



# Commission Agenda Report

Planning  
Commission Meeting  
12-03-12

**Item  
6.C.**

Agenda Item 10(b)  
SMMC  
2/25/13

To: Chair Mazza and Members of the Planning Commission

Prepared by: Stephanie Danner, AICP, Senior Planner

Approved by: Joyce Parker-Bozylinski, AICP, Planning Director

Date prepared: November 21, 2012 Meeting date: December 3, 2012

Subject: Coastal Development Permit No. 09-057, Variance No. 10-022 and Offer to Dedicate No. 10-006 - An application for the construction of a new, two-story 4,277 square foot single-family residence, with an attached two-car garage, a concrete bulkhead, staircase to the beach, swimming pool and spa, view corridors and installation of a new alternative onsite wastewater treatment system; including a variance for construction on slopes in excess of 2½ to 1 and an offer to dedicate lateral public access along the shore

Application Filing Date: September 15, 2009  
Applicant: ARYA Group Inc. / Ardie Tavangarian  
Owner: Ardeshir and Tania Tavangarian  
Location: 24024 Malibu Road, within the appealable coastal zone  
APN: 4458-009-007  
Zoning: Single-Family Medium (SFM)

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**RECOMMENDED ACTION:** Adopt Planning Commission Resolution No. 12-110 (Attachment 1) approving Coastal Development Permit (CDP) No. 09-057, Variance (VAR) No. 10-022 and Offer to Dedicate (OTD) No. 10-006 for the construction of a new, two-story 4,277 square foot single-family residence with an attached two-car garage, a concrete bulkhead, staircase to the beach, swimming pool and spa on the roof deck, view corridors and installation of a new alternative onsite wastewater treatment system (AOWTS); including a variance for construction on slopes in excess of 2½ to 1 and an OTD for lateral public access along the shore located at 24024 Malibu Road (Attachment 2).

**DISCUSSION:** The subject property has never been residentially developed. Along the northern property line that abuts Malibu Road sits a soldier pile retaining wall that was installed by the Los Angeles County Department of Public works in 1987 in response to an identified geological slide hazard condition. The retaining wall supports the road and the hill located north of the road, protecting them from the damage that would be caused by a geological failure. A guardrail and chainlink fence were also installed along the northern property line for safety purposes.

Additionally, on July 26, 2010, the City Council adopted Resolution No. 10-41, approving a variance from the coastal floodplain requirements of the City’s Floodplain Management Ordinance (Malibu Municipal Code (M.M.C) Section 15.20) which would allow the construction of the bulkhead required for this project to be constructed within a coastal high hazard area (Attachment 3). With the approval of the variance, the project was approved by the City Public Works Department.

**Surrounding Land Use and Setting**

Properties situated in this stretch of Malibu Road are zoned SFM (minimum lot size of one single-family residence per 0.25 acre). The properties are developed with one- and two-story single-family residences and multi-family residential structures. Additionally, there are four public vertical accessways located along Malibu Road.

Table 1 provides a summary of the surrounding uses.

<b>Table 1 – Surrounding Uses</b>	
<b>Direction</b>	<b>Description</b>
North	Malibu Road
	Vacant residential parcel (0.49 acre)
South	Pacific Ocean
East	Vacant residential parcel (0.13 acre)
West	Vacant residential parcel (0.09 acre)
Existing Vertical Public Access	Located approximately 1,900 feet west of the project site between 24314 and 24320 Malibu Road

The project site which is located at 24024 Malibu Road is a 4,525 square foot, beachfront lot situated on Malibu Road Beach. The subject property lies within the Appealable Zone as depicted on the Post-Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction Map. The property is not designated Environmentally Sensitive Habitat Area (ESHA) as shown on LCP ESHA Overlay Map. In addition to the existing vertical public accessway that is located 1,900 feet west of the subject property, a vertical public accessway has been recorded on the State Coastal Conservancy-owned parcel located 40 feet west of the property.

As stated previously, a large soldier pile retaining wall, guardrail and chainlink fence is the only development existing onsite. As part of the subject application, the fence and

guardrail will be removed, but the retaining wall will remain in place. The property, immediately adjacent to the retaining wall and Malibu Road, contains steep manmade slopes that resulted from the construction of Malibu Road. As a portion of the development is located on these slopes (areas with a slope in excess of 2½ to 1), a variance request is included in the project description.

The parcels on either side of the subject property are currently undeveloped. For purposes of determining front and rear yard (stringline) setbacks, the nearest development to the east (24016 Malibu Road) and to the west (24056 Malibu Road) were used.

Table 2 provides a summary of the lot dimensions and lot area of the subject parcel.

