

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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W 16a



DATE: March 29, 2008

[Click here to go to the Staff Report Addendum posted on June 10, 2008](#)

TO: Commissioners and Interested Persons

FROM: John Ainsworth, Deputy Director
Barbara Carey, Supervisor, Planning and Regulation
Deanna Christensen, Coastal Program Analyst

SUBJECT: City of Malibu Local Coastal Program Amendment 1-07 for Public Hearing and Commission Action at the June 11, 2008 Commission Meeting in Santa Rosa.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu's proposed amendment to the adopted Local Coastal Program consists of amending the lot development criteria for the Single Family-Medium (SF-M) Zoning District to include a 45-foot minimum lot width standard for beachfront lots. This lot development criteria amendment is intended to facilitate a proposed beachfront subdivision at 30732 Pacific Coast Highway. In addition, the proposed amendment includes changing the land use and zoning designation of a property known as 5920 Paseo Canyon Road from Public Open Space (OS) to Single Family Residential-Low Density (SF-L).

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission **approve** the proposed amendment with suggested modifications. The modifications are necessary because, as submitted, the LIP portion of the LCP amendment is not adequate to ensure consistency with the applicable policies of the certified Land Use Plan.

Staff recommends that in order to take this action, the Commission, after public hearing, **deny** the amendment to the certified LCP as submitted; then **approve, only if modified**, the amendment to the LCP. The motions to accomplish this recommendation are found on **pages 6-8**. The suggested modifications are found starting on **page 8**.

SUBSTANTIVE FILE DOCUMENTS

City of Malibu City Council Ordinance No. 302 and Resolution No. 06-71 approving Local Coastal Program Amendment 06-001; City of Malibu City Council Ordinance No. 304 and Resolution No. 07-07 approving Local Coastal Program Amendment 05-002; Local Coastal Program Amendment Nos. 06-001 and 05-002 Text, dated March 5, 2007; City of Malibu Local Coastal Program, adopted September 2002; CDP No. 5-81-297-A (Merritt); CDP No. P-80-7430 (Merritt); CDP 4-95-100-W (Ioki Partners); CDPs 4-99-129 and 4-99-155 (Ioki Partners); "Vegetation and Sensitive Resource Evaluation-

Tentative Parcel Map No. 24070,” prepared by Dr. Edith Read, dated July 19, 1999; “Restoration Plan for Coastal Foredunes-30732 Pacific Coast Hwy, Broad Beach,” prepared by Dr. Edith Read, dated December 1, 2005; “Assessment of Historic and Current Biological Resources-30732 Pacific Coast Hwy, Broad Beach,” prepared by Dr. Edith Read, dated October 23, 2006; “Assessment of the Extent of Coastal Foredunes at 30732 Pacific Coast Highway (Broad Beach): A Review of the Science,” prepared by Dr. Edith Read, dated July 30, 2007; Memorandum to David Reznik Regarding Rincon Consultants’ Biological Constraints Discussion, by Dr. Edith Read, dated December 18, 2006; “Biological Resources Constraints Discussion, 30732 Pacific Coast Highway,” prepared by Rincon Consultants, Inc., dated December 6, 2006; “Biological Inventory,” prepared by Forde Biological Consultants, dated November 15, 2005; USFWS Letters Regarding 30732 Pacific Coast Highway Property, dated February 13, 2007 and April 18, 2007; “Final Report, Coastal Dunes, Broad Beach,” prepared by Dr. Norbert P. Psuty, Coastal Geomorphologist, dated November 22, 2007; “Results of Focused Surveys for the Silvery Legless Lizard (*Anniella pulchra pulchra*) for the 2.08-acre Broad Beach Property,” prepared by Glenn Lukos Associates, dated February 15, 2008; “Jurisdictional Determination for Four Lots, 30732 Pacific Coast Hwy, Malibu,” prepared by Glenn Lukos Associates, dated December 12, 2007; “Survey of Globose Dune Beetles at 30732 Pacific Coast Highway, Comparing Distribution in Dunes With or Without Houses,” prepared by Dr. Cristina Sandoval, dated May 5, 2008; “Biological Resources Assessment-30732 Pacific Coast Hwy, Malibu,” prepared by Robert A. Hamilton, Daniel S. Cooper, Wayne R. Ferren, and Dr. Cristina P. Sandoval, dated March 6, 2008; Letter to Commission staff from Dave Crawford and Vic Peterson of City of Malibu regarding 30732 Coast Highway, dated April 10, 2008; CCC Memorandum from Dr. Jonna Engel Regarding Southern Foredune Community at 30732 Pacific Coast Highway, dated May 15, 2008.

<p>Additional Information: Please contact Deanna Christensen, California Coastal Commission, South Central Coast Area, 89 So. California St., Second Floor, Ventura, CA. (805) 585-1800.</p>

STAFF NOTE:
THE COMMISSION MUST ACT ON THIS LCP AMENDMENT AT THE JUNE 2008
COMMISSION HEARING.

