

Commission Agenda Report

To: Chair Mazza and Members of the Planning Commission

Prepared by: Ha Ly, Associate Planner *HL*

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

Date prepared: February 21, 2013 Meeting Date: March 4, 2013

Subject: Conditional Use Permit Amendment No. 12-004 – An application amending Conditional Use Permit No. 06-010 to extend the hours of operation for an unoccupied, newly constructed restaurant to commence operation at 7:00 a.m. instead of 11:00 a.m. daily

Application Date:	December 18, 2012
Applicant:	Severine Tatangelo of Studio PCH, LLC
Property Owner:	Malibu Cantina, LLC
Location:	22716 Pacific Coast Highway
APN:	4452-004-070
Zoning:	Commercial Visitor Serving – 1 (CV-1)

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 13-24 (Attachment 1) approving Conditional Use Permit Amendment (CUPA) No. 12-004 amending Conditional Use Permit No. 06-010 to extend the hours of operation for an unoccupied, newly constructed restaurant to commence operation at 7:00 a.m. instead of 11:00 a.m. daily.

DISCUSSION: On January 16, 2007, the Planning Commission adopted Resolution No. 07-03, approving Coastal Development Permit (CDP) No. 05-192, Variance Nos. 05-039 and 05-040, Conditional Use Permit (CUP) No. 06-010, Demolition Permit No. 06-020, Initial Study No. 06-007 and Mitigated Negative Declaration No. 06-008, to allow for the construction of a new 7,100 square foot restaurant with liquor, beer and wine service, outdoor seating, associated development and installation of an alternative onsite wastewater treatment system (AOWTS). CUP No. 10-010 allowed for the operation of a restaurant from 11:00 a.m. to 12:00 a.m. midnight on Sundays through Thursdays and 11:00 a.m. to 2:00 a.m. on Fridays and Saturdays (Attachment 2).

On December 7, 2012, a Certificate of Occupancy was issued for the new restaurant. Currently, the restaurant is unoccupied.

On December 18, 2012, CUPA No. 12-004 was submitted, requesting to extend the hours of operations permitted under CUP No. 06-010 to commence operation at 7:00 a.m. instead of 11:00 a.m. The closing times will remain unchanged.

On February 1, 2013, the project was deemed complete for processing.

Project Description

The approved hours of operation are from 11:00 a.m. to 12:00 a.m. on Sundays through Thursdays and 11:00 a.m. to 2:00 a.m. on Fridays and Saturdays and include alcohol sales. The proposed amendment includes extending the hours of operation to commence at 7:00 a.m. instead of 11:00 a.m. daily in order to allow the future restaurant operator to provide breakfast service. The applicant anticipates restaurant employees to start preparation at approximately 5:00 am or 5:30 a.m. daily. Alcohol service during hours of operation is regulated by the California Department of Alcoholic Beverage Control (ABC). The applicant is not intending to change the hours of approved alcohol sales; therefore, alcohol service will begin at 11:00 a.m.

The project was approved with a Joint Use Parking Agreement (JUPA) to serve as donor site for 10 parking spaces for the adjacent restaurant at 22706 PCH (Nobu Restaurant). Condition No. 44 in Resolution No. 07-03 requires valet parking be used for all uses associated with the project and during all hours of operation. When Nobu first opened in August 2012, the restaurant was having difficulty accommodating the number of vehicles on the shared parking lot as construction activities for 22716 PCH were still ongoing and the full parking lot was not available for use. Construction is now complete on the project site and the full parking lot is available for use. All valet parking can be accommodated onsite on the shared parking lot. In the event additional spaces are required for valet parking in the future, the applicant may submit a CUPA to use a nearby parking lot for overflow valet parking. However, for the purpose of the subject application, the applicant is requesting patrons be allowed to self-park in the parking lot during the hours of 7:00 a.m. to 11:00 a.m. on weekdays during nonpeak season (Labor Day through Memorial Day), excluding holidays. The justification for this request is that Nobu is closed during breakfast hours and therefore will not need the 10 donor spaces on the subject property, and the volume of patrons on weekdays during nonpeak season is not expected to exceed self-parking capacity. Valet parking will be required at 7:00 a.m. on all holidays, weekends, and weekdays during peak season (Memorial Day through Labor Day). Valet parking will be required after 11:00 a.m. on weekdays during the non-peak season.

Days	Valet Required
Monday – Friday (non-peak season)	11:00 a.m. – close

Monday – Friday (peak season)	7:00 a.m. – close
Saturday – Sunday (all seasons)	7:00 a.m. – close
Holidays (all seasons)	7:00 a.m. – close

No other changes to the operation are proposed as part of this amendment application.

Conditions of Approval:

Staff has received numerous noise complaints from nearby residents of Nobu Restaurant at 27706 PCH that have since been resolved. However, as part of this amendment, conditions of approval have been included to minimize noise impacts to the nearby residents.

- No outdoor activities, including the use of trash cans and storage areas, shall occur prior to 7:00 a.m.
- Employees and patrons of the subject restaurant shall park in the parking lot within the subject parcel prior to 11:00 a.m.
- No parking shall be permitted on 22706 PCH (Nobu Restaurant) prior to 11:00 a.m. and access shall be blocked off.
- All valet parking shall be accommodated onsite.
- A review of the self-parking hours shall be conducted by Planning staff and reported to the Planning Commission within six months of commencement of operations, at which time the Planning Commission may modify the hours valet parking is required.

Conditional Use Permit and Findings (M.M.C. Section 17.66.080)

Pursuant to Malibu Municipal Code (M.M.C.) Section 17.66.020, a CUP may be amended upon submittal of an application by the permittee. All required findings were made for the approval of original CUP No. 12-004. The proposed extension of hours affects three of the 11 CUP findings made in CUP No. 12-004. All other findings set forth in Planning Commission Resolution No. 07-03 are hereby incorporated by reference into Resolution No. 13-24.

The CUP can be supported based on the revised findings below:

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The proposed project consists of extending the hours of operation to commence at 7:00 a.m. instead of 11:00 a.m. The subject site is currently developed with an unoccupied

restaurant and is surrounded by other commercial uses. Nobu Restaurant is located directly to the west and Malibu Casa Beach Inn is located directly to the east. The nearest residential structure is a multi-family condominium located approximately 340 feet west of the subject restaurant. The applicant anticipates a nominal amount of restaurant employees would start food preparation at 5:00 a.m. or 5:30 a.m. All food preparation would occur within the restaurant and minimal noise would occur in the early morning. The request to extend the hours of operation is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

The proposed project consists of extending the hours of operation to commence at 7:00 a.m. instead of 11:00 a.m. CUP No. 06-010 approved alcohol service to commence at 11:00 a.m.; the applicant is not intending to change the approved hours of alcohol sales. The subject site is currently surrounded by other commercial uses with the nearest residential structure located approximately 340 feet away. The applicant anticipates a nominal amount of restaurant employees would start food preparation at 5:00 a.m. or 5:30 a.m. All food preparation would occur within the restaurant and minimal noise would occur in the early morning. The extended hours are not anticipated to generate any impacts that would be incompatible with uses permitted by the General Plan, Local Coastal Plan or Zoning Ordinance, or any uses in the vicinity.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

A newly constructed restaurant is located on the project site. There are adequate provisions for water, sanitation, and public utilities and services for the restaurant. Since the previous use was a restaurant, no significant impacts on City services are anticipated. The proposed extension of hours of operation would not be detrimental to public health and safety, impact solar access or adversely impact existing public and private views.

ENVIRONMENTAL REVIEW: When processing the original CDP to develop the property, an Initial Study was prepared pursuant to CEQA Guidelines Section 15300.2(c). The Initial Study determined that the project would not have a significant impact on the environment with the incorporation of mitigation measures; subsequently, a Mitigated Negative Declaration (MND No. 06-008) was prepared pursuant to CEQA Guidelines Section 15070. The MND was circulated for the required public review period, then adopted by the Planning Commission and finally, a Notice of Determination was filed pursuant to CEQA Guidelines Section 15075(a).