Table 2 – Property Data	
Lot Depth (to mean high tide line)	~90 feet
Lot Width	~40 feet
Gross Lot Area	4,525 sq ft (0.104 acre)
Area of 1 to 1 Slopes	88 square feet
Area of Easements	0 square feet
Net Lot Area*	4,437 sq ft (0.102 acre)

\*Net Lot Area = Gross Lot Area minus the area of public or private access easements and 1 to 1 slopes.

### Project Description

Proposed project plans are included as Attachment 4.

Proposed total development square footage (TDSF) on the site totals 4,277 square feet and is broken down as follows:

- Main floor = 1,588 square feet + 382 square foot two-car garage
- Upper floor = 994 square feet
- Lower floor = 998 square feet
- Covered deck area = 315 square feet

Additional improvements not included in TDSF calculation:

- Rooftop swimming pool and spa;
- Uncovered decks off the upper, main and lower floors;
- Associated hardscape (stairs and off-street parking area);
- AOWTS consisting of a 3,000 gallon Norweco Bio Kinetic Model BK 2000 system with ultra-violet disinfection and a 450 square foot drain field;
- Retractable staircase to the beach; and
- Vertical concrete pile supported bulkhead.

VAR No. 10-022 – for the construction of a portion of the new, single-family residence and associated development on slopes in excess of 2 ½ to 1.

OTD No. 10-006 - The applicant has agreed to provide an offer to dedicate a lateral access easement to accommodate public access along the shoreline and a condition of approval in Planning Commission Resolution No. 12-110 has been incorporated to memorialize this offer.

## **Chronology**

On June 4, 2009, Pre-Application (PA) No. 09-013 was submitted by Marcia Marinello to the Planning Department. The pre-application included questions related to the supportability of a variance for the reduction in required unenclosed parking spaces, and what the maximum height and setbacks would be for new development onsite. The determination letter, dated June 19, 2009, stated that the findings could not be made in support of the variance request to reduce the parking onsite.

On September 15, 2009, an application for CDP No. 09-057 was submitted by Mike Barsocchini, on behalf of property owners Ardie and Tania Tavangarian, to the Planning Department for processing. The application was referred to the City Biologist, City Coastal Engineer, City Environmental Health Administrator, City Geologist, and the Los Angeles County Fire Department (LACFD) for LCP conformance review (Attachment 5). The original project submittal included a variance request for a 50 percent reduction in the required number of parking spaces, a variance request to reduce the western side yard setback and a variance request for construction on steep slopes.

On October 28, 2009, a Courtesy Notice of CDP Application was mailed to all property owners and occupants within a 500 foot radius of the subject property.

On July 26, 2010, the City Council adopted Resolution No. 10-41, approving a variance from the coastal floodplain requirements of the City's Floodplain Management Ordinance (M.M.C. Section 15.20) which would allow the bulkhead required for this project to be constructed within a coastal high hazard area.

In July 2011, story poles were placed on the subject property to demonstrate the height of the proposed project and potential visual impacts. Staff visited the site in July 2011, to ensure that the story poles were placed according to plan and to evaluate potential impacts (Attachment 6).

On October 3, 2011, a Notice of CDP Application was posted on the subject property.

On October 24, 2012, plans were submitted to the Planning Department which revised the frontage of the residence in order to provide two additional unenclosed parking spaces on the property (VAR No. 11-023, for a reduction in the number of required parking spaces, and VAR No. 11-024, for the reduction of the western side yard setback, were removed from the project scope). The revised plans brought the project into conformance with the residential parking requirements set forth in LCP Local

Implementation Plan (LIP) Section 3.12 and the setback requirements in LIP Section 3.6. No change to the story poles was warranted by these project revisions.

On November 6, 2012, the application was deemed complete for processing.

On November 22, 2012, a Notice of 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.

### **Local Coastal Program**

The LCP consists of a Land Use Plan (LUP) and an LIP. The LUP contains programs and policies to implement the Coastal Act in Malibu. The purpose of the LIP is to carry out the policies of the LUP. The LIP contains specific policies and regulations to which every project requiring a coastal development permit must adhere.

There are 13 sections within the LIP that potentially require specified findings to be made, depending on the nature and location of the proposed project. Of these 13, three are for conformance review only and require no findings. These three sections, which include Zoning, Grading and Archaeological/Cultural Resources, are discussed under the "Conformance Analysis" section below.

There are ten remaining sections that potentially require specific findings to be made. These findings are found in the following sections of the LIP: 1) General Coastal Development Permit, including variance findings; 2) Environmentally Sensitive Habitat Area; 3) Native Tree Protection; 4) Scenic, Visual and Hillside Protection; 5) Transfer of Development Credits; 6) Hazards; 7) Shoreline and Bluff Development; 8) Public Access; 9) Land Division; and 10) OWTS. Of these ten, for the reasons discussed below, five (General Coastal Development Permit, including variance findings; Scenic, Visual and Hillside Protection; Hazards; Shoreline and Bluff Development; and Public Access) apply to the proposed project and warrant further discussion.