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LIST OF EXHIBITS

- Exhibit 1. City of Malibu LCP Amendment Text, dated 3/5/07**
- Exhibit 2. City of Malibu City Council Ordinance No. 302 and Resolution No. 06-71, approving Local Coastal Program Amendment 06-001 (5920 Paseo Canyon Road Rezone)**
- Exhibit 3. City of Malibu City Council Ordinance No. 304 and Resolution No. 07-07, approving Local Coastal Program Amendment 05-002 (SF-M Zone)**
- Exhibit 4. Vicinity Map – 5920 Paseo Canyon Road**
- Exhibit 5. Parcel Map – 5920 Paseo Canyon Road**
- Exhibit 6. Commission Staff Comment Letter to City on LCPA 06-001, dated 10/13/06**
- Exhibit 7. Vicinity Map – 30732 Pacific Coast Highway**
- Exhibit 8. Tentative Parcel Map – 30732 Pacific Coast Highway**
- Exhibit 9. Commission Staff Comment Letters on LCPA 05-002, dated 9/1/06, 12/8/06**
- Exhibit 10. Commission-approved Site Plan for CDP Waiver No. 4-95-100 (Ioki)**
- Exhibit 11. Dr. Edith Read ESHA Delineation Map, from 1999 Biological Report**
- Exhibit 12. City of Malibu Biological Review Sheets, dated 12/12/05, 3/9/06**
- Exhibit 13. City Biologist Letter, dated 4/10/08**
- Exhibit 14. Ex Parte Communications**
- Exhibit 15. Dr. Jonna Engel’s Biological Memorandum, dated 5/15/08**
- Exhibit 16. Public View Corridor Plan for 30732 Pacific Coast Highway**
- Exhibit 17. Depiction of Dr. Jonna Engel’s ESHA Delineation for 30732 PCH**
- Exhibit 18. Open Space Conservation Easement Area for 30732 PCH**
- Exhibit 19. Hamilton et al. Habitat Delineation Map, from 3/6/08 Report**
- Exhibit 20. Three Spiral-bound Documents:**

Click Here for Document No. 1

1. “Biological Resources Assessment-30732 Pacific Coast Hwy, Malibu,” prepared by Robert A. Hamilton, Daniel S. Cooper, Wayne R. Ferren, and Dr. Cristina P. Sandoval, dated March 6, 2008.

Click Here for Psuty Report and Sandoval Report of Document No. 2

2. “Final Report, Coastal Dunes, Broad Beach,” prepared by Dr. Norbert P. Psuty, Coastal Geomorphologist, dated November 22, 2007; “Results of Focused Surveys for the Silvery Legless Lizard (*Anniella pulchra pulchra*) for the 2.08-acre Broad Beach Property,” prepared by Glenn Lukos Associates, dated February 15, 2008; “Jurisdictional Determination for Four Lots, 30732 Pacific Coast Hwy, Malibu,” prepared by Glenn Lukos Associates, dated December 12, 2007; “Survey of Globose Dune Beetles at 30732 Pacific Coast Highway, Comparing Distribution in Dunes With or Without Houses,” prepared by Dr. Cristina Sandoval, dated May 5, 2008.

Click Here for Silvery Legless Lizard Survey Report of Document No. 2

Click Here for Jurisdictional Determination of Document No. 2

Consultant Response Letters to Dr. Jonna Engel's Memorandum

Click Here for Document No. 3

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 30512(c))

The Coastal Act further provides:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter.

...The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30513)

The standard of review that the Commission uses in reviewing the adequacy of the land use plan, as the City is proposing to amend it, is whether the land use plan is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the Implementation Plan of the certified Local Coastal Program, pursuant to Section 30513 and 30514 of the Coastal Act, is that the proposed amendment is in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the adopted City of Malibu Local Coastal Program. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified City of Malibu LUP as guiding policies.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held a series of public hearings (Planning Commission Hearings on October 17, 2006 and September 5, 2006, and City Council Hearings on November 13, 2006 December 11, 2006, January 22, 2007, and February 12, 2007) and received written comments regarding the project from concerned parties and members of the public. The hearings were noticed to the public by publishing the notice in the local newspaper and by mailing notice to interested parties, consistent with Section 13515 of Title 14 of the California Code of Regulations.

Notice of the Coastal Commission hearing for LCP Amendment 1-07 has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that a Local Coastal Program Amendment will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. The City Council Resolutions for this amendment state that the amendment will take effect after Commission certification. However, in this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the City must act to accept the certified suggested modifications within six months from the date of Commission action in order for the Amendment to become effective (California Code of Regulations, Title 14, Section 13544; Section 13537 by reference). Pursuant to Section 13544, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE LAND USE PLAN

Following public hearing, staff recommends the Commission adopt the following resolution and findings in order to **approve** the proposed amendment to the Malibu Land Use Plan **as submitted**.