The Planning Department has found that the subject amendment application does not substantially alter the project that was considered in the MND. The extension of hours proposed does not meet the definition of a "substantial revision" under CEQA Guidelines Section 15073.5 and therefore no recirculation of the MND is required.

CORRESPONDENCE: No written correspondence have been received; however, staff has been in communications with an attorney representing the property owners of the residential condominium structure located approximately 340 feet west of the project site at 22664 Pacific Coast Highway regarding noise. As discussed in Finding 4, a nominal amount of restaurant employees are anticipated to start food preparation at 5:00 a.m. or 5:30 a.m. and food preparation would occur within the restaurant; therefore, minimal noise would occur in the early morning as a result of the proposed extension of hours.

PUBLIC NOTICE: Staff published a Notice of Public Hearing in the Malibu Surfside News on February 7, 2013 and mailed the notice to property owners and occupants within a 500 foot radius of the subject property.

CONCLUSION: Staff recommends approval of this application, approving CUPA No. 12-004 to amend the hours of operation approved under Conditional Use Permit No. 06-010 for an unoccupied, newly constructed restaurant to commence operation at 7:00 a.m. instead of 11:00 a.m., daily. The proposed amendment will not lessen or negate any of the findings or specific permit conditions contained in Planning Commission Resolution No. 07-03 which would remain in effect.

ATTACHMENTS

1. Planning Commission Resolution No. 13-24
2. Planning Commission Resolution No. 07-03
3. Amendment Request
4. Public Hearing Notice / Mailer

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 13-24**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. 12-004, AMENDING PLANNING COMMISSION RESOLUTION NO. 07-03 (CONDITIONAL USE PERMIT NO. 06-010), TO EXTEND THE HOURS OF OPERATION FOR AN UNOCCUPIED, NEWLY CONSTRUCTED RESTAURANT TO COMMENCE OPERATION AT 7:00 A.M. INSTEAD OF 11:00 A.M. DAILY, LOCATED AT 22716 PACIFIC COAST HIGHWAY (MALIBU CANTINA, LLC)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. On January 16, 2007, the Planning Commission adopted Resolution No. 07-03, approving Coastal Development Permit (CDP) No. 05-192, Variance Nos. 05-039 and 05-040, Conditional Use Permit No. 06-010, Demolition Permit No. 06-020, Initial Study No. 06-007 and Mitigated Negative Declaration (ND) No. 06-008, to allow for the construction of a new 7,100 square foot restaurant with liquor, beer and wine service, outdoor seating, associated development and installation of an alternative onsite wastewater treatment system at 22716 Pacific Coast Highway (PCH).

B. At the conclusion of the hearing, the Planning Commission adopted Planning Commission Resolution No. 07-03, approving the aforementioned application, including CUP No. 10-010 (Attachment 2). CUP No. 10-010 allowed for the operation of a restaurant from 11:00 a.m. to 12:00 a.m. midnight on Sundays through Thursdays and 11:00 a.m. to 2:00 a.m. on Fridays and Saturdays.

C. On December 7, 2012, a Certificate of Occupancy was issued for the new restaurant. Currently, the restaurant is unoccupied.

D. On December 18, 2012, the applicant, Severine Tatangelo on behalf of property owner, Malibu Cantina LLC, submitted Conditional Use Permit (CUPA) No. 12-004 requesting to extend the hours of operations permitted under CDP No. 06-010 to commence operation at 7:00 a.m. instead of 11:00 a.m. The closing times approved under CUP No. 06-010 will remain the same.

E. On February 1, 2013, the CUPA application was deemed complete.

F. On February 7, 2013, 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.

G. On March 4, 2013, the Planning Commission held a duly noticed public hearing on the subject amendment application, reviewed and considered the staff report, reviewed and considered written

correspondence, public testimony, and other information in the record.

Section 2. Environmental Review.

When processing the original CDP to develop the property, the Planning Commission found that none of the categorical exemptions from California Environmental Quality Act (CEQA) applied because the project had the potential to have a significant adverse effect on biological, aesthetics, hazards and hazardous materials, air quality, land use and planning, hydrology/water quality, noise, transportation/traffic, and geology/soil resources. Accordingly, an Initial Study was prepared pursuant to CEQA Guidelines Section 15300.2(c). The Initial Study determined that the project would not have a significant impact on the environment with the incorporation of mitigation measures; subsequently, a Mitigated Negative Declaration (MND No. 06-008) was prepared pursuant to CEQA Guidelines Section 15070. The MND was circulated for the required public review period, then adopted by the Planning Commission and finally, a Notice of Determination was filed pursuant to CEQA Guidelines Section 15075(a).

The Planning Commission has found that the subject amendment application does not substantially alter the project that was considered in the MND. The extension of hours proposed does not meet the definition of a "substantial revision" under CEQA Guidelines Section 15073.5 and therefore no recirculation of the MND is required.

Section 3. Amendment of Conditional Use Permit.

Pursuant to Malibu Municipal Code (M.M.C.) Section 17.66.020, a CUP may be amended upon submittal of an application by the permittee. All required findings were made for the approval of original CUP No. 12-004. The proposed extension of hours affects 3 of the 11 CUP findings made in CUP No. 12-004. All other findings set forth in Planning Commission Resolution No. 07-03 are hereby incorporated by reference into this resolution and remain in full force and effect.

The CUP can be supported based on the revised findings below:

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The proposed project consists of extending the hours of operation to commence at 7:00 a.m. instead of 11:00 a.m. The subject site is currently developed with an unoccupied restaurant and is surrounded by other commercial uses. Nobu Restaurant is located directly to the west and Malibu Casa Beach Inn is located directly to the east. The nearest residential structure is a multi-family condominium located approximately 340 feet west of the subject restaurant. The applicant anticipates a nominal amount of restaurant employees would start food preparation at 5:00 a.m. or 5:30 a.m. All food preparation would occur within the restaurant and minimal noise would occur in the early morning. The request to extend the hours of operation is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

The proposed project consists of extending the hours of operation to commence at 7:00 a.m. instead of 11:00 a.m. CUP No. 06-010 approved alcohol service to commence at 11:00 a.m.; the applicant is not intending to change the approved hours of alcohol sales. The subject site is currently surrounded by other commercial uses with the nearest residential structure located approximately 340 feet away. The applicant anticipates a nominal amount of restaurant employees would start food preparation at 5:00 a.m. or 5:30 a.m. All food preparation would occur within the restaurant and minimal noise would occur in the early morning. The extended hours are not anticipated to generate any impacts that would be incompatible with uses permitted by the General Plan, Local Coastal Plan or Zoning Ordinance, or any uses in the vicinity.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

A newly construction restaurant is located on the project site. There are adequate provisions for water, sanitation, and public utilities and services for the restaurant. Since the previous use was a restaurant, no significant impacts on City services are anticipated. The proposed extension of hours of operation would not be detrimental to public health and safety, impact solar access or adversely impact existing public and private views.

Section 4. 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 arising from the City's actions in connection with this resolution, 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 resolution. 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 resolution.
2. The approved hours of operation are from 7:00 a.m. to 12:00 a.m. midnight on Sundays through Thursdays and 7 a.m. to 2 a.m. on Fridays and Saturdays. Alcohol sales shall not commence prior to 11:00 a.m.
3. Valet parking shall be used for all uses associated with the project and during all hours of operation, except 7:00 a.m. to 11:00 a.m. on weekdays during non-peak season (Labor Day through Memorial Day), excluding holidays. Valet parking shall be required as follows:

Days	Valet Required
Monday – Friday (non-peak season)	11:00 a.m. – close

Monday – Friday (peak season)	7:00 a.m. – close
Saturday – Sunday (all seasons)	7:00 a.m. – close
Holidays (all seasons)	7:00 a.m. – close

4. No outdoor activities, including the use of trash cans and storage areas, shall occur prior to 7:00 a.m.
5. Employees and patrons of the subject restaurant shall park in the parking lot within the subject parcel prior to 11:00 a.m.
6. No parking shall be permitted on 22706 PCH (Nobu Restaurant) prior to 11:00 a.m. and access shall be blocked off.
7. All valet parking shall be accommodated onsite.
8. A review of the self-parking hours shall be conducted by Planning staff and reported to the Planning Commission within six months of commencement of operations, at which time the Planning Commission may modify the hours valet parking is required.
9. All other conditions of Planning Commission No. 07-03 are incorporated herein by reference.

Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 4th day of March 2013.

JOHN MAZZA, Planning Commission Chair

ATTEST:

JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - Pursuant to Malibu Municipal Code Section 17.04.220 (Appeal of Action), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms and fee schedule may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, extension 374.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 13-24 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 4th day of March 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

JESSICA BLAIR, Recording Secretary

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 07-03**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 05-192, VARIANCE NOS. 05-039 AND 05-040, CONDITIONAL USE PERMIT NO. 06-010, DEMOLITION PERMIT NO. 06-020, INITIAL STUDY NO. 06-007 AND MITIGATED NEGATIVE DECLARATION NO. 06-008 TO ALLOW FOR THE CONSTRUCTION OF A NEW, 7,100 SQUARE FOOT RESTAURANT TO REPLACE AN EXISTING VACANT RESTAURANT BUILDING AND THE INSTALLATION OF A NEW, ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM IN A COMMERCIAL VISITOR SERVING - 1 (CV-1) ZONING DISTRICT LOCATED AT 22716 PACIFIC COAST HIGHWAY (MALIBU CANTINA, LLC)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. On November 30, 2005, an application for Coastal Development Permit (CDP) No. 05-192 and associated requests was submitted by Scott Mitchell Studios on behalf of Malibu Cantina, LLC to the Planning Division for processing. The application was reviewed and approved by the City of Malibu Public Works Department, City Geologist, City Coastal Engineer, City Environmental Health Administrator, City Biologist and the Los Angeles County Fire Department. The submitted project consisted of the replacement of an 8,004 square foot restaurant with a new, 7,100 square foot restaurant with full liquor license, outdoor seating, and associated development.

B. On December 28, 2006, Notice of Application for Coastal Development Permit No. 05-192 was posted on the subject property.

C. On August 23, 2006, the project was heard before the Environmental Review board.

D. On December 6, 2006, the application was deemed complete for processing.

E. On December 14, 2006, a Notice of Intent to adopt a Mitigated Negative Declaration was issued on December 13, 2006.

F. On December 21, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on December 21, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

G. On January 16, 2007, 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.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the CEQA, the Planning Division has analyzed the proposal as described above. Initial Study No. 06-007 and Mitigated Negative Declaration No. 06-008 were circulated for public review through the State Clearinghouse.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B and 13.9 of the City Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the findings in the staff report, the findings of fact below, and approves Coastal Development Permit No. 05-192.

The proposed project has been reviewed by the City of Malibu Public Works Department, City Geologist, City Coastal Engineer, City Environmental Health Administrator, City Biologist and Los Angeles County Fire Department. According to the City of Malibu's Cultural Resources Sensitivity Maps, the subject site has a low potential to contain archaeological resources. The project is consistent with the LCP's zoning, grading, water quality, and onsite wastewater treatment requirements. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies.

A. General Coastal Development Permit (LIP Chapter 13)

Finding A. 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 and approved for conformance with the LCP by the Planning Commission. As discussed herein, the project, as proposed and/or conditioned, conforms to the certified City of Malibu LCP.

Finding B. 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 project is located between the first public road and the sea. The project site is off a public street and does accommodate public access to the shoreline. Existing onsite development blocks vertical access to the ocean. Nearby public access is available to the east at Zonker Harris access easement adjacent to Windsail. 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 Sections 30200 of the Public Resources Code).

Finding C. The project is the least environmentally damaging alternative.

Pursuant to the California Environmentally Quality Act (CEQA), an Initial Study and Negative Declaration were circulated for public review and considered by the City. According to the Initial Study, the project will result in less than significant adverse effects on the environment, within the meaning of

CEQA. 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 and the Malibu Municipal Code (M.M.C.).

The project will result in less than significant impacts on the physical environment. The new restaurant and AOWTS system will be replacing the existing restaurant and onsite wastewater treatment system. Because the proposed restaurant will be built in the same general location as the existing restaurant, site disturbance will be minimized. Therefore, the proposed location is the least environmentally damaging feasible alternative.

The project consists of a new restaurant and AOWTS. The project will not result in potentially significant impacts because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any potentially significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any potentially significant adverse impacts of the development on the environment.

Finding D. If the project is located in or adjacent to an environmentally sensitive habitat area (ESHA) 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 within ESHA Overlay Map and the project will not result in negative impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into an ESHA. Nevertheless, the project was reviewed by the City Biologist and determined to be exempt from ESHA requirements. The project was determined to be consistent with the provisions of LIP Section 4.4.4(b). The project was reviewed by the Environmental Review Board as an initial study was prepared to analyze potential environmental impacts. The project does not result in the increase of an existing graded pad or developed area.

B. Variance for Parking in the Front Yard (LIP – Chapter 13.26.5)

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 ten findings of fact. The project includes a variance application to provide parking in the front yard. This condition will exceed that which is permitted by LIP Sections 13.12.5(A)(2). The evidence in the record supports the requested variance and the following findings of fact can be made.

Finding A. 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 proposed parking facilities in the front yard are necessary to minimize grading and pull the development away from the beach. Requiring the project to comply with the subject regulations would result in additional grading and pushing the development towards this potentially sensitive resource. Other commercial development in the vicinity includes parking in the front yard. Therefore, special

circumstances or exceptional characteristics apply to the subject property 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.

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

The project will meet all applicable building and engineering safety codes and will not be detrimental to other adjacent properties or improvements. The variance will reduce required grading and work to push the development away from the beach. The variance will allow the construction of the building in an area that has been determined to be appropriate for such use and protect nearby sensitive resources. As stated previously, the project has been reviewed and approved by the Los Angeles County Fire Department, the City Public Works Department, City Biologist, Environmental Health Administrator, City Coastal Engineering and the City Geologist. The project is consistent with applicable City goals and policies and will not be detrimental to the public's interest, safety, health or welfare or injurious to the property or improvements in the same vicinity and zones in which the property is located.

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

Granting of the variance will not constitute a special privilege to the applicant or property owner because other properties in the immediate vicinity are developed with parking in close proximity to the street. The variance will work to protect potentially sensitive resources near the project site and limit overall grading. Since restaurants are consistent with the uses allowed by the zoning district, granting the variance does not constitute a special privilege to the property owner.

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

The granting of the variance is not contrary to or in conflict with the general purposes or intent of the LCP in that granting the variance will allow construction of a restaurant in the CV zoning district. The protection of sensitive resources overrides other development standards and is consistent with the goals, objectives and policies of the LCP.

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

The variance does not propose reduction of any ESHA standards. The development limits of LIP Section 4.7 do not apply because the project site is not in ESHA or ESHA buffer.

Finding F. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The variance is not for a deviation of stringline standards. Therefore, this finding is not applicable.

Finding G. 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 project is for a restaurant, which is an allowed use in the CV zoning district in which the project is located. The variance is for parking in the front yard and does not authorize a use or activity that is not expressly authorized by the zoning regulations for the subject property.

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

The granting of the variance will allow construction of a restaurant in a location that will protect potentially sensitive resources near the site and limit overall grading. The proposed and existing developments share a similar use and layout, and the site has consistently been utilized as a restaurant. With implementation of specific geo-technical specifications, the subject site is physically suitable for the variance.

Finding I. 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 improvements will comply with all building code requirements and will incorporate all recommendations from applicable City Agencies.

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

The project does not include any reduction or elimination of public parking for access to the beach, public trails, or parklands. The variance will aid in accommodating all required on site parking thereby minimizing any use of available public parking by restaurant patrons.

C. Joint Use and Common Parking Facilities (3.12.4)

The Planning Commission may permit the joint use of parking facilities to meet the standards for certain commercial, office, or mixed uses under the following conditions:

Condition A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use; provided, that such reciprocal parking arrangement shall comply with subsection C of this section.