### **Conformance Analysis**

As is shown in Table 3 below, the proposed project complies with LCP development standards. No portion of the residence or the parking spaces will extend north of the property line adjacent to Malibu Road. The project complies with LIP Section 3.6 concerning height on beachfront lots. Story poles were placed on the subject property to demonstrate the height of the proposed project and visual impacts. The project height of 28 feet conforms to the allowed maximum 28-foot height for pitched roofs. Sections of flat roof comply with the 24-foot maximum (with an additional one-foot allowed for view permeable railing). Staff visited the site in July 2011, to verify that the story poles were placed according to plan and to evaluate potential impacts. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies.

Zoning (LIP Chapter 3)

Table 3 provides a summary and indicates that the proposed project meets the property development and design standards as set forth under LIP Chapters 3 and 6.

<b>Table 3 – Beachfront Residential Development Standards</b>			
<b>Development Requirement</b>	<b>Allowed</b>	<b>Proposed</b>	<b>Comments</b>
<b>SETBACKS</b>			
Front Yard- Average of two adjacent neighbors	0 ft	0 ft	Complies
Rear Yard – Stringline / 10 ft landward of mean high tide line	Stringline	Stringline	Complies
Side Yard (5 feet max. and 3 feet min.)	5 ft	5 ft	Complies
View Corridor (10% on either side of structure)	5 ft west side 5 ft east side	5 ft west side 5 ft east side	Complies
<b>PARKING</b>	2 enclosed 2 unenclosed	2 enclosed 2 unenclosed	Complies
<b>TOTAL DEVELOPMENT SQUARE FOOTAGE</b>	N/A	4,277 sq ft	Complies
<b>2/3RDS RULE / 2<sup>nd</sup> floor sq.ft.</b>	N/A	N/A	N/A
<b>HEIGHT</b>			
Seaward Half of Structure (measured from lowest rec. finished floor elevation)	24 ft flat roof (up to 25 ft with deck railing); 28 ft pitched roof	24 ft flat roof with a view permeable deck railing up to 25 ft	Complies
Landward Half of Structure (measured from center line of Malibu Road)	24 ft flat roof; 28 ft pitched roof	28 ft pitched roof	Complies
<b>IMPERMEABLE COVERAGE</b>	N/A	N/A	N/A
<b>NON-EXEMPT GRADING</b>	1,000 c.y.	~153 c.y.	Complies
<b>CONSTRUCTION ON SLOPES</b>	3:1	2½:1 to 1:1	Variance
<b>FENCE / WALL HEIGHT</b>			
Front	42 inches impermeable, 6 ft visually permeable	6 ft, 100% visually permeable	Complies
Side(s)	6 ft	6 ft	Complies
Rear	6 ft	None	Complies

Grading (LIP Chapter 8)

Table 4 includes the grading quantities proposed as part of the project.

<b>Table 4 – LCP Grading Conformance</b>						
	<b>Exempt**</b>			<b>Non-Exempt</b>	<b>Remedial</b>	<b>Total</b>
	<b>R&amp;R*</b>	<b>Understructure</b>	<b>Safety***</b>			
<b>Cut</b>	47.2	138.44	0	0	0	185.64
<b>Fill</b>	47.2	0	0	152.78	0	199.98
<b>Total</b>	<b>94.4</b>	<b>138.44</b>	<b>0</b>	<b>152.78</b>	<b>0</b>	<b>385.62</b>
<b>Import</b>	0	0	0	152.78	0	14.34
<b>Export</b>	0	138.44	0	0	0	0

As indicated previously, the project proposes a total of 152.78 cubic yards of non-exempt grading. Therefore, the project conforms to the grading requirements as set forth under LIP Section 8.3, which ensures that new development minimizes the visual and resource impacts of grading and landform alteration by restricting the amount of non-exempt grading to a maximum of 1,000 cubic yards.

Archaeological / Cultural Resources (LIP Chapter 11)

The project site has been evaluated for potential impacts to archaeological resources per the adopted City of Malibu Cultural Resources Sensitivity Map and it has been determined to have a very low probability of containing archeological resources. However, a condition has been included in Planning Commission Resolution No. 12-110 which states that in the event that potentially important cultural resources are found in the course of construction, work must 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.