APPROVAL AS SUBMITTED

MOTION I: *I move that the Commission **CERTIFY** City of Malibu Land Use Plan Amendment MAL-MAJ-1-07, as submitted by the City of Malibu.*

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a **YES** vote. Passage of the motion will result in certification of the land use plan as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY THE LAND USE PLAN AMENDMENT:

The Commission hereby certifies Land Use Plan Amendment MAL-MAJ-1-07 as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the Land Use Plan, as amended, will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

**III. STAFF RECOMMENDATION, MOTIONS, AND
RESOLUTIONS ON THE LOCAL IMPLEMENTATION PLAN**

Following public hearing, staff recommends the Commission adopt the following resolutions and findings in order to **approve** the proposed amendment to the Malibu Local Implementation Plan **with suggested modifications**. To accomplish this action, there is a motion and resolution for denial of the amendment as submitted, and a motion and resolution for approval of the amendment with suggested modifications. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

A. DENIAL AS SUBMITTED

MOTION I: *I move that the Commission reject the City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-07 as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PLAN
AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-07 and adopts the findings set forth below on grounds that the Implementation Program as it is proposed to be amended, does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant

adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

B. CERTIFICATION WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission certify City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-07 if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-07 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program as amended by the proposed amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, as amended. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Local Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN

Following are the modifications suggested by the Commission to the City of Malibu for incorporation into the LIP portion of LCPA 1-07. The suggested modifications are numbered consecutively. The LCP number indicates the existing LIP Section in the certified City of Malibu LCP.

The existing language in the certified LIP is shown in straight type. The language proposed by the City of Malibu in this amendment to be deleted is shown in ~~line-out~~. The language proposed by the City of Malibu in this amendment to be inserted is shown underlined. The language suggested by Commission staff to be modified is shown in

~~double line out~~ and double underline. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

MOD. # 1	CITY AMEND. # N/A	LCP # Sec. 3.4
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Add the following language to LIP Section 3.4 as follows:

3.4.2 Overlay Districts Specific to Future Developments

...

A. Malibu Bay Company Overlay District (30732 Pacific Coast Highway/APN 4469-026-005)

The Residential Property Development and Design Standards contained in Section 3.6 of the Malibu LIP, as well as all other applicable LCP provisions, shall apply, unless specifically modified by standards detailed in this Section (3.4.2.A). In addition, the following special site-specific regulations shall apply to the subject property.

1. Public View Corridors

As a condition of approval of, and prior to issuance of a coastal development permit for, subdivision of the subject property, the following restrictions shall be imposed, and the applicant shall be required to demonstrate that the land owner has executed and recorded a deed restriction that reflects the following restrictions:

- (a) No less than 20% of the lineal frontage of each created parcel of the subdivision shall be maintained as one contiguous public view corridor in the location shown on **Exhibit 16**. The view corridor may not be split or reconfigured.
- (b) No portion of any structure shall extend into the view corridor above the elevation of Pacific Coast Highway.
- (c) Any fencing across the view corridor shall be visually permeable, and any landscaping within the view corridor shall include only low-growing species that will not block or obscure bluewater views.
- (d) Vegetation between Pacific Coast Highway and the on-site access road that is within the public view corridors shall include only low-growing species that will not block or obscure bluewater views.

2. View Corridor

As a condition of approval of, and prior to issuance of a coastal development permit for, subdivision of the subject property, the applicant shall be required to remove all existing obstructions between Pacific Coast Highway and the on-site access road that are within the required public view corridors, including vegetation that is over two feet in height

above the elevation of Pacific Coast Highway and any fencing or gates that are not visually permeable.

3. Revised Dune Habitat Restoration Plan

As a condition of approval of, and prior to issuance of a coastal development permit for, subdivision of the subject property, the applicant shall be required to submit, for review and approval by the City Biologist, a revised “Restoration Plan for Coastal Foredunes, 30732 Pacific Coast Highway” (Read, 2005), that incorporates the following changes and additions:

- a. All restoration plants and seeds shall consist of local genotypes. Propagules shall be collected on the project site or from elsewhere along the coast of northern Los Angeles County or southern Ventura County, as close as feasible to the project site.
- b. The use of a temporary irrigation line system shall be omitted. Rather, restoration seeds/plants shall be planted during the rainy season. If rainfall is not sufficient and additional irrigation is determined necessary for successful plant establishment, only hand watering may be conducted.
- c. The planting plan shall be revised to include all disturbed dune habitat areas as identified in the dune habitat delineation contained in the “Biological Resources Assessment,” by Hamilton et al., dated March 6, 2008.
- d. A maximum of two (2), three-foot wide pathways through the dunes may be established within the dune restoration area, and may only be sited in the area of the existing paths per Figure 2 of the Restoration Plan.
- e. Symbolic fencing (post and rope) along the two allowed pathways within the restoration area shall be installed to clearly delineate pathways from restoration areas.
- f. The root barrier element of the Restoration Plan shall be omitted.
- g. Rear yard fencing shall be installed to delineate developed/setback areas from ESHA/restoration areas.

4. Dune Habitat Restoration Plan Implementation

As a condition of approval of the subdivision of the subject property, the applicant shall be required to implement the Revised Dune Habitat Restoration Plan required pursuant to Part 3 above. Restoration shall commence immediately after issuance of the coastal development permit.

5. Rear Setback

The following standard shall replace the rear setback standards for beachfront parcels in Malibu LIP Sections 3.6 (G3) and 3.6 (G4):

Rear Setback

New development, including dwellings, decks, patios, etc. shall provide a rear setback that is the most landward of either: 1) the appropriate structure or deck stringline; or 2) no less than 5 feet landward of the landwardmost limit of dune ESHA, which is shown on Exhibit 17.

Separate stringline standards apply to dwellings and decks, as follows:

- a. Dwellings. For a dwelling, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast dwelling. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast dwelling.
- b. Decks and patios. For a deck or patio, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast deck or patio. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast deck or patio.