The applicant has requested a Joint Use and Common Parking Facilities Agreement with the adjacent restaurant use. The restaurant use at 22716 PCH requires 59 parking spaces while they have proposed 70 (11 extra) parking spaces onsite. The proposed restaurant use at 22706 PCH requires 74 spaces and provides 64 spaces onsite. The reciprocal parking agreement will allow the 10 required spaces to be utilized on the adjacent site. The two sites together have a net of one extra parking space. Since both properties are restaurant uses, with the same proposed hours of operation and both are conditioned to require only valet parking, the two parking lots will efficiently manage parking for both restaurants through the Joint Use and Common Parking Facilities Agreement.

Condition B. The Planning Commission may reduce parking requirements for common parking facilities by up to twenty-five percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.

The applicant has not requested to reduce the required parking spaces as allowed in a Joint Use and Common Parking Facilities Agreement (a twenty five percent reduction would equate to a loss of 33 parking spaces) but rather to allow some flexibility in the use of the two adjoining parking lots. As discussed above, the total required parking for the site is distributed on both sites.

Condition C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.

As both properties will be restaurant uses and will both be required to have valet parking, there should be no conflict in the principal operating hours. A recorded legal agreement between the City and the applicant is required as a condition of approval. The agreement will contain requirements for an annual review by the City Planning Manager with authority to modify the agreement as necessary to maintain onsite parking arrangements.

Condition D. Parking facilities for new development of general office or commercial use, which may cumulatively impact public access and recreation, shall be designed to serve not only the development during ordinary working hours, but also public beach parking during weekends and holidays, in conjunction with public transit or shuttle buses serving beach recreation areas.

The proposed new development is not anticipated to impact public access or recreation as the site already contains both dedicated vertical and lateral public access.

Condition E. A program to utilize existing parking facilities for office and commercial development located near beaches for public access parking during periods of normal beach use when such development is not open for business should be developed. As feasible, new non-visitor serving office or commercial development shall be required to provide public parking for beach access during weekends and holidays.

The site is a visitor serving development not an office development and will be in operation during the highest beach use times of the day. Adequate parking to meet onsite uses shall be provided, ensuring that off-site restaurant patron parking does not displace public parking for beach access.

D. Variance for Reduction of the Amount of Required Landscaping.

The applicant is requesting approval of a variance to reduce the amount of required landscaping. Pursuant to LIP Chapter 3.8.A.5.b, forty (40) percent of a commercial lot area shall be devoted to landscaping. The proposed project has a total landscaped area of 17 percent, and 34 percent open space (25 percent open space is required). As such, the applicant is requesting a variance for relief from this requirement based on the following findings:

Finding 1. 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.

Due to the constrained parcel and sandy beach, there are special circumstances or exceptional characteristics applicable to the subject property in that the strict application of the 40 percent landscape requirement will make the lot economically un-useable and deny the applicant privileges enjoyed on similar properties in the vicinity and same zone. Abutting and similar properties developed with restaurant uses, including Dukes and Moonshadows have significantly less than the required 40 percent landscaped area.

Finding 2. 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 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 proposed project will eliminate an existing blighted property.

Finding 3. 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 since similar properties with existing restaurant facilities in the vicinity and same zone have similar or less landscaping percentages.

Finding 4. 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 General Plan.

LU Policy 4.1.7: The City shall require visually aesthetic screening of service areas and well landscaped parking lots.

LU Implementation Measure 71: Permit minor modifications to development standards to accommodate renovation and adaptive reuse of existing commercial/retail buildings.

The proposed variance will not be in conflict with the purposes and intent of the LCP nor the goals, objectives and policies of the General Plan. Landscape screening of the parking area from Pacific

Coast Highway will be installed as part of the project to lessen the impact of parking located within the front yard setback area. The modification to landscape standards will allow the proposed project to renovate and enhance an existing vacant blighted commercial property.

Finding 5. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located.

The variance request is for landscaping reduction related to the development of a restaurant/bar in the CV-1 zone. This use is consistent with the purpose and intent of the proposed CV-1 zone.

Finding 6. The subject site is physically suitable for the proposed variance.

The subject site as currently developed has a limited amount of area for landscaping. However, the site is physically suited to allow for extensive landscaping along the front property line to screen parking from the public right-of-way.

Finding 7. The variance request complies with all requirements of state and local law.

The variance request and the proposed project will comply with all the requirements of state and local laws.

Finding 8. The variance will not be detrimental to the health, safety and welfare of the City.

All or any necessary conditions have been imposed on the proposed project to ensure that the project will not be detrimental to the health, safety and welfare of the City.

E. Conditional Use Permit and Findings (M.M.C. Section 17.66.080)

The applicant is requesting a CUP to allow a new restaurant with beer, wine and liquor. Pursuant to M.M.C. Section 17.66.080, the Planning Commission may approve, deny and/or modify an application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. The CUP can be supported based on the findings below:

Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

The proposed restaurant is a conditionally permitted use in the CV-1 zoning district. The project has been conditioned to comply with all applicable provisions of the M.M.C.

Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The restaurant use is a visitor serving use on a visitor serving zoned property and therefore promotes the intent of the CV-1 zoning district.

Finding 3. The subject site is physically suitable for the type of land use being proposed.

It has been determined that the subject site is physically suitable for supporting a restaurant, as the site has previously operated as a restaurant for many years.

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The subject site is currently developed with a vacant restaurant, and is surrounded by both commercial and residential uses. The proposed hours of operation are limited to 11:00 am to midnight, Sunday-Thursday, and from 11:00 am to 2:00 am on Friday and Saturday. The proposed project will not interfere with the parking and circulation in the area and therefore the use is compatible with on-site uses and other uses in the surrounding neighborhood.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

As conditioned, the proposed restaurant will have limited hours of operation and full liquor service (11:00 am to 12:00 am Sunday through Thursday, and 11:00 am through 2:00 am on Friday and Saturday) and no live entertainment will be permitted. Therefore the proposed use is not anticipated to generate any impacts that would be incompatible with uses permitted by the General Plan, Local Coastal Plan or Zoning Ordinance, or any use uses in the vicinity.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

Existing utilities will serve the proposed project. Since the previous use is a restaurant, no significant impacts on City services are anticipated. The conditional use permit has been conditioned so that the hours of operation are from 11 am - midnight Sunday through Thursday; 2 am on Friday and Saturday nights.

The proposed project will not create any shade or shadow impacts that would impede solar access. The structure size at 22716 Pacific Coast Highway will not change significantly under this application, and; therefore, will not adversely impact existing public and private views.

Finding 7. There would be adequate provisions for public access to serve the subject proposal.

The proposed restaurant replaces a former restaurant of slightly larger size. The proposed restaurant will not impact parking or circulation for the area.

Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

The use is a conditionally permitted commercial use in the CV-1 district and, as conditioned, is consistent with goals, objectives and policies of the General Plan.

Finding 9. The proposed project complies with all applicable requirements of state and local law.

The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as Alcoholic Beverage Control (ABC).

Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

The proposed project is a restaurant with beer, wine and liquor service, which is a conditionally permitted use in a visitor serving commercial zone. As conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare.

Finding 11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

The project will not be at risk from earth movement and flood hazards since the application is limited to redevelopment of an already developed property. The building footprint and envelope will change slightly; but there is no new impact related to earth movement or liquefaction.

F. Environmentally Sensitive Habitat Area (LIP Chapter 4)

The subject parcel is not located in the ESHA Overlay Map and the project will not result in negative impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into an ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

G. Native Tree Protection Ordinance (LIP Chapter 5)

No native trees exist on the property; therefore, this finding does not apply.

H. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Ordinance governs those CDP 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. The proposed project is visible from PCH, but according to LUP Policy 6.4, the area of development is not considered a scenic area since it is existing commercial development on PCH east of Malibu Canyon Road. In addition the project is for reconstruction of a restaurant in the same location as the former, and the installation of a new AOWTS, and will not impede views once installed. No potentially significant impacts on scenic and/or visual resources are anticipated. The project is consistent with existing development, and will not result in substantial view changes. Nonetheless, the scenic resource findings can be made and are enumerated below.

LIP Section 6.5(E) requires a view corridor for new development located on the ocean side of public roads. The subject site is located on a public road. The view corridor has been provided.