**Findings**

The proposed project has been reviewed for conformance with the LCP by Planning Department staff, City Biologist, City Environmental Health Administrator, City Coastal Engineer, City Geologist, City Public Works Department and the LACFD. Staff has determined that, subject to the proposed conditions of approval, the project conforms to the LCP. The required findings are made as follows.

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

Pursuant to LIP section 13.9 the following four findings need to be made on all coastal development permits.

*Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.*

The project has been reviewed for conformance with the LCP (see Table 3). As discussed throughout this report, the project, as proposed and/or conditioned, conforms to the LCP.

*Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).*

The LCP Public Access Map indicates that a lateral accessway has not been recorded on the subject property; however, the applicant has agreed to provide an offer to dedicate a lateral access easement to accommodate public access along the shoreline and a condition of approval within Planning Commission Resolution No. 12-110 has been incorporated to memorialize this offer. The proposed development will not encroach seaward of the dwelling stringline or deck stringline and is not anticipated to impact existing public access. The LCP Public Access Map also indicates that vertical access exists approximately 1,900 feet west of the project site between 24314 and 24320 Malibu Road. The location of the proposed project and related construction activities is not anticipated to interfere with the public's right to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).

*Finding A3. The project is the least environmentally damaging alternative.*

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements of the LCP. The project will not result in potentially significant impacts on the physical environment. The proposed location is the least environmentally damaging alternative.

The project, as proposed, has been found to be Categorical Exempt under CEQA Section 15303(a) – New Construction. Therefore, the project as proposed has been determined to be consistent with CEQA.

There are four alternatives that were considered to determine the least environmentally damaging alternative.

1. No project – The no project alternative would avoid any change in the project site, and hence, any change in coastal resources. However, the project site is zoned SFM. Thus, prohibiting similar economic use of the property as those with similar lot sizes is not a legally feasible alternative. Furthermore, if the no project alternative was pursued, the lateral public access easement would not be dedicated onsite.

2. Original project design – The original project plans submitted on September 15, 2009 included a variance for the reduction of the number of unenclosed parking spaces proposed onsite as well as a variance to reduce the required side yard setback. The proposal would have reduced the amount of spaces available onsite and would have necessitated on-street parking along the public section of Malibu Road, thus adding additional vehicles to a heavily parked street. Additionally, the reduction of the side yard setback would not have provided the required area of view corridors onsite. This alternative would have taken street parking away from the public that visits the four public vertical accessways along Malibu Road and would have diminished views of the ocean from Malibu Road.

3. Different location on the site by relocating the bulkhead further landward – The proposed bulkhead is located 47 feet from the property line adjoining Malibu Road. Due to the short depth of the subject property (approximately 90 feet deep), the bulkhead is already located as far landward as feasible. Relocating it further towards Malibu Road would not allow enough space to locate the AOWTS drain field. Relocation of the bulkhead is not a feasible alternative.

4. Proposed project – The project consists of construction of a new two-story, single-family residence with an attached garage, concrete bulkhead and a new AOWTS. The use of a reinforced concrete structural slab with concrete piles and a concrete bulkhead has been recommended by Pacific Engineering Group (report dated March 17, 2008) due to onsite wave uprush and geological conditions. The foundation will provide safe structural support for the proposed residence and will have the least impact on the beach deposits underlying the site. Furthermore, the unenclosed parking accommodated onsite will not encroach into the view corridors on either side of the residence. Therefore, the project, as proposed, is the least damaging alternative.

*Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.*

The subject parcel is not located in or adjacent to ESHA, ESHA buffer zone or any streams as designated in the LCP and is not subject to review by the Environmental Review Board pursuant to LIP Section 4.4.4(C). In addition, the City Biologist has determined that the project is consistent with the policies contained in the LCP.

#### **B. Variance for Construction on Slopes in Excess of 2½ to 1 (LIP Section 13.26.5)**

A variance is requested for the construction of the landward side of the residence on slopes in excess of 2½ to 1. This variance is necessary because a steep hillside runs from Malibu Road down to the sand on the subject property. Without the variance, it

would not be possible to gain access to or build a residential structure on this parcel. Pursuant to LIP Section 13.26.5, the Planning Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes 10 findings of fact. Based on the foregoing evidence contained within the record, Planning Department staff recommends the approval of VAR No. 10-022.

*Finding B1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.*

The topography of the subject property is such that the strict application of the zoning ordinance deprives the subject property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. LIP Section 3.6(J) limits the site of residential construction to areas containing slopes less than 2½ to 1. The construction of the residence on slopes in excess of 2½ to 1 is necessary due to the topography of the parcel.