The variance provisions of Malibu LIP Section 13.26 shall not apply to the rear setback requirements of the Malibu Bay Company (30732 Pacific Coast Highway) Overlay.

6. Open Space Conservation Easement

No development, as defined in Section 2.1 of the Malibu LIP, shall occur within the area of the subject property located between the landwardmost limit of ESHA and the ambulatory seawardmost limit of dune vegetation, which is generally shown on **Exhibit 18**, except for dune habitat restoration, the use and maintenance of a maximum of two 3-ft. wide pathways, and symbolic fencing to delineate the two pathways.

As a condition of approval of, and prior to issuance of a coastal development permit for, subdivision of the subject property, the applicant shall be required to demonstrate that the land owner has executed and recorded a document in a form and content acceptable to the Coastal Commission, granting to a public agency or private association approved by the Coastal Commission, an open space conservation easement over the area described in the prior paragraph (“open space conservation easement area”), for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 18**. The recorded document shall reflect that no development shall occur within the open space easement area except as otherwise set forth in this permit condition. The offer shall be

recorded free of prior liens and encumbrances which the Coastal Commission determines may affect the interest being conveyed.

MOD. # 2	CITY AMEND. # N/A	LCP # LIP Maps
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Add map of Malibu Bay Company Overlay District (30732 Pacific Coast Highway/APN 4469-026-005).

V. FINDINGS FOR APPROVAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED

The following findings support the Commission's approval of the Land Use Plan amendment as submitted. The Commission hereby finds and declares as follows:

C. LAND USE PLAN AMENDMENT DESCRIPTION AND BACKGROUND

The City of Malibu's proposed amendment to the Land Use Plan portion of the adopted Local Coastal Program (Amendment No. 1-07) consists of changing the land use designation of a 5-acre property known as 5920 Paseo Canyon Road (APN 4469-046-007) from Public Open Space (OS) to Single Family Residential-Low Density (SF-L) on the LUP Land Use Map and LIP Zoning Map.

The City held a series of public hearings on the subject Land Use Plan LCP Amendment (LCPA), including a Planning Commission Hearing on October 17, 2006, and City Council Hearings on December 11, 2006 and January 17, 2007. The amendment was approved by the Malibu City Council on January 17, 2007. The ordinance approving City LCPA No. 06-001 is attached as **Exhibit 2**. The LCP amendment was submitted on March 6, 2007. After the submittal was reviewed by Commission staff, the amendment was determined to be complete on March 20, 2007. At the June 14, 2007 hearing, the Commission extended the deadline to act on LCPA 1-07 for a period of one year.

D. NEW DEVELOPMENT AND CUMULATIVE IMPACTS

1. Coastal Act Policies

Section 30250 of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition,

land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels...

2. Discussion

The land use designations of the Malibu LCP were based on the existing City of Malibu General Plan designations, as well as the policies of the Coastal Act. In the case of the subject property on Paseo Canyon Road, the General Plan designation was Public Open Space. The Malibu LUP carried over this designation. The City asserts that the current land use designation of Public Open Space (OS) had been assigned to this parcel in error when the LCP was adopted in 2002, as is explained below. The property is located in the Trancas Canyon area of Malibu, east of Trancas Canyon Road, and at the northern terminus of Paseo Canyon Road (**Exhibits 4, 5**). An existing residential neighborhood zoned for Single Family Residential-Low Density (SF-L) is situated to the south of the property, and a large expanse of National Park Service public parkland is located to the north of the property. While the parcel is designated Public Open Space, it is not in fact owned or controlled by a public agency, nor has it been used in the past as parkland.

In 1980, the Coastal Commission approved Coastal Development Permit No. P-80-7430 (Merritt) for subdivision of 5 parcels (132+ acres) under single ownership into 9 parcels. The land use/zoning designation of the parcels was Rural Land I (1 du/10 acres). Special conditions of approval included recording an offer-to-dedicate an open space easement over sufficient applicable lots to constitute a minimum of four transfer of development credits, and recording an offer-to-dedicate a trail easement. In 1981, the property owner applied for a permit amendment to adjust the lot lines of the previously-approved 9-lot subdivision (CDP Amendment No. 5-81-297A). This amendment was approved by the Commission with an additional special condition, which required recordation of an open space deed restriction across specific portions of the resultant 9 parcels. Although future building sites were not specifically identified, the open space deed restricted areas were identified to ensure that future development on each parcel would occur near existing roads and development. In 1982, the subdivision tract map and open space deed restriction were recorded.

The 5-acre property that is the subject of the proposed LUP amendment, known as 5920 Paseo Canyon Road, had been a part of Lot No. 9 of the Commission-approved 9-lot subdivision. In 1984, Pepperdine University acquired Lot 9. Then in May 1990, Pepperdine University deeded most of the open space deed-restricted portion of Lot 9 to the National Park Service. The remainder of Lot 9, which is the subject parcel, was then deeded to a private party in December 1990. The subject parcel contains the non-open space deed restricted portion of Lot 9 that was intended for development when the Commission approved CDP 5-81-297-A. Essentially, Pepperdine University split Lot 9 into two parcels in 1990 to give a large open space deed-restricted area to the National Park Service for public parkland and the remainder to a private party for future

development. Since this land division was brought about in connection with the purchase of land by a public agency for public recreational use, the land division did not meet the definition of “development” pursuant to Coastal Act §30106 and was therefore exempt from coastal development permit requirements.

