the incorporation of all recommendations and/or conditions, the proposed project will be safe, the site of the grading will not be affected by any hazard from landslide and the completed work will not adversely affect adjacent properties. As such, there are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity. Any special conditions from City geotechnical staff and City Public Works Department must be met prior to issuance of a building permit.

3. The project, as conditioned, is the least environmentally damaging alternative.

4. The proposed development has been analyzed for the hazards listed in LIP Chapter 9 by the City Biologist, City Environmental Health Administrator, City geotechnical staff, City Public Works Department, and LACFD. These specialists and agency determined that the proposed project does not impact site stability or structural integrity. There are no feasible alternatives to the proposed development that would result in less site disturbance.

5. The proposed project, as designed and conditioned, will not have adverse impacts on sensitive resources.



SECTION 6. Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves CDP No. 16-038 and VAR Nos. 16-017 and 18-045, subject to the following conditions.

SECTION 7. Conditions of Approval.

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application is to allow for the project described herein. The scope of work approved includes:

Construction

- a. Construction of a 2,963 square foot, two-story single-family residence, plus a 434 square foot attached two-car garage;
- b. Total Development Square Footage (TDSF) 3,397 square feet;
- c. Installation of a new AOWTS;
- d. Construction of a spa, and associated equipment;
- e. Construction of a pile-supported retaining wall (nine-foot in height maximum);
- f. Construction of first floor and second floor decks;
- g. Installation of new landscaping and hardscaping; and
- h. Grading.

Additional Discretionary Requests

- i. VAR No. 16-017 for construction on slopes steeper than 1.5 to 1; and
  - j. VAR No. 18-045 for a retaining wall in excess of six feet for up to nine feet.
3. Except as specifically changed by conditions of approval, the proposed development shall be constructed in substantial conformance with the approved scope of work, as described in Condition No. 2 and depicted on plans on file with the Planning Department date stamped **February 14, 2020**. The proposed development shall further comply with all conditions of approval stipulated in this resolution and Department Review Sheets attached hereto. In the event project plans conflict with any condition of approval, the condition shall take precedence.
  4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions of approval set forth herein. The applicant shall file this form with the Planning Department prior to the issuance of any development permits.

5. The applicant shall submit three (3) complete sets of plans, including the items required in Condition No. 6 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
6. This resolution, signed and notarized Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check, and the City of Malibu Public Works Department for an encroachment permit (as applicable).
7. The CDP shall expire if the project has not commenced within three (3) years after issuance of the permit, unless a time extension has been granted. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request. In the event of an appeal, the CDP shall expire if the project has not commenced within three years from the date the appeal is decided by the decision-making body or withdrawn by the appellant.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Biologist, City Coastal Engineer, City Environmental Health Administrator, City geotechnical staff, City Public Works Department, WD29, and LACFD, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission (CCC), have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
12. The property owner must submit payment for all outstanding fees payable to the City prior to issuance of any building permit, including grading or demolition.
13. The property owner shall comply with all provisions of the MMC and LIP.

### ***Cultural Resources***

14. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the

Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in MMC Section 17.54.040(D)(4)(b) shall be followed.

15. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

### ***Site-Specific Conditions***

16. Shrubs proposed in the north portions of the property shall be maintained at a height not to exceed six feet, as described in the Landscape Plans.
17. This project proposes to construct improvements within the public right-of-way. The applicant shall obtain encroachment permits from the Public Works Department prior to the commencement of any work within the public right-of-way.
18. The property owner / applicant is required to install and maintain a vertical living wall or other similar landscape along the south-facing retaining wall, and staggered planting in front the wall to help visually screen the wall from Pacific Coast Highway.

### ***Lighting***

19. Exterior lighting must comply with the Dark Sky Ordinance and shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view. Permitted lighting shall conform to the following standards:
  - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height and are directed downward, and limited to 850 lumens (equivalent to a 60 watt incandescent bulb);
  - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 850 lumens;
  - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 850 lumens;
  - d. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 850 lumens;
  - e. Site perimeter lighting shall be prohibited; and
  - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
20. Night lighting for sports courts or other private recreational facilities shall be prohibited.
21. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property(ies) shall not produce an illumination level greater than one foot candle.

22. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded directed downward and inward so there is no offsite glare or lighting of natural habitat areas. High intensity lighting of the shore is prohibited.
23. String lights are allowed in occupied dining and entertainment areas only and must not exceed 3,000 Kelvin.
24. Motion sensor lights shall be programmed to extinguish ten minutes after activation.
25. Three sequential violations of the conditions by the same property owner will result in a requirement to permanently remove the outdoor light fixture(s) from the site.

### ***Fencing and Walls***

26. The height of fences and walls shall comply with LIP Section 3.5.3(A), except for the rear pile-supported retaining wall which is allowed a maximum height of nine feet, pursuant to Variance No. 18-045.
27. Gates and any proposed fencing along the front property line shall comply with the regulations set forth in LIP Section 3.5.

### ***Construction / Framing.***

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

- d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within the project site.
32. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning Department for review and sign off on framing.

### **Colors and Materials.**

33. The project is visible from scenic roads or public viewing areas, therefore, shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
- 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. Colors shall be reviewed and approved by the Planning Director and clearly indicated on the building plans.
  - The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
  - All windows shall be comprised of non-glare glass.
34. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color of driveways and retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

### **Biology/Landscaping**

35. Prior to final Planning inspection or other final project sign off (as applicable), the applicant shall submit to the Planning Director for review and approval a certificate of completion in accordance with the Landscape Water Conservation Ordinance (MMC Chapter 9.22). The certificate shall include the property owner's signed acceptance of responsibility for maintaining the landscaping and irrigation in accordance with the approved plans and MMC Chapter 9.22.
36. Invasive plant species, as determined by the City of Malibu, are prohibited.
37. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as creosote or copper arsenate.
38. Earthmoving shall be scheduled only during the dry season from April 1 through October 31. If it becomes necessary to conduct earthmoving activities from November 1 through March 31, a comprehensive erosion control plan shall be submitted to the City Biologist for approval prior to the issuance of a grading permit and implemented prior to initiation of vegetation removal and/or earthmoving activities.

39. Any site preparation activities, including removal of vegetation, between February 1 and September 15 will require nesting bird surveys by a qualified biologist at least five days prior to initiation of site preparation activities. Should active nests be identified, a buffer area no less than 150 feet (300 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City within two business days of completing the surveys.
40. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
41. Prior to installation of any landscaping, the applicant shall obtain a plumbing permit for the proposed irrigation system from the Building Safety Division.
42. Vegetation forming a view impermeable condition serving the same function as a fence or wall (also known as a hedge) located within the side or rear yard setback shall be maintained at or below a height of six feet. A hedge located within the front yard setback shall be maintained at or below a height of 42 inches. Three sequential violations of this condition will result in a requirement to permanently remove the vegetation from the site.
43. Native species of the Santa Monica Mountains, characteristic of the local habitat, shall be used on graded slopes or where slope plantings are required for slope stabilization, erosion control, and watershed protection. Plants should be selected to have a variety of rooting depths. A spacing of 15 feet between large woody ( $\geq 10$ -foot canopy) shrubs is recommended by the LACFD. Lawns are prohibited on slopes  $> 5$  percent.
44. No non-native plant species are allowed greater than 50 feet from the residential structure.

#### ***Public Works***

45. The applicant shall obtain encroachment permits from the Public Works Department prior to the commencement of any work within the public right-of-way. The driveway shall be constructed of either six inches of concrete over four inches of aggregate base, or four inches of asphalt concrete over six inches of aggregate base. The driveway shall be flush with the existing grades with no curbs.
46. A digital drawing (AutoCAD) of the project's private storm drain system, public storm drain system within 250 feet of the property limits, and post-construction BMPs shall be submitted to the Public Works Department prior to the issuance of grading or building permits. The digital drawing shall adequately show all storm drain lines, inlets, outlets, post-construction BMPs and other applicable facilities. The digital drawing shall also show the subject property, public or private street, and any drainage easements.