The granting of the variance would permit the construction of the below-street level support system for the new single-family residence. Development regulations limiting construction on slopes are written on a general basis and cannot take into account the individual and unique characteristics a property may exhibit. In this instance, the strict application of the ordinance would preclude construction of any structure onsite. Denial of the variance would deprive the property owner of developing the property in a similar manner to nearby residential development, as other similar variances have been granted on Malibu Road due to this topographic condition (i.e., at 24008, 24052, 24166, 24524, 24844 and 25222 Malibu Road).

*Finding B2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

The granting of the requested variance will allow the construction of below-street level improvements which will support the proposed single-family residence. This construction will not be detrimental to the public's interest, safety, health or welfare and furthermore, it will not be detrimental or injurious to the property or improvements in the same vicinity and zone as the subject property. The granting of the requested variance will allow the landward portion of the residence to be developed on slopes in excess of 2½ to 1. As stated previously, the proposed project has been reviewed and conditionally approved by the LACFD and all applicable City departments. The project was found to be consistent with applicable City goals and policies.

*Finding B3. The granting of the variance will not constitute a special privilege to the applicant or property owner.*

The granting of the variance will not constitute a special privilege to the applicant or property owner in that nearby properties have been developed on slopes greater than 2½ to 1. The properties in the immediate area all contain sloped areas adjacent to Malibu Road. The construction of the residence on the variance slopes allows the structure to be located as far landward as possible and also allows vehicular and pedestrian access from the street. The approval of this variance will grant relief from a technical development standard and allow construction of a residence on a residentially zoned parcel.

*Finding B4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.*

The granting of the variance for construction on slopes in excess of 2½ to 1 will not be contrary to or in conflict with the general purposes and intent of the zoning provisions nor contrary to or in conflict with the goals, objectives and policies of the LCP. As stated earlier, granting the requested variance will allow the subject property to be developed in a similar manner to nearby properties and no alternatives exist that would eliminate the need for the requested variance. The slope onsite is man-made was already altered by the installation of the retaining wall in 1987. The proposed project has been reviewed and approved for conformance with the LCP and applicable City and County goals and policies by the LACFD and City staff.

*Finding B5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in LIP Section 4.7.*

The subject parcel does not contain ESHA and ESHA buffer. Therefore, this finding does not apply.

*Finding B6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by LIP Chapter 12.*

The requested variance is not associated with stringline standards. Therefore, this finding is not applicable.

*Finding B7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.*

The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the SFM zoning district. The proposed project is for the construction of a new single-family residence, which is permitted in this zone.

*Finding B8. The subject site is physically suitable for the proposed variance.*

The granting of the variance will allow construction of a new single-family residence on the subject parcel. The subject site is physically suitable for the proposed variance in that there is no alternate building site or configuration which would eliminate the need for the variance request. As stated above, the project has been reviewed and approved by applicable agencies. Prior to the issuance of a building permit, the project will be reviewed and approved for structural integrity and stability. All final recommendations of the applicant's structural engineer as well as those recommendations of the Building Safety Division, City Geotechnical staff and the City Public Works Department will be incorporated into the project.

*Finding B9. The variance complies with all requirements of state and local law.*

The variance complies with all requirements of state and local law. Construction of the proposed improvements will comply with all building code requirements and will incorporate all recommendations from applicable City and County agencies.

*Finding B10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.*

The requested variance is for relief from a specific development standard and does not involve the reduction or elimination of public parking. Therefore, this finding is not applicable.

### **C. Environmentally Sensitive Habitat Area (LIP Chapter 4)**

As discussed above, the subject parcel is not located in or adjacent to ESHA as depicted on the LCP ESHA Overlay Map and, as a result, the project will result in less than significant impacts to sensitive resources, significant loss of vegetation or wildlife, and will not encroach into an ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

### **D. Native Tree Protection (LIP Chapter 5)**

The proposed project does not require the removal of any native trees. Therefore, according to LIP Section 5.7, the native tree findings are not applicable.

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

The Scenic, Visual and Hillside Resource Protection Chapter governs those coastal development permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. This project is visible from a scenic area (the beach) and a scenic road (Malibu

Road); therefore, the Scenic, Visual and Hillside Resource Protection Chapter applies and the five findings set forth in LIP Section 6.4 are made as follows.

LIP Section 6.5(E) states “new development on parcels located on the ocean side of public roads, including but not limited to, Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, Cliffside Drive shall protect public ocean views.” In addition, LIP Section 6.5(E)(2)(b) requires that lots with a lineal frontage of 50 feet or less shall provide 20 percent 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 percent of the lot width on each side. As the subject property is located along Malibu Road, the applicant has met this requirement and provided 10 percent of the lineal frontage on either side of the residence as ocean view corridors, each of which measures five feet in width.