Upon incorporation of the City of Malibu in 1991, County tax assessment records incorrectly identified the subject parcel as publicly owned. Therefore, the parcel was given an open space zoning designation on the City’s Interim Zoning Map in 1993. In 1995 it was brought to the City’s attention that the subject parcel was privately owned and distinct from the adjacent public parkland. The City subsequently approved an amendment to its General Plan and Zoning Map to change the parcel’s land use and zoning designation from Open Space to Single-Family-Low Density (SF-L) in order to resolve the discrepancy. However, the actual general plan and zoning map were not updated with the approved change prior to the City transmitting this zoning information to the Coastal Commission for inclusion in the LCP. When the City’s LCP was certified by the Commission in 2002, the subject parcel mistakenly retained land use and zoning designations of Public Open Space. Therefore, the City now wishes to amend the LCP to assign the appropriate land use designation to the parcel. The existing residential lots that adjoin the subject parcel are similarly zoned Single-Family Residential-Low Density. Single-family residential development on the subject parcel would allow the clustering of development within or near an existing development area able to accommodate it, consistent with Section 30250 of the Coastal Act, which is incorporated as a policy into the Malibu LCP.

The Commission therefore finds that the proposed LUP portion of the LCP amendment, as submitted, is consistent with and adequate to carry out the requirements of Section 30250 of the Coastal Act.

VI. FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT IF MODIFIED AS SUGGESTED

The following findings support the Commission’s denial of the Local Implementation Plan amendment as submitted and approval of the Local Implementation Plan amendment if modified as indicated in Section IV (*Suggested Modifications*) above. The Commission hereby finds and declares as follows:

E. LOCAL IMPLEMENTATION PLAN AMENDMENT DESCRIPTION AND BACKGROUND

The City of Malibu’s proposed amendment to the adopted Local Coastal Program (Amendment No. 1-07) consists of amending the zoning designation of a 5-acre property known as 5920 Paseo Canyon Road (APN 4469-046-007) from Public Open

Space (OS) to Single Family Residential-Low Density (SF-L) on the LIP Zoning Map, as well as amending the lot development criteria for the Single Family-Medium (SF-M) Zoning District to reduce the minimum lot width standard for beachfront lots in order to facilitate a proposed beachfront lot subdivision at 30732 Pacific Coast Highway (APN 4469-026-005). The proposed language is shown in **Exhibit 1**, the document prepared by City staff.

The City proposes to amend LIP Section 3.3(B)(3), which pertains to lot development criteria for the Single Family-Medium (SF-M) Zoning District. The amendment specifies that the minimum lot width standard for beachfront lots in the SF-M zone shall be reduced from 80 feet to 45 feet in order to facilitate a proposed beachfront subdivision of one lot into four lots at 30732 Pacific Coast Highway.

On July 29, 2005, the owner of the subject property, Malibu Bay Company, applied for a Coastal Development Permit (CDP) from the City to subdivide the 2.08 acre, 200-ft. wide beachfront parcel located at 30732 Pacific Coast Highway into four separate lots (**Exhibit 8**). Since the four proposed lots would not meet the LCP's minimum lot width requirement of 80 feet for the SF-M zone district, Malibu Bay Company also requested an LCP amendment from the City in order to reduce the minimum lot width requirement for SF-M beachfront properties to 45 feet. The City prepared and adopted an Initial Study and Mitigated Negative Declaration for the proposed project. On January 22, 2007 the City Council approved, on appeal, the Coastal Development Permit for subdivision of the subject beachfront property; however, the approval was conditioned upon certification of the City's proposed LCP amendment by the Coastal Commission to amend the development criteria for beachfront lots in the SF-M zoning district (**Exhibit 3**). Other special conditions of the City's approval of the subdivision included retiring two (2) Transfer of Development Credit (TDC) lots, effectuating an offer-to-dedicate lateral public access easement, recordation of a deed restriction that ensures no shoreline protection structure shall be proposed or constructed to protect development approved, and implementation of the applicant's "Restoration Plan for Coastal Foredunes" upon completion of future site development. Notwithstanding the requirements of Malibu LIP Section 13.16 that a final local action notice (FLAN) be submitted within seven days of City action, the FLAN for the subdivision has never been submitted to the Commission and therefore, this CDP is not final. In addition, it should be noted that the TDC condition contained in the City's Resolution approving the subdivision contains a typo. Instead of two (2) TDC lots to be retired, it should be three (3), since three new lots will be created.