Finding 1. 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 restrictive lot dimensions, there is no alternative building site location where development would not be visible. However, the project has been designed to avoid any adverse or scenic impacts by emulating the mass bulk and scale of the existing development. In addition, the proposed project is under the maximum development envelope allowed for the subject property. The use of non-metallic and non-glare siding, as required by the LCP will help minimize visual impacts upon viewing the subject site.

Staff conducted several site visits. The analysis of the project's visual impact from public viewing areas along PCH included site reconnaissance, view of the property from PCH, and review of the landscape and architectural plans. Staff determined that the proposed restaurant would result in a less than significant visual impact to public views from either the beach or from PCH.

Finding 2. 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 restaurant is designed utilizing colors and materials that will be compatible with the architectural character of the surrounding neighborhood.

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

As discussed in A. General Coastal Development Permit, Finding C. the project as proposed or as conditioned is the least environmentally damaging alternative.

Finding 4. 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 A. General Coastal Development Permit, Finding C. the proposed location of the structure will result in less than significant impacts on scenic and visual resources.

Finding 5. 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 A. General Coastal Development Permit, Finding C. the project will have less than significant scenic and visual impacts.

I. Transfer Development Credits (LIP Chapter 7)

Pursuant to LIP Section 7.2, transfers of development credits only apply to land division and/or new multi-family development in specified zoning districts. The proposed CDP does not involve land division or multi-family development. Therefore, LIP Chapter 7 does not apply.

J. 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 Planning Commission has determined that the project is located on a site or in an area where the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Therefore, the requirements of Chapter 9 of the LIP are applicable to the project and the required findings are made below.

Finding 1. 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.

The project was analyzed by the Planning Commission for the hazards listed in the LIP Section 9.2.A. (1-7). Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City Geologic Data maintained by the City; 2) submitted geological reports; 3) Wave Uprush Analysis.

The General Plan shows that the project site is in the vicinity of the Malibu Coast Fault. The Malibu Coast Fault Zone has not been recognized as an active fault by the State and no special study zones have been delineated along its length. The General Plan also shows the project site is in the vicinity of extreme fire hazards areas. The project could be subject to hazards from liquefaction (LIP 9.2.A.4), wave action (LIP Section 9.2.A.5) and potential tsunamis (LIP Section 9.2.A.6). Therefore, the proposed site was analyzed for geologic and structural integrity hazards.

Based on the Planning Commission's review of the above referenced information, it has been determined that:

1. The project site has a low potential to be subject to liquefaction hazards;
2. The project site could be subject to hazards from wave action and tsunami hazard; and
3. The project site is in the vicinity of extreme fire hazard areas.

The City Coastal Engineer, the City Geologist, Public Works Department, Environmental Health Specialist and 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 and wave uprush reports are incorporated into the project design.

Exempt grading includes all removal and recompaction (R&R), understructure, and safety grading. Safety grading is the incremental grading required for fire department access (such as turnouts, hammerheads, and turnarounds and any other increases in driveway width above 15 feet required by the Los Angeles County Fire Department).

Liquefaction Hazard

The project site soils consist primarily of existing fill and littoral sands that are subject to liquefaction and erosion due to wave action. The proposed two-story wood frame structure will be supported by caisson and grade-beam foundation system embedded into bedrock beneath the sandy soils. The building superstructure will be supported directly by the caissons and the ground floor will consist of a structural deck also supported by the caissons. Any exterior concrete slab-on-grade construction would be supported by compacted soils. The proposed structure foundations will extend into the bedrock which is not susceptible to liquefaction thus mitigating seismically induced settlement and earth movement due to liquefaction hazards.

Wave Uprush Hazard

Wave Uprush analysis can be found on file at city hall. The wave uprush study recognized that the adjacent structures have been in place for over thirty years and have not been subject to wave runoff damage and recommended that the finished floor of the proposed structure be the same as those adjacent.

Flood/Fire Hazard

The proposed site was also evaluated for flood hazards and the project has been designed to meet the Federal Emergency Management Act's requirements for flood prone areas. In addition, the entire City of Malibu is located within the fire hazard zone.

Finding 2. 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 F. Hazards Finding 1 above, the proposed project as designed, conditioned, and approved by the City Coastal Engineer, City Geologist, City Public Works Department and the LACFD, the project will not have any significant adverse impacts on the site stability or structural integrity.

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

As discussed previously, the project will not result in any potentially significant environmental impacts because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen potentially significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any potentially significant adverse impacts of the development on the environment. The project is the least environmental damaging alternative.

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in F. Hazards Finding 1 above, the proposed project as designed, conditioned, and approved by the City Coastal Engineer, City Geologist, City Public Works Department and the LACFD, the project

will not have any significant adverse impacts on the site stability or structural integrity.

Finding 5. 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 F. Hazards Finding 1 above, the proposed project as designed, conditioned, and approved by the City Coastal Engineer, City Geologist, City Public Works Department and the LACFD, the project will not have any significant adverse impacts on the site stability or structural integrity. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the LCP.

In addition, pursuant to LIP Section 4.42, the property owner will be required, as a condition of approval, to record a deed restriction acknowledging and assuming the hazard risk of development at the site. The deed restriction shall state that the proposed project is subject to wave action, erosion, flooding, landslides or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against liability, claims, damages or expenses arising from any inquiry or damage due to such hazards.

K. Shoreline and Bluff Development (LIP Chapter 10)

The project does include development of a parcel located on or along the shoreline, a coastal bluff or bluff top fronting the shoreline as defined by the Malibu Local Coastal Program. Therefore, in accordance with Section 10.2 of the Local Implementation Plan, the requirements of Chapter 10 of the LIP are applicable to the project and the required findings made below.

Finding 1. 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 is located between the first public road and the sea. However, the proposed project and related construction activities are not anticipated to interfere with the public's right to access the coast as the site offers no direct or indirect beach access. There is existing vertical public access at 22706 Pacific Coast Highway near the former Windsail restaurant. In addition, the applicant has offered to provide a lateral access easement; therefore, the proposed project will have no significant adverse impacts on public access. It is also anticipated that shoreline sand supply or other resources will not be impacted by the proposed project.

Finding 2. 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 K. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

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

As discussed previously, the project will not result in potentially significant impacts because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any potentially significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any potentially significant adverse impacts of the development on the environment. The project is the least environmentally damaging alternative.

Finding 4. 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 K. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

Finding 5. 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 K. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources. The proposed structure is located as far landward as feasible while maintaining required setbacks.

Per LIP 10.5 (c) (page 184), all applications for proposed development on a beach or along a shoreline, including a shoreline protection structure, shall contain written evidence of review and determination from the California State Lands Commission (CSLC) relative to the proposed project's location to or impact upon the boundary between public tidelands and private property. The CDP application for the associated staff report contains the determination from the State Land Commission which indicates that "the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters or that it falls within the LCP's ten-foot setback requirement."

Finally, the AOWTS requires further wastewater treatment than the systems of the adjacent existing properties. Therefore, the proposed project is the least environmentally damaging alternative.

In addition, the property owner will be required, as condition of approval, to record a deed restriction waiving any right to extend the seaward footprint of the onsite structures. The deed restriction shall state that 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.

L. Public Access (LIP Chapter 12)

The subject site is located between the first public road and the sea, on the ocean side of PCH. The project involves the construction of a new restaurant on a previously developed lot. The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; however, LIP Section 12.6 states that public access is not required when adequate access exists nearby and the findings addressing LIP Section 12.8.3 can be made. The following findings satisfy this requirement. Analyses required by LIP Section 12.8.2 are provided herein, and in geotechnical and coastal engineering reports referenced previously in this report. Bluff top, trail, and recreational accesses are not applicable. No issue of public prescriptive rights has been raised.

The subject parcel is located on or near a public beach. The project involves construction of a new restaurant. No on-site vertical access is provided currently. A lateral access easement will be provided prior to the issuance of building permits. Therefore, the project will not hinder public access either during short-term construction activities nor long-term operation. No modifications to the existing, approved seawall are permitted under this application.

Lateral Access

The project is on the shoreline. According to LIP Section 12.5, access is required for new development between the nearest public roadway and the sea. Standards for lateral public access are identified in LIP Section 12.7.1. As previously mentioned, the applicant must record a lateral access easement prior to the issuance of building permits.