*Finding E1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.*

Due to the relatively narrow lot dimensions (40 feet), no alternative building site location exists where onsite development would not be visible from the shore or road. However, the project has been designed to avoid any adverse or scenic impacts by emulating the mass, bulk and scale of nearby beachfront residences. In addition, the use of non-metallic, non-glare siding and the incorporation of natural colors on the exterior of the residence, as required by the LCP, will help minimize visual impacts of the subject site.

In July 2011, story poles were placed on the subject property to demonstrate the height of the proposed project and to analyze visual impacts. Staff visited the site in July 2011 to ensure that the story poles were placed according to plan and to evaluate potential impacts. The analysis of the project’s visual impact from public viewing areas included site reconnaissance, view of the property from the beach and road and review of the architectural plans. Staff determined that the proposed residence would result in a less than significant visual impact to public areas of the beach and road.

*Finding E2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.*

The project has been designed to avoid any adverse or scenic impacts. The proposed residence has been conditioned to provide view corridors, utilize colors and materials that will be compatible with the surrounding natural and residential character and will be compatible with the architectural character of the surrounding neighborhood.

*Finding E3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

As discussed in Finding A3, the project as proposed or conditioned is the least environmentally damaging alternative.

*Finding E4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.*

As discussed in Finding A3, the proposed project is the least environmentally damaging alternative.

*Finding E5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.*

As discussed in Findings A3 and E1, the project will have less than significant scenic and visual impacts.

#### **F. Transfer of Development Credits (LIP Chapter 7)**

Pursuant to LIP Section 7.2, the regulations requiring the transfer of development credits apply to any action to authorize a CDP for a land division or multi-family development. This CDP does not involve a land division or multi-family development; therefore, LIP Chapter 7 does not apply.

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

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed by staff for the hazards listed in LIP Section 9.2(A)(1-7).

The applicant submitted the following reports for the proposed project:

Prepared by GeoConcepts, Inc. (GCI)

- Preliminary Geologic and Soils Engineering Investigation dated May 29, 2009
- Private Sewage Disposal Report dated November 12, 2009
- Addendum Report No. 1 dated November 12, 2009
- Private Sewage Disposal Report dated January 21, 2010
- Private Sewage Disposal Report dated March 15, 2010
- Private Sewage Disposal Report dated April 2, 2010
- Addendum Report No. 2 dated August 23, 2010
- Addendum Report No. 3 dated October 12, 2010

Prepared by Pacific Engineering Group

- Wave Uprush Study dated March 17, 2008
- Addendum Report No. 1 dated September 14, 2009

- Addendum Report No. 2 dated October 26, 2009
- Addendum Report No. 3 dated March 11, 2010

These reports are on file in City Hall. In these reports, previous studies have been reviewed, site-specific conditions are evaluated, and recommendations are provided to address any pertinent issues. Potential geologic hazards addressed include stability issues, liquefaction and fault rupture, structural integrity, drainage, grading and groundwater issues. Potential flooding hazards were addressed by City Public Works Department review. As stated previously, a variance from M.M.C. Chapter 15.20 (City's Floodplain Management Ordinance) was granted by the City Council in July 2010. The City Geologist, City Coastal Engineer, City Public Works Department and the LACFD have reviewed the project for conformance with the LCP, and have deemed the project consistent with relevant policies and standards in LIP Chapter 9.

In summary, no substantial geologic, flood or fire risks to life and/or property are identified. Compliance with standard engineering techniques and other readily-available solutions to address hazards issues will ensure that the project does not result in any hazardous conditions. The findings provided by LIP Section 9.3 are made as follows.

*Finding G1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.*

Based on staff's review of the above referenced reports and associated information, it has been determined that:

1. The project site is located within a liquefaction zone;
2. The project site is mapped within a landslide;
3. The project site is subject to wave uprush and tsunamis;
4. The proposed bulkhead is located within a Federal Emergency Management Agency (FEMA) Special Flood Hazard Area (SFHA); and
5. The project site is in the vicinity of extreme fire hazard areas.

#### Liquefaction Hazard

The May 2009 GCI Report identified that the subject site is located within a liquefaction zone on the State of California Seismic Hazard Map. Per LIP Section 10.6(A), a condition of approval is included in Planning Commission Resolution No. 12-110 that requires an assumption of risk and release for beachfront hazards, including liquefaction, be recorded against the property.

#### Landslide Hazard

The May 2009 GCI Report identifies that the subject property has been mapped within a

landslide by numerous consultants. Onsite borings were taken to analyze the extent of the onsite landslide. The borings encountered recently active landslide debris to maximum depths between 15 and 20 feet. GCI's subsurface explorations, review of aerial photographs, geomorphology and previous consultants' investigations all indicate that a deeper landslide does not underlie the subject site. As a result of the presence of this hazard, GCI has recommended a deepened pile foundation for the proposed residence.