The subject 2.08-acre beachfront parcel (30732 Pacific Coast Highway/APN 4469-026-005) is located at the eastern end of Broad Beach, between Pacific Coast Highway and the ocean (**Exhibit 7**). The property is zoned Single Family-Medium Density (one unit per 0.25 acre) in the Malibu LCP. The area of the subject property (Broad Beach) is characterized as a built-out portion of Malibu consisting of residential development, as well as a wide oscillating beach environment. The subject beachfront parcel consists of a coastal dune environment that is part of a larger coastal dune ecosystem at Broad Beach. Coastal dunes are considered environmentally sensitive habitat areas (ESHA) in

the Malibu LCP. Zuma Beach County Park and the outlet of Trancas Creek are located approximately 200 feet to the east of the subject site. A private access road that is adjacent to and parallels Pacific Coast Highway exists on the subject property. Alongside the private drive, on the highway side, is 12-ft. high landscaping, including trees and shrubs, solid gates, and a 3-ft. high wrought iron fence atop a 3-ft. high retaining wall. The private access road and retaining wall across the subject property was authorized by the Commission in 1995, pursuant to CDP Waiver No. 4-95-100-W (loki), in order to serve adjacent beachfront residences, although the gates and wrought iron fencing were not approved (**Exhibit 10**). Existing single-family residences are situated on either side of the subject property (**Exhibit 19**). The adjacent lot to the west is 0.24 acres in size and contains a 5,438 sq. ft. residence that was approved by the Commission in 2000 pursuant to CDP No. 4-99-129. Special conditions of CDP approval included dune restoration, sign restriction, assumption of risk, conformance to geologic recommendations, offer-to-dedicate lateral public access, construction responsibility, public view corridor, and open space deed restriction. The adjacent lot to the east is 0.38 acres in size and contains a 7,561 sq. ft. residence that was approved by the Commission in 1999 pursuant to CDP No. 4-99-155. Special conditions of CDP approval included public view corridor, dune restoration, construction responsibilities, sign restriction, conformance to geologic recommendations, offer-to-dedicate lateral public access, assumption of risk, open space deed restriction, and no future shoreline protection.

The City held a series of public hearings on the subject Local Implementation Plan portion of the LCP Amendment (LCPA), including a Planning Commission Hearing on September 5, 2006, and City Council Hearings on November 13, 2006, and February 12, 2007. The LCPA was approved by the Malibu City Council on February 12, 2007. The ordinance approving LCPA No. 05-002 is attached as **Exhibit 3**. Commission staff provided written comments regarding the amendment, in letters dated September 1, 2006 and December 8, 2006, prior to action by the City Planning Commission and City Council (**Exhibit 9**). The LCP amendment was submitted on March 6, 2007. After the submittal was reviewed by Commission staff, the amendment was determined to be complete on March 20, 2007. At the June 14, 2007 hearing, the Commission extended the deadline to act on LCPA 1-07 for a period of one year.

Commissioner ex parte communications received to date are attached in **Exhibit 14**.

F. NEW DEVELOPMENT, ENVIRONMENTALLY SENSITIVE HABITAT, AND VISUAL RESOURCES

1. Coastal Act Policies

The following Coastal Act policies have been incorporated in their entirety into the certified City of Malibu Land Use Plan as policies.

Section **30250** of the Coastal Act states, in relevant part:

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

Section **30240** of the Coastal Act states that:

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

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

Section **30253** of the Coastal Act states, in part, that:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section **30251** of the Coastal Act states:

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

2. Existing LUP Policies

Environmentally Sensitive Habitat

- 3.1** Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.
- 3.16** Dune ESHA shall be protected and, where feasible, enhanced. Vehicle traffic through dunes shall be prohibited. Where pedestrian access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be used. Nesting and roosting areas for sensitive birds such as Western snowy plovers and Least terns shall be protected by means, which may include, but are not limited to, fencing, signing, or seasonal access restrictions.
- 3.23** Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.
- 3.31** Permitted development located within or adjacent to ESHA and/or parklands that adversely impact those areas may include open space or conservation restrictions or easements over ESHA, ESHA buffer, or parkland buffer in order to protect resources.
- 3.44** Land divisions, including certificates of compliance (except as provided under Policy 5.41), except for mergers and lot line adjustments for property which includes area within or adjacent to an ESHA or parklands shall only be permitted if each new parcel being created could be developed (including construction of any necessary access road), without building in ESHA or ESHA buffer, or removing ESHA for fuel modification.
- 3.51** Disturbed areas ESHAs shall not be further degraded, and if feasible, restored. If new development removes or adversely impacts native vegetation, measures to restore any disturbed or degraded habitat on the property shall be included as mitigation.

New Development

- 5.35** The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of surrounding parcels.
- 5.36** Land divisions shall be designed to minimize impacts to coastal resources and public access. A land division shall not be approved if it creates a parcel that would not contain an identified building site that could be developed consistent with all of the policies of the LCP.
- 5.37** Land divisions shall be designed to cluster development, including building pads, if any, in order to minimize site disturbance, landform alteration, and removal of native vegetation, to minimize required fuel modification, and to maximize open space.
- 5.39** Any Coastal Development Permit for a land division resulting in the creation of additional lots shall be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created.
- 5.44** On beachfront parcels, land divisions may be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure, on-site sewage treatment system, if necessary, and any other necessary facilities without development on sandy beaches or bluffs, consistent with all other policies in the LUP including those regarding geologic, wave uprush, and public access.
- 5.45** Land divisions, except for mergers and lot line adjustments, for property which includes area within or adjacent to an ESHA shall not be permitted unless consistent with Policy 3.44.

Scenic and Visual Resources

- 6.15** Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.
- 6.18** Where the topography of the project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures:
- Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
 - The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall

constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors.

- No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.
- Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor.

6.25 Land divisions, including lot line adjustments, that do not avoid or minimize impacts to visual resources, consistent with all scenic and visual resource policies of the LUP, shall be prohibited.