A lateral public access easement provides public access and use along or parallel to the sea or shoreline. The applicant has agreed to provide an offer to dedicate a lateral access easement subject to project approval. Such Offer to Dedicate (OTD) shall include a site map that shows all easements, deed restrictions, or OTD and/or other dedications to public access and open space and provide documentation for said easement or dedication.

Due to the scope of the project, and that a lateral access easement must be recorded prior to the issuance of building permits, no potential project-related or cumulative impacts on lateral public access are anticipated. LIP Section 12.6 indicates that public access is not required when public access is inconsistent with public safety and the findings addressing LIP Section 12.8.3 can be made. The following findings apply.

Finding A. The type of access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Lateral access will be provided. No potential project-related or cumulative impact on public access is anticipated.

Finding B. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

No mitigation measures to manage the type, character, intensity, hours, season or location of lateral access are available to protect public safety. Lateral access will be provided. In any case, no potential project-related or cumulative impact on public access is anticipated.

Finding C. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

The public, through another reasonable means, can reach the same area of public tidelands as would be made accessible by an access way on the subject land. Nonetheless, lateral access will be provided as a condition of approval. In any case, no potential project-related or cumulative impact on public access is anticipated.

Vertical Access

As discussed previously, the project is located between the shore and the first public road. Due to the scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Furthermore, due to nearby vertical access, vertical access across the site is not deemed appropriate. The basis for the exception to the requirement for vertical access is associated with the availability of the Zonker Harris accessway nearby at Windsail, immediately next door.

Due to the scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Nevertheless, the following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding vertical access. Due to these findings, LIP Section 12.8.1 is not applicable.

Finding A. The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Vertical access would not impact fragile coastal resources or have any impact on a military facility. The basis for the exception to the requirement for vertical access is associated with the availability of access nearby as described above. Due to the scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated.

Finding B. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

As discussed previously, no mitigation measures are available to manage the type, character, intensity, hours, season or location of a vertical access to public safety because of wave and tidal forces. No impacts to military security or to fragile coastal resource have been identified. Due to the scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated.

Finding C. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

Due to the scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. The ability of the public to access nearby public coastal tidelands is available from the beaches located both east and west of the project site.

The project as proposed does not block or impede access to the ocean. Conditioning the project to provide a vertical public access would not provide additional access to coastal resources because adequate public access is provided in the vicinity. Since existing access to coastal resources is adequate, and the project site is located on a private street that is not accessible to the public, no legitimate governmental or public interest would be furthered by requiring access at the project site.

Bluff Top Access

The project is not located on a bluff top. Therefore, no potential project-related or cumulative impact on bluff top access is anticipated. The ability of the public to access nearby public coastal tidelands is available from the public beaches located both east and west of the project site. The project as proposed does not block or impede access to the ocean. Because existing access to coastal resources is adequate, no legitimate governmental or public interest would be furthered by requiring access at the project site. Due to the scope of the project, no potential project-related or cumulative impact on bluff top public access is anticipated and the findings in LIP Section 12.8.3 regarding bluff top access are not applicable.

Trail Access

The project site does not include any existing or planned trails as indicated in the LCP, the General Plan, or the Trails Master Plan. Therefore, no conditions or findings for trail access are required.

Recreational Access

The project site is not adjacent to, does not include, nor has any access ways to existing or planned public recreational areas. Therefore, no conditions or findings for recreational access are required.

M. Land Division (LIP Chapter 15)

This project does not involve a division of land as defined in LIP Section 15.1; however the proposed lot tie is subject to the requirements of Section 15.4, Merger of Parcels. The requirements for a voluntary merger (applicant requested) are identified as follows:

- A. Contiguous parcels under common ownership may be voluntarily merged if:
 - 1. Either a merger or lot tie is authorized or required pursuant to a term or condition of a coastal development permit; or
 - 2. The City determines that the merger is not inconsistent with any policy or standard of the LCP that protects environmentally sensitive habitat areas and/or visual resources of the coastal zone.

The parcels are under common ownership and the application is for a Lot Tie Covenant and Agreement for the three adjoining parcels. The Planning Commission has determined in the Findings previously stated in this report that the proposed project, including the lot tie is not inconsistent with any policy or

standard of the LCP that protects environmentally sensitive habitat or visual resources of the coastal zone.

- B. An instrument evidencing the merger shall be recorded. The recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, and the new parcel that results after the merger. The instrument must be reviewed and approved by the City prior to recording. A copy of the recorded instrument shall be provided to the Los Angeles County Assessor's Office.

Said instrument is required as Condition of Approval No. 37 of Resolution No. 07-02. Upon submittal, the document shall be reviewed and approved by the City Engineer and forwarded to the Los Angeles County Recorder's office for recordation. In addition, Condition of Approval No. 38 requires that the applicant supply proof that the recorded document was submitted to the Los Angeles County Assessor's Office.

N. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses AOWTS. LIP Section 18.7 includes specific siting, design, and performance requirements. The project includes an AOWTS, which has been reviewed by the City Environmental Health Specialist and found to meet the minimum requirements of the Malibu Plumbing Code, the City of Malibu Municipal Code and the LCP. The subject system will meet all applicable requirements, and operating permits will be required from the City of Malibu's Environmental and Building Safety Division. An operation and maintenance contract and recorded covenant covering such shall be in compliance with the City of Malibu Environmental Health requirements. Nevertheless, conditions of approval have been included to require continued operation, maintenance and monitoring of on site facilities.

Demolition Permit

Pursuant to Section 17.70.060 of the IZO the following findings must be made in order for the review and approval body to approve a demolition permit application.

1. *The demolition permit is conditioned to assure that it will be conducted in a manner that will not create significant adverse environmental impact.*

Project Specific conditions and mitigation measures will ensure that the demolition will not create a significant adverse environmental impact.

2. *A development plan has been approved or the requirement waived by the city.*

A demolition permit will only be approved as part of the approval all other development permits requested as part of this application.

Malibu Municipal Code Section 17.70 requires that demolition permits be issued for projects that result in the demolition of any building or structure. The project proposes to demolish onsite development. The required findings can be made since (1) the project will not result in potentially significant adverse environmental impacts, and (2) the project includes a replacement development.

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 05-192 and associated requests, subject to the conditions listed below:

1. The applicants and 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.
 - Demolition of an existing 8,004 square foot vacant restaurant building;
 - Construction of a new, 7,100 square foot restaurant, and a new AOWTS;
 - Grading and landscaping;
 - Conditional Use Permit for the restaurant/bar use with the proposed hours of operation limited to 11:00 am to midnight, each day, and from 11:00 am to 2 am on Friday and Saturday, with no amplified music or outdoor speaker system permitted;
 - Joint Use and Common Parking Facilities Agreement to allow reciprocal parking. The agreement will contain requirements for an annual review by the City Planning Manager with authority to modify the agreement as necessary to maintain onsite parking arrangements; and
 - Lot Tie Covenant and Agreement for the three adjoining parcels

Subsequent submittals for this project shall be in substantial compliance with the plans on-file with the Planning Division. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

3. Pursuant to LIP Section 13.18.2 (page 237), this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 days of this decision and prior to issuance of any development permits.
4. This resolution and the referral 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 and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
5. The CDP shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.

6. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
7. All structures shall conform to all requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Specialist, City Biologist, Los Angeles County Water District No. 29, and Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
8. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
9. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division 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 Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
10. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Thereafter, the procedures contained in Chapter 11 of the LCP and those in Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code (M.M.C.) shall be followed.
11. 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.
12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
13. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.
14. The CDP runs with the land and binds all future owners of the property.
15. Pursuant to LIP Section 13.20, development pursuant to an approved coastal development permit shall not commence until the coastal development permit is effective. The coastal development permit is not effective until all appeal, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or

issues the permit on appeal, the coastal development permit approved by the City is void.

16. New development shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
 - a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones.
 - b. 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.
 - c. All windows shall be comprised of non-glare glass.