### Wave Uprush / Tsunami Hazard

The March 2008 Wave Uprush Study indicates that the projected wave uprush limit at the subject site will occur approximately 26 feet landward of the Malibu Road right-of-way line at an elevation of 22 feet above mean sea level (MSL). The Study recommends a lowest finished floor elevation of 23 feet above MSL based upon the NGVD '29 vertical datum. Recommendations related to the foundation, bulkhead and building materials have been proposed to protect the residence against wave uprush hazards. These modifications are intended to prevent erosion and water damage.

The City of Malibu General Plan discusses the phenomena of tsunamis that may be caused by displacement of faults immediately off-shore of Malibu. The March 2008 Study also addresses possible tsunami hazards along the shore. The Study identifies that the storm waves generated by design storm waves would exceed tsunami uprush for locally generated tsunamis. The Study concludes that "the design criteria for the storm wave uprush and storm scour exceeds the design parameters of the tsunami models, and thus, the storm wave uprush results govern the overall design for the subject property."

### Flood Hazard

The proposed bulkhead is located within a FEMA mapped SFHA, which is identified in the City's floodplain management regulations as a coastal high hazard area. The City's Floodplain Management Ordinance (M.M.C. Chapter 15.20) states that any proposed development within a FEMA designated SFHA must conform to the City's floodplain management regulations and FEMA guidelines.

In the case of the subject development, the coastal floodplain covers approximately 70 percent of the property. Per M.M.C. Section 15.20.150(C), development in this area is required to have the space below the lowest floor free of obstructions or constructed with breakaway walls. The placement of the concrete bulkhead onsite to protect the AOWTS does not comply with this requirement and, therefore, requires a variance.

As discussed in the July 26, 2010 City Council report prepared for the variance from the City's Floodplain Management Ordinance (M.M.C. Chapter 15.20), the required findings to grant the variance per M.M.C. Section 15.20.200 were supported by the evidence in

the record. It was determined that the residential structure can comply with the floodplain ordinance in all other aspects and without the variance to allow the bulkhead to protect the AOWTS, residential development of the property would not be possible.

### Fire Hazard

The entire city limits of Malibu are located within the fire hazard zone so no other alternatives were considered. The City is served by the LACFD, as well as the California Department of Forestry, if needed. In the event of a major fire, the County has mutual aid agreements with cities and counties throughout the state so that additional personnel and firefighting equipment can augment the LACFD. As such, the proposed project, as conditioned, will not be subject to nor increase the instability of the site or structural integrity involving wild fire hazards.

However, a condition of approval has been included in Planning Commission Resolution No. 12-110 which requires that the property owner 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 City Geologist, City Coastal Engineer, City Public Works Department and the LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design. As such, the proposed project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, fire or any other hazards as identified in LIP Section 9.2(A)(1-7).

*Finding G2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.*

As stated in Finding G1, the proposed project as designed, conditioned, and approved by City departments and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity.

*Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

As discussed previously in Finding A3, the proposed project as designed, conditioned, and approved by City departments and the LACFD, will not result in potentially significant environmental impacts because site and construction design measures have been incorporated which substantially lessen any potential for adverse effects of the

development on the environment. The project, as proposed or conditioned, is the least environmental damaging alternative.

*Finding G4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.*

As stated in Finding G1, the proposed project as designed, conditioned, and approved by City departments and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity.

*Finding G5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.*

As stated in Finding G1, the proposed project as designed, conditioned, and approved by City departments and the LACFD, will not have any significant adverse impacts on site stability or structural integrity. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the LCP.

#### **H. Shoreline and Bluff Development (LIP Chapter 10)**

The project includes development of a parcel located along the shoreline as defined by the LCP. Therefore, in accordance with LIP Section 10.2, the requirements of LIP Chapter 10 are applicable to the project and the required findings are made as follows.

*Finding H1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.*

The project currently provides no public access. However, the project scope includes an offer to dedicate public lateral access across the property. Therefore, the proposed project will have a beneficial impact on public access. The California State Lands Commission (CSLC) issued a determination letter dated December 22, 2008 which states "that the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would like in an area that is subject to the public easement...or that it falls within the LCP's 10-foot setback requirement.

According to the March 2008 Wave Uprush Study prepared for the subject property, any proposed OWTS on the site would be in the uprush zone and would require a protective bulkhead structure to protect the system. The Study further states that the new residence is designed so as to not rely on the bulkhead for protection from wave uprush, beach scour and coastal erosion. The protective bulkhead is required to protect the AOWTS only.