3. Discussion

The City of Malibu Local Coastal Program requires that new development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it. Additionally, new development must be located where it will not have significant adverse impacts on coastal resources.

As mentioned previously, one of the City's proposed changes to the LIP portion of the adopted LCP consists of changing the land use designation of a 5-acre property known as 5920 Paseo Canyon Road (APN 4469-046-007) from Public Open Space (OS) to Single Family Residential-Low Density (SF-L) on the LIP Zoning Map. When the City's LCP was certified by the Commission in 2002, the subject parcel mistakenly retained land use and zoning designations of Public Open Space. Therefore, the City now wishes to amend the LCP to assign the appropriate land use designation to the parcel. The existing residential lots that adjoin the subject parcel are similarly zoned Single-Family Residential-Low Density. Single-family residential development on the subject parcel would allow the clustering of development within or near an existing development area able to accommodate it, consistent with Section 30250 of the Coastal Act, which is incorporated as a policy into the Malibu LCP. The Commission therefore finds that this proposed change to the LIP zoning map is consistent with and adequate to carry out the requirements of Section 30250 of the Coastal Act.

The City also proposes to amend LIP Section 3.3(B)(3), which pertains to lot development criteria for the Single Family-Medium (SF-M) Zoning District. The amendment specifies that the minimum lot width standard for beachfront lots in the SF-M zone shall be reduced from 80 feet to 45 feet. While this change would apply city-wide to any beachfront parcels zoned SF-M, the LCPA was proposed specifically in order to facilitate a proposed beachfront lot subdivision at 30732 Pacific Coast Highway.

LIP Section 3.3(B) currently specifies that the minimum lot area for new parcels created within the Single Family-Medium Zoning District is 1 unit per 0.25-acre, the minimum lot width is 80 feet, and the minimum lot depth is 120 feet. Under the proposed LCP amendment, these standards would remain the same, except a beachfront minimum lot width standard of 45 feet would be added (**Exhibit 1**).

The proposed minimum lot width standard would apply city-wide to SF-M zoned beachfront properties. City of Malibu staff conducted an analysis of SF-M zoned beachfront properties in the City to determine if of the new development standard would allow for an increase in beachfront development density. To subdivide a beachfront property in this zone district under the proposed amendment, at a minimum the existing legal lot must be at least 0.5-acres in size (due to the minimum lot area standard of 1 unit per 0.25 acre), and at least 90 feet wide (given a minimum lot width standard of 45 feet). There are 733 SF-M zoned beachfront parcels in the City, the majority of which are non-conforming. The average lot width among them is 50 feet. At Broad Beach in particular, the average lot width is 48 feet. Of the City's 733 SF-M zoned beachfront parcels, the City's analysis found that only thirteen (13) parcels were at least 0.5-acres in size and at least 90 feet wide. Of those thirteen parcels, eight (8) are located on narrow beaches that would necessitate the need for shoreline protection devices. According to LIP Section 15.2.B.14, a land division may not be permitted if it creates a parcel where a shoreline protection or bluff stabilization structure would be required to protect development. Therefore, the proposed lot width standard would not allow for these eight parcels to be split because Section 15.2.B.14 would still prevent it. The remaining five parcels that meet both the lot size and width minimum requirement could be subdivided given the new proposed lot width standard. One of the five is the subject parcel at 30732 PCH, which triggered this LCP amendment request. The remaining four parcels are currently developed with single-family homes. Two of those four developed properties are comprised of several smaller, approximately 50-foot wide lots that had previously been tied or merged. As such, besides the subject parcel at 30732 PCH, a total of two properties could feasibly be subdivided to create an additional parcel each, if demolition of the existing homes and subdivision were requested.

The subject parcel that would be affected by the amendment request is located contiguous with an existing developed area with adequate public services. In addition, future subdivision of the subject parcel as a result of the LCP amendment would not create additional parcels significantly smaller than the average size of surrounding parcels, or that would significantly impact traffic or public access in the area, or that would require a shoreline protection structure to protect development at any time during the full 100 year life of the development. The site is therefore able to accommodate an increased density of new residential development on an infill parcel. Thus, reducing the minimum lot width standard in the SF-M beachfront zone to facilitate a future residential subdivision on the site, would not conflict with Section 30250 of the Coastal Act as incorporated into the LUP, so long as it will not have significant adverse impacts, either individual or cumulative, on coastal resources. Since the proposed LCP amendment sets up a future subdivision of this property into four lots, it is necessary to consider a

site specific analysis of the land division's consistency with the resource protection policies of the Malibu LUP.

30732 Pacific Coast Highway

The subject parcel at 30732 Pacific Coast Highway (APN 4469-026-005) is 2.08 acres in size, approximately 500 feet deep, and approximately 200 feet wide. However, the parcel is slightly pie shaped, so while the parcel's roadside frontage is 200 feet wide, the rear property line (ocean side) is only 186 feet wide. A subdivision of the property into four lots would accommodate 50 foot frontages, but only 46.5 foot rear lot widths. Therefore, to accommodate this subdivision, the City is proposing a 45-foot minimum lot width standard for Single Family-Medium zoned beachfront properties.