#### ***Grading/Drainage/Hydrology (Geology/ Public Works)***

47. The non-exempt grading for the project shall not exceed a total of 1,000 cubic yards, cut and fill.

48. The total grading yardage verification certificate shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitutes will be accepted.
49. A grading and drainage plan containing the following information shall be approved, and submitted to the Public Works Department, prior to the issuance of grading permits for the project:
- a. Public Works Department general notes;
  - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
  - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
  - d. The limits to land to be disturbed during project development shall be delineated and a total area of disturbance should be shown on this plan. Areas disturbed by grading equipment beyond the limits of grading shall be included within the area delineated;
  - e. If the property contains rare, endangered or special status species as identified in the Biological Assessment, this plan shall contain a prominent note identifying the areas to be protected (to be left undisturbed). Fencing of these areas shall be delineated on this plan is required by the City Biologist;
  - f. The grading limits shall include the temporary cuts made for retaining walls, buttresses and over excavations for fill slopes; and
  - g. Private storm drain systems shall be shown on this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.
50. A Local Storm Water Pollution Prevention Plan (LSWPPP) shall be provided prior to issuance of grading/building permits. This plan shall include and Erosion and Sediment Control Plan (ESCP) that includes, but not limited to:

Erosion Controls Scheduling	Erosion Controls Scheduling
	Preservation of Existing Vegetation
Sediment Controls Silt Fence	Sediment Controls Silt Fence
	Sand Bag Barrier
	Stabilized Construction Entrance
Non-Storm Water Management	Water Conservation Practices
	Dewatering Operations
Waste Management	Material Delivery and Storage
	Stockpile Management
	Spill Prevention and Control
	Solid Waste Management
	Concrete Waste Management
	Sanitary/Septic Waste Management

All Best Management Practices (BMP) shall be in accordance to the latest version of the California Stormwater Quality Association (CASQA) BMP Handbook. Designated areas for

the storage of construction materials, solid waste management, and portable toilets must not disrupt drainage patterns or subject the material to erosion by site runoff.

51. A Storm Water Management Plan (SWMP) shall be submitted for review and approval of the Public Works Director. The SWMP shall be prepared in accordance with the LIP Section 17.3.2 and all other applicable ordinances and regulations. The SWMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the pre-development and post-development drainage of the site. The SWMP shall identify the site design and source control BMPs that have been implemented in the design of the project. The SWMP shall be reviewed and approved by the Public Works Department prior to the issuance of the grading or building permit for this project.
52. Clearing and grading during the rainy season (extending from November 1 to March 31) shall be prohibited for development that:
  - a. Is located within or adjacent to ESHA, or
  - b. Includes grading on slopes greater than 4 to 1.

Approved grading for development that is located within or adjacent to ESHA or on slopes greater than 4 to 1 shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the City determines that completion of grading would be more protective of resources.

53. Exported soil from a site shall be taken to the Los Angeles County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
54. A Water Quality Mitigation Plan (WQMP) shall be submitted for review and approval of the Public Works Director. The WQMP shall be prepared in accordance with the LIP Section 17.3.3 and all other applicable ordinances and regulations. The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage on the site. The following elements shall be included within the WQMP:
  - a. Site Design Best Management Practices (BMPs);
  - b. Source Control BMPs;
  - c. Treatment Control BMPs;
  - d. Drainage improvements;
  - e. Methods for onsite percolation, site re-vegetation and an analysis for off-site project impacts;
  - f. Measures to treat and infiltrate runoff from impervious areas;
  - g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure;
  - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during construction prior to the issuance of grading or building permits; and
  - i. The WQMP shall be submitted to the Building Safety Division and the fee applicable at the time of submittal for review of the WQMP shall be paid prior to the start of the



technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder. A certified copy of the WQMP shall be submitted prior to the Public Works Department approval of building plans for the project.

55. The developer's consulting engineer shall sign the final plans prior to the issuance of permits.

### ***Geology***

56. All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City geotechnical staff shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City geotechnical staff prior to the issuance of a grading permit.
57. Final plans approved by the City geotechnical staff shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require a CDP amendment or a new CDP.

### ***Spa***

58. Onsite noise, including that which emanates from swimming pool/spa and air conditioning equipment, shall be limited as described in MMC Chapter 8.24 (Noise).
59. Pool/spa and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall comply with LIP Section 3.5.3(A).
60. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
61. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool / spa is prohibited. Provide information on the plans regarding the type of sanitation proposed for pool.
- Ozonization systems are an acceptable alternative to chlorine. The discharge of clear water from ozonization systems is not permitted to the street;
  - Salt water sanitation is an acceptable alternative to chlorine. The discharge of salt water is not permitted to the street; and
  - Chlorinated water from pools or spas shall be trucked to a publicly-owned treatment works facility for discharge.
62. The discharge of chlorinated and non-chlorinated pool / spa water into streets, storm drains, creeks, canyons, drainage channels, or other locations where it could enter receiving waters is prohibited.
63. A sign stating "It is illegal to discharge pool, spa, or water feature waters to a street, drainage course, or storm drain per MMC Section 13.04.060(D)(5)" shall be posted in the filtration and/or pumping equipment area for the property.