Lighting

17. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. 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 that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent.
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent.
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent.
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent.
 - e. Site perimeter lighting shall be prohibited.
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.
 - h. **Prior to issuance of the CDP, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.**
18. The project applicant shall prepare a lighting plan prior to issuance of a building permit that demonstrates to the satisfaction of the Planning Manager and Building Official that all lighting for the site shall be confined to the project site.

Landscaping

19. All open areas not used for buildings, driveways, parking areas, or walkways shall be attractively landscaped and maintained in accordance with a landscape plan, with native plant species, to the satisfaction of the Planning Manager.

Geology

20. All recommendations of the consulting Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and/or the City Geologist 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 Geologist prior to the issuance of a grading permit.
21. Final plans approved by the City Geologist shall be in substantial conformance with the approved Coastal Development Permit relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment of the Coastal Development Permit or a new Coastal Development Permit

Water Service Condition

22. Prior to the issuance of a building permit, the applicant shall submit a Will Serve letter from the Los Angeles County Waterworks District No. 29 indicating the ability of the project to receive adequate water service.

Water Quality

23. 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 Chapter 17 of the Malibu LIP.
24. 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 Malibu LCP and all other applicable ordinances and regulations.
25. A Water Quality Management Plan (WQMP) shall be submitted for review and approval of the Public Works Director. The WQMP shall be prepared in accordance with the Malibu LCP and all other applicable ordinances and regulations.
26. The design of the proposed project shall comply with the applicable provisions of the Water Quality Management Plan (WQMP), and if required by the WQMP, shall include structural or other measures to collect and treat the first 3/4 inch of stormwater runoff from the site, and control peak flow discharge.
27. In order to further reduce potentially significant impacts to surface water quality resulting from implementation of the proposed project, the following mitigation measures are recommended. Implementation of these measures would reduce all project impacts to less than significant levels.

28. The following conditions deal with temporary construction impacts.
- Construction shall be phased to the extent feasible and practical to limit the amount of disturbed areas present at a given time.
 - Grading activities shall be planned during the southern California dry season (April through October).
 - 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.
 - Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within project sites.

Demolition/Solid Waste

29. The project developer shall utilize licensed subcontractors and ensure that all asbestos-containing materials and lead-based paints encountered during demolition activities are removed, transported, and disposed of in full compliance with all applicable federal, state and local regulations.
30. Applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
31. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.

Hazards

32. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

Onsite Wastewater Treatment System

33. 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 the Chapter 18.9 of the LCP related to continued operation, maintenance and monitoring of onsite facilities.

Shoreline Protection

34. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.
35. The property owner is required to acknowledge, by the recordation of a deed restriction, that 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. Said deed restriction shall be submitted to the Planning Division for approval prior to recordation. The deed restriction shall also acknowledge that the intended purpose of the shoreline protection structure is solely to protect existing structures located on the site, in their present condition and location, including the septic disposal system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure. No modifications to the existing, approved seawall are permitted under this application. No new shoreline protective device is required for the proposed project.
36. Pursuant to LIP Section 10.4.C. Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:
 1. No stockpiling of dirt or construction materials shall occur on the beach;
 2. All grading shall be properly covered and sandbags, ditches, or other Best Management Practices (BMPs) shall be used to prevent runoff and siltation;
 3. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work;
 4. No machinery shall be allowed in the intertidal zone at any time unless authorized in the Coastal Development Permit;
 5. All construction debris shall be removed from the beach daily and at the completion of development.
37. In order to effectuate the property owner's offer to dedicate lateral access, prior to the issuance of any building, grading or other development permits, the property owner shall execute and record a document in a form and content acceptable to the Coastal Commission, an irrevocable offer to dedicate (or grant an easement) free of prior liens and any other encumbrances that may affect the interest being conveyed, an easement to a public agency or private association approved by the Coastal Commission, granting the public the permanent right of lateral public access for the right to pass and repass. The easement shall extend along the entire width of the property from the mean high tide line to the dripline of the most seaward projecting structure. The recorded document shall include legal descriptions and a map drawn to scale of both the subject parcel and

the easement area. The offer to dedicate or grant of easement shall run with the land in favor of the People of the State of California, binding all successors and assignees, and the offer shall be irrevocable for a period of 21 years, from the date of recordation.

Lot Tie and Covenant Agreement

38. An instrument evidencing the lot tie shall be recorded. The recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, and the new parcel that results after the merger. The instrument must be reviewed and approved by the City Planning Department and City Engineer prior to recording.
39. The applicant shall supply proof that the recorded Lot Tie Covenant Agreement was provided to the Los Angeles County Assessor's Office.

Restaurant

40. The new restaurant at 22716 PCH shall serve as a donor site for 10 parking spaces for the adjacent restaurant at 22706 PCH. A legal agreement (Joint Use and Common Parking Facilities Agreement) between the City and the applicant is required as a condition of approval. The agreement will contain requirements for a six month review by the City Planning Manager with authority to modify the agreement as necessary to maintain onsite parking arrangements.
41. The proposed hours of operation are limited to 11:00 am to midnight, each day, and from 11:00 am to 2 am on Friday and Saturday.
42. No live entertainment or amplified sound will be permitted. Additionally, no outdoor speaker/pager system or shall be allowed.
43. No trash or recycling pick up is permitted between the hours of 10:00 pm and 8:00 am.
44. Valet parking shall be used for all uses associated with the project and during all hours of operation.
45. Once obtained, the applicant is required to provide to the Planning Division a copy of the California Department of Alcohol Beverage Control issued On-Premise Consumption License.
46. Violation of any of the conditions of approval shall be cause for revocation of the conditional use permit and termination of all rights contained therein.

Other conditions

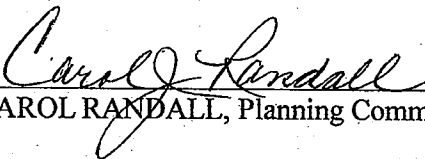
47. No valet staging or valet parking of cars on PCH is permitted.
48. No Demolition permit shall be issued until the building permits are approved. For issuance demolition and start of reconstruction must take place within a six month period.

49. Dust control measures must be in place if construction does not commence within 30 days after demolition.
50. No lanes shall be closed on PCH during construction from 7-9 am or from 5-7 pm Monday-Friday and during summer peak hours (10 am-6 pm) on weekends. This condition shall be included on all encroachment permit.
51. Compact spaces shall be limited to 20 percent of overall site parking requirements.
52. The existing seawall shall be removed when the new onsite wastewater treatment system is installed.

Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 16th day of January 2007.


CAROL RANDALL, Planning Commission Chair

ATTEST:

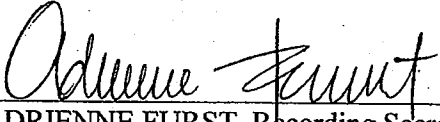

ADRIENNE FURST, Recording Secretary

Local Appeal - Pursuant to Local Coastal Program Local Implementation (LIP) Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee of \$655.00, as specified by the City Council. Appeal forms may be found online at www.ci.malibu.ca.us, in person at City Hall, or by calling (310) 456-2489 ext. 245 or ext. 256.

Coastal Commission Appeal - An aggrieved person may appeal the Planning Commission's decision 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 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.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 07-02 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 16th day of January 2007, by the following vote:

AYES: 4 Commissioners: House, Moss, Schaar and Randall
NOES: 0
ABSTAIN: 0
ABSENT: 1 Commissioner: Sibert



ADRIENNE FURST, Recording Secretary

RECEIVED
DEC 18 2012
PLANNING DEPT.

Malibu, December, 12th, 2012

Attn: City of Malibu, Planning Department

RE: CUP AMENDMENT TO EXISTING CUP # 06-010

17. Description of proposed business, including but not limited to: daily operations, hours, liquor sales, number of employees, music/entertainment, private events and recurring planned events.

The owner is requesting an amendment to the CUP # 06-010 to extend the business hours of operations for the restaurant located at 22716 Pacific Coast Highway.

The proposed amendment requests only a change in opening hours from 11am to 7 am daily. The restaurant will comply with all other conditions of CUP 06-010.

The proposed business is a restaurant in an existing, previously approved building, with on-site liquor service.