The Study concludes that the subject beach is a stable beach that oscillates seasonally between sandy summer profiles and winter profiles. Based on evidence and data presented in the available studies to date, the subject beach should remain stable at present conditions provided that the sources of sediment supply are not changed. Over the next 50 years, maintenance of the proposed single-family residence should be minimal as long as the construction materials specified in the Study are utilized.

*Finding H2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.*

As stated in Finding H1, as designed, conditioned, and approved by the City Coastal Engineer, the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

*Finding H3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

As discussed in Finding A3, the proposed project is the least environmentally damaging alternative.

*Finding H4. There are not alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.*

As stated in Finding H1, as designed, conditioned, and approved by the City Coastal Engineer, the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

*Finding H5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum extent feasible extent adverse impacts on local shoreline sand supply and public access, there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and is the least environmentally damaging alternative.*

As stated in Finding H1, as designed, conditioned, and approved by the City Coastal Engineer and City Environmental Health Administrator, the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources. Furthermore, as stated in Finding A3, the bulkhead has been located as far landward as feasible and is sited in such a way that provides adequate area for the AOWTS drain field.

Per LIP Section 10.6(B), a condition of approval has been included in Planning Commission Resolution No. 12-110 which requires that the property owner execute and record a deed restriction that states “no future repair or maintenance, enhancement,

reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235.”

#### **I. Public Access (LIP Chapter 12)**

The subject site is located seaward of the first public road (Malibu Road), between Amarillo Beach and Malibu Lagoon State Park. No onsite vertical or lateral access is currently provided on the subject parcel. Bluff-top, trail and recreational access are not applicable. No issue of public prescriptive rights has been raised.

Lateral Access - A lateral public access easement provides public access and use along or parallel to the sea or shoreline. As discussed previously, the applicant has agreed to provide an offer to dedicate a lateral access easement that will extend from the ambulatory mean high tide line to the dripline of the deck.

Vertical Access - As indicated previously, the project is located along the shoreline; however, adequate vertical public access is available at a nearby public vertical accessway located between 24314 and 24320 Malibu Road, approximately 1,900 feet east of the subject property. Vertical access has also been recorded, but not yet constructed at 24038 Malibu Road, two parcels to the west, owned by the State Coastal Conservancy. Consistent with LIP Section 12.5, due to the ability of the public, through other reasonable means to reach nearby coastal resources, an exception for public vertical access has been determined to be appropriate for the project and no condition for vertical access has been required.

#### **J. Land Division (LIP - Chapter 15)**

This project does not involve a division of land as defined in LIP Section 15.1. Therefore, LIP Chapter 15 does not apply.

#### **K. Onsite Wastewater Treatment System (LIP Chapter 18)**

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design, and performance requirements. The project includes the installation of a new AOWTS, which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the M.M.C. In order to meet LCP requirements, advanced treatment is required. The subject system will meet all applicable requirements and an operating permit will be required.

The system will incorporate a 3,000 gallon Norweco Bio Kinetic Model BK 2000 system with ultra-violet disinfection and a 450 square foot drain field. Secondary and tertiary treatment will be incorporated. An operation and maintenance contract and recorded covenant covering such shall be in compliance with the City of Malibu Environmental

Health requirements. In addition, conditions of approval have been included in Planning Commission Resolution No. 12-110 which require continued operation, maintenance and monitoring of onsite facilities.

CORRESPONDENCE: To date, staff has not received correspondence from any members of the public.

ENVIRONMENTAL REVIEW: Pursuant to the authority and criteria contained in CEQA, the Planning Department has analyzed the proposal as described above. The Planning Department has found that this project is listed among the classes of projects that have been determined to have less than significant adverse effects on the environment and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Section 15303(a) – New Construction. The Planning Department 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).

PUBLIC NOTICE: Pursuant to LIP Section 13.12.1, staff published the required 10-day public hearing notice in the Malibu Surfside News on November 22, 2012 and mailed the notice to property owners and occupants within a 500 foot radius of the subject property (Attachment 7).

SUMMARY: The required findings can be made that the project complies with the LCP. Further, the Planning Department's findings of fact are supported by substantial evidence in the record. Based on the analysis contained in this report, staff is recommending approval of this project subject to the conditions of approval contained in Section 5 (Conditions of Approval) of Planning Commission Resolution No. 12-110. The project has been reviewed and conditionally approved for conformance with the LCP by Planning Department staff, appropriate City departments and the LACFD.

ATTACHMENTS:

1. Planning Commission Resolution No. 12-110
2. Vicinity Map and Aerial Photo
3. City Council Agenda Report and Resolution dated July 26, 2010
4. Project Plans
5. Department Review Sheets
6. Story Pole Photographs
7. Public Hearing / Mailing Notice