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***Onsite Wastewater Treatment System***

64. Prior to the issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's onsite wastewater treatment regulations including provisions of MMC Chapters 15.40, 15.42, 15.44, and LIP Chapter 18 related to continued operation, maintenance and monitoring of the OWTS.
65. Prior to final Environmental Health approval, a final OWTS plot plan shall be submitted showing an OWTS design meeting the minimum requirements of the MMC and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The OWTS plot plan shall show essential features of the OWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
66. A final design and system specifications shall be submitted as to all components (i.e., alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of the proposed OWTS. For all OWTS, final design drawings and calculations must be signed by a California registered civil engineer, a registered environmental health specialist or a professional geologist who is responsible for the design. The final OWTS design drawings shall be submitted to the City Environmental Health Administrator with the designer's wet signature, professional registration number and stamp (if applicable).
67. Any above-ground equipment associated with the installation of the OWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
68. The final design report shall contain the following information (in addition to the items listed above).
  - a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;
  - b. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;
  - c. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the

results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak OWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics;

- d. All final design drawings shall be submitted with the wet signature and typed name of the OWTS designer. If the scale of the plan is such that more space is needed to clearly show construction details, larger sheets may also be provided (up to a maximum size of 18 inch by 22 inch, for review by Environmental Health). Note: For OWTS final designs, full-size plans are required for review by the Building Safety Division and/or the Planning Department; and
  - e. H2O Traffic Rated Slab: Submit plans and structural calculations for review and approval by the Building Safety Division prior to Environmental Health final approval.
69. Prior to final Environmental Health approval, the construction plans for all structures and/or buildings with reduced setbacks must be approved by the City Building Safety Division. The architectural and/or structural plans submitted to Building and Safety plan check must detail methods of construction that will compensate for the reduction in setback (e.g., waterproofing, concrete additives, etc.). For complex waterproofing installations, submittal of a separate waterproofing plan may be required. The architectural/structural/ waterproofing plans must show the location of OWTS components in relation to those structures from which the setback is reduced, and the plans must be signed and stamped by the architect, structural engineer, and geotechnical consultants (as applicable).
70. Prior to final Environmental Health approval, the applicant shall provide engineer's certification for reduction in setbacks to buildings or structures: All proposed reductions in setback from the OWTS to structures (i.e., setbacks less than those shown in MMC Table 15.42.030(E)) must be supported by a letter from the project structural engineer and a letter from the project soils engineer (i.e., a geotechnical engineer or civil engineer practicing in the area of soils engineering). Both engineers must certify unequivocally that the proposed reduction in setbacks from the treatment tank and effluent dispersal area will not adversely affect the structural integrity of the OWTS, and will not adversely affect the structural integrity of the structures for which the Table 15.42.030(E) setback is reduced. Construction drawings submitted for plan check must show OWTS components in relation to those structures from which the setback is reduced. All proposed reductions in setback from the OWTS to buildings (i.e., setbacks less than those shown in Table 15.42.030(E)) also must be supported by a letter from the project architect, who must certify unequivocally that the proposed reduction in setbacks will not produce a moisture intrusion problem for the proposed building(s). If the building designer is not a California-licensed architect, then the required architect's certification may be supplied by an engineer who is responsible for the building design with respect to mitigation of potential moisture intrusion from reduced setbacks to the wastewater system. In this case, the engineer must include in his/her letter an explicit statement of responsibility for mitigation of potential moisture intrusion. If any

specific construction features are proposed as part of a moisture intrusion mitigation system in connection with the reduced setback, then the architect or engineer must provide associated construction documents for review and approval during Building Safety Division plan check. The wastewater plans and the construction plans must be specifically referenced in all certification letters.