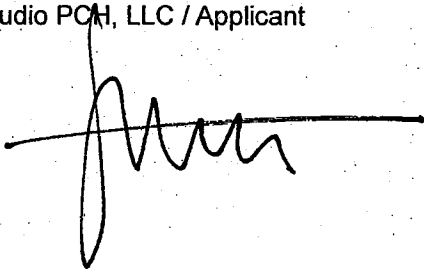
DAILY OPERATIONS: Open for breakfast, lunch and dinner 7 days/week.

HOURS OF OPERATIONS: From 7am to midnight Sunday through Thursday, and 7am to 2am Friday and Saturday.

NUMBER OF EMPLOYEES: Yet to be determined as the business has not opened yet. Expected about 50 employees.

LIQUOR SALES: Full liquor license approved under CUP # 06-010

Severine Tatangelo
Studio PCH, LLC / Applicant



**NOTICE OF PUBLIC HEARING
CITY OF MALIBU
PLANNING COMMISSION**

The Malibu Planning Commission will hold a public hearing on **Monday, March 4, 2013, at 6:30 p.m. in the Council Chambers, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA**, for the project identified below.

CONDITIONAL USE PERMIT AMENDMENT NO. 12-004 – An application to amend the hours of operation for an unoccupied, newly constructed restaurant to commence operation at 7:00 a.m. instead of 11:00 a.m. daily as approved under Conditional Use Permit No. 07-03.

APPLICATION FILING DATE:	December 18, 2012
APPLICANT:	Severine Tatangelo, Studio PCH
OWNER:	Malibu Cantina, LLC
ADDRESS:	22716 Pacific Coast Highway
APN:	4452-004-037
ZONING:	Commercial Visitor Serving – 1 (CV-1)
CITY PLANNER:	Ha Ly, Associate Planner (310) 456-2489, extension 250

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the previously approved project and adopted Mitigated Negative Declaration No. 06-008. Furthermore, the Planning Director has analyzed the proposed amendment as described above and 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 15301 – Existing Facilities. The Planning Director 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).


A written staff report will be available at or before the hearing. Following an oral staff report at the beginning of the hearing, the applicant may be given up to 15 minutes to make a presentation. Any amount of that time may be saved for rebuttal. All other persons wishing to address the Commission will be provided up to three minutes to address the Commission. These time limits may be changed at the discretion of the Commission. At the conclusion of the testimony, the Commission will deliberate and its decision will be memorialized in a written resolution.

Copies of all related documents are available for review at City Hall during regular business hours. Written comments may be presented to the Planning Commission at any time prior to the close of the public hearing.

LOCAL APPEAL - A decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within ten days following the date of action for which the appeal is made and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org or in person at City Hall, or by calling (310) 456-2489, extension 256.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

If there are any questions regarding this notice, please contact Ha Ly, Associate Planner, at (310) 456-2489, extension 250.


JOYCE PARKER-BOZYLINSKI, AICP
Planning Director

Publish Date: February 7, 2013

City of Malibu

23825 Stuart Ranch Road
Malibu, CA 90265
(310) 456-2489 Fax (310) 456-7650

NOTICE OF
PUBLIC HEARING

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APPLICATION FILING DATE: December 18, 2012
APPLICANT: Severine Tatangelo,
Studio PCH

PROPERTY OWNER: Malibu Cantina, LLC
LOCATION: 22716 Pacific Coast
Highway

APN: 4452-004-037

ZONING: Commercial Visitor
Serving - 1 (CV-1)

CITY PLANNER:

Ha Ly, Associate Planner
(310) 456-2489, ext. 250
hly@mailbucity.org

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City of Malibu Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265

Notice of Public Hearing

Notice Continued...

2

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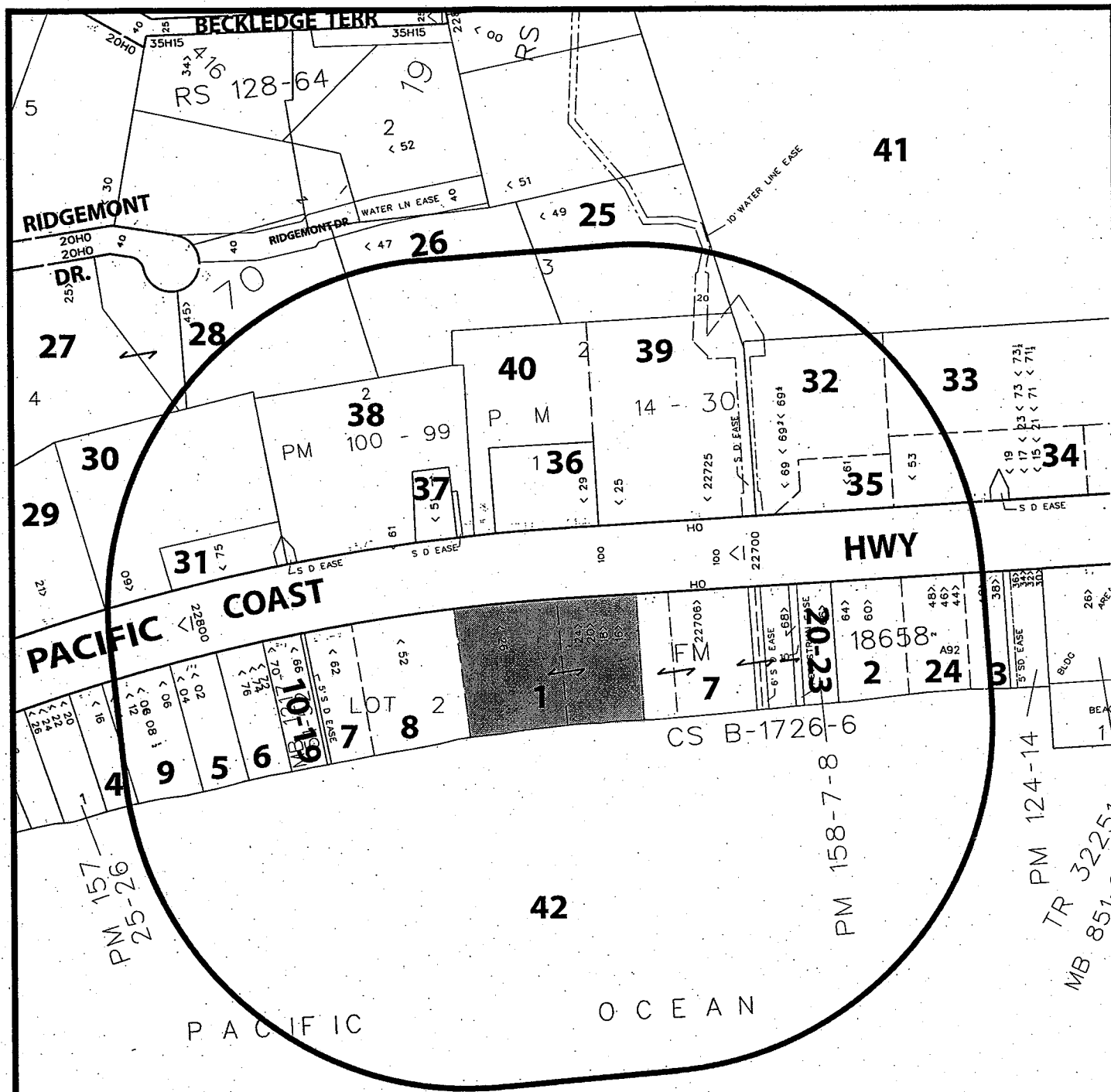
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If there are any questions regarding this notice, please contact Ha Ly, Associate Planner, at (310) 456-2489, extension 250, or at hly@mailbucity.org.

Date: February 7, 2013

By: Joyce Parker-Bozylinski, AICP, Planning Director



500 FT. RADIUS MAP

ADDRESS: 22716 PACIFIC COAST HWY.



Quality Mapping Service

14549 Archwood St. Suite 301
Van Nuys, California 91405
Phone (818) 997-7949 - Fax (818) 997-0351
qmapping@qesqms.com

CASE NO:
DATE: 12-11-12
SCALE: 1" = 200'

QMS 12-266