71. The following note shall be added to the plan drawings included with the OWTS final design: "Prior to commencing work to abandon, remove, or replace the existing Onsite Wastewater Treatment System (OWTS) components, an 'OWTS Abandonment Permit' shall be obtained from the City of Malibu. All work performed in the OWTS abandonment, removal or replacement area shall be performed in strict accordance with all applicable federal, state, and local environmental and occupational safety and health regulatory requirements. The obtainment of any such required permits or approvals for this scope of work shall be the responsibility of the applicant and their agents."
72. Final plans shall clearly show the locations of all existing OWTS components (serving pre-existing development) to be abandoned and provide procedures for the OWTS' proper abandonment in conformance with the MMC.
73. All project architectural plans and grading/drainage plans shall be submitted for Environmental Health review and approval. These plans must be approved by the Building Safety Division prior to receiving Environmental Health final approval.
74. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
75. An operations and maintenance manual specified by the OWTS designer shall be submitted to the property owner and maintenance provider of the proposed advanced OWTS.
76. Prior to final Environmental Health approval, a maintenance contract executed between the owner of the subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed OWTS after construction shall be submitted. Only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.
77. Prior to final Environmental Health approval, a covenant running with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the City of Malibu Recorder's Office. Said covenant shall serve as constructive notice to any future purchaser for value that the onsite wastewater treatment system serving subject property is an advanced method of sewage disposal pursuant to the City of MMC. Said covenant shall be provided by the City of Malibu Environmental Health Administrator.
78. A covenant running with the land shall be executed by the property owner and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive notice to any successors in interest that: 1) the private sewage disposal system serving the development on the property does not have a 100 percent expansion effluent dispersal area (i.e., replacement disposal field(s) or seepage pit(s)), and 2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures including,

but not limited to, limitations on water use enforced through operating permit and/or repairs, upgrades or modifications to the private sewage disposal system. The recorded covenant shall state and acknowledge that future maintenance and/or repair of the private sewage disposal system may necessitate interruption in the use of the private sewage disposal system and, therefore, any building(s) served by the private sewage disposal system may become non-habitable during any required future maintenance and/or repair. Said covenant shall be in a form acceptable to the City Attorney and approved by the City Environmental Sustainability Department.

79. The City geotechnical staff final approval shall be submitted to the City Environmental Health Administrator.
80. In accordance with MMC Chapter 15.44, prior to Environmental Health approval, an application shall be made to the Environmental Sustainability Department for an OWTS operating permit.

#### ***Water Quality/ Water Service***

81. Prior to the issuance of a building permit, the applicant shall submit an updated Will Serve Letter from WD29 to the Planning Department indicating the ability of the property to receive adequate water service.
82. Prior to final inspection (or project sign off, as applicable) by the Planning Department, the applicant shall demonstrate that all requirements of WD29 have been met, including installation of a meter, if applicable.

#### **Deed Restrictions**

83. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning department staff prior to final planning approval.
84. Prior to final Planning Department approval, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition Nos. 18-24. The property owner shall provide a copy of the recorded document to the Planning Department prior to final Planning Department approval.

#### **Prior to Occupancy**

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

86. Prior to final inspection (or project sign off, as applicable) by the Planning Department, the City Biologist shall inspect the project site and determine that all Planning Department conditions to protect natural resources are in compliance with the approved plans.
87. Prior to a final Building inspection, the applicant shall provide a Recycling Summary Report (Summary Report) and obtain the approval from the Environmental Sustainability Department. Applicant must provide haul tickets and diversion information. The final Summary Report shall designate the specific materials that were land filled or recycled, and state the facilities where all materials were taken.
88. The applicant shall request a final Planning Department inspection prior to final inspection by the City of Malibu Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Department has determined that the project complies with this coastal development permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
89. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval, and if applicable, the issuance of the certificate of occupancy.

#### **Fixed Conditions**


90. This coastal development permit shall run with the land and bind all future owners of the property.
91. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

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

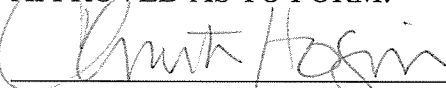
PASSED, APPROVED AND ADOPTED this 8<sup>th</sup> day of June 2020.

  
KAREN FARRER, Mayor

ATTEST:

  
HEATHER GLASER, City Clerk  
(seal)

APPROVED AS TO FORM:

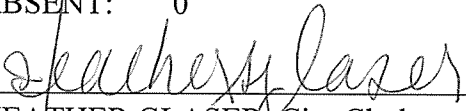
  
CHRISTI HUGIN, City Attorney

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

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-23 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 8<sup>th</sup> day of June 2020 by the following vote:

AYES: 5 Councilmembers: Mullen, Peak, Wagner, Pierson, Farrer  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

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