The area of the subject property (Broad Beach) is characterized as a built-out portion of Malibu consisting of residential development, as well as a wide oscillating beach environment. Downcoast of the parcel are four beachfront residences with restored dunes between the homes and the beach. Just downcoast of the southernmost residence, approximately 200 feet from the site, is Trancas Creek and Zuma Beach. Upcoast of the parcel are hundreds of beachfront residences along Broad Beach. Dunes ranging from lightly to heavily impacted and invaded by non-native plants occur between the beach and most of these homes. The dunes at Broad Beach are foreshortened due to development and only exhibit the nearshore dune zone. A private access road that is adjacent to and parallels Pacific Coast Highway exists on the subject property. Alongside the private drive, on the highway side, is 12-ft. high landscaping including trees and shrubs, solid gates, and a 3-ft. high wrought iron fence atop a 3-ft. high retaining wall. The remainder of the subject beachfront parcel consists of a coastal dune environment that is part of a larger coastal dune ecosystem at Broad Beach.

Site History and Prior Commission Actions

In 1978, the South Coast Regional Commission issued Coastal Development Permit No. P-10-26-77-2118 to the Malibu Yacht Club for development associated with use of the subject property as a private boat storage and launching site. In particular, the Commission approved construction of a 2,400 sq. ft. portable picnic table platform with windwalls, a lifeguard tower, fencing, and grading and placement of fill for a compacted roadway to the portable platform and to the beach. Conditions of permit approval included relocating the picnic platform 30 feet toward the eastern edge of the property, erecting a snow fence around the remaining on-site dunes, removal of extraneous materials, and agreement to allow lateral public access, restoration of site upon vacating, and encouragement of public participation in boating programs. Most of the approved grading and site improvements had already been completed at the time the permit was considered. Portions of the on-site dunes were removed to accommodate the development. The Malibu Yacht Club began leasing the subject site for its boating center operation in January 1977. However, the Club began utilizing the site prior to

that, in late 1976. The Club ceased its operation and vacated the site by 1992. Malibu Bay Company, the present property owner, acquired the site in 1989.

In 1995, the Commission authorized a private 30-foot wide access road with retaining wall parallel to Pacific Coast Highway on the subject property, pursuant to CDP Waiver No. 4-95-100-W (Ioki). The access road was constructed to serve several new single family residences on adjacent properties. According to 2001 and 2002 aerial photographs of the site, the property had been used extensively as a storage and staging area during construction of residences on adjacent properties, although this use was not approved as part of any CDP for the residences. It is evident in a 2004 aerial photograph, that by that time, the site was no longer experiencing active disturbance and the dune environment showed evidence of recovery.

Coastal Dune ESHA

The subject beachfront parcel consists of a coastal dune environment that is part of a larger coastal dune ecosystem at Broad Beach. The site has undergone varying degrees of disturbance over time, beginning with the construction of Pacific Coast Highway, then use as a boat storage and launching site, and use as a construction staging ground. The site is bound on either side by residential development. Nonetheless, the coastal dune community fronting homes along Broad Beach is southern foredunes, a habitat type identified as rare by the California Natural Diversity Data Base (CNNDDB) and the California Native Plant Society (CNPS), and considered environmentally sensitive habitat areas (ESHA) in the Malibu City LCP. Several independent biological assessments have been conducted at the site to date, including focused surveys and a geomorphologic evaluation.

In 1999, the property owners' consulting biologist, Dr. Edith Road, prepared a "Vegetation and Sensitive Resources Evaluation" of the site. The study concluded a small group of fragmented coastal foredune features containing a mix of native and non-native vegetation was present on the property. Dr. Read speculated that due to the history of site disturbances, the foredune features could be remnant of old sand berms rather than originating from natural processes. A "Biological Inventory" conducted by Forde Biological Consultants in 2005 found that no special status species occurred on the property and the proposed project would not affect any species using shoreline resources. In follow-up to the question of dune origination, Dr. Edith Read prepared another report entitled, "Assessment of Historic and Current Biological Resources" (2006). In this report, Dr. Read finds that the dune features on the site are remnants of a larger dune system of Broad Beach that was eliminated by 1950 when Pacific Coast Highway was constructed. The report also concludes that since that time, sand supply has been diminished, which substantially altered natural ecological processes of the dunes. Dr. Read's report concludes that biological evidence does not support qualification of the on-site dune features as ESHA. Notwithstanding Dr. Read's determination, the City of Malibu acknowledged during its review of the proposed LCP amendment that since coastal dunes are designated ESHA pursuant to Chapter 3 of the Malibu LUP, the delineated dunes at 30732 PCH were to be considered ESHA as well.

The area delineated as dunes by Dr. Read and considered by the City to be dune ESHA was 20 feet from the site's rear yard "stringline", a line drawn across the parcel from the seawardmost corner of the nearest upcoast structure to that of the nearest downcoast structure (**Exhibit 11**). The rear yard stringline is a development standard in the LCP for all beachfront properties. Dr. Read recommended that the on-site dunes be restored and that a buffer of 10 feet from the restored dune area be provided from proposed development. The City found that the site's rear yard stringline for development was a sufficient distance away from the dunes, as restored, to preserve the integrity of the resource. Dr. Read prepared a "Dune Restoration Plan" for the property in 2005. The plan specified removal of non-natives, planting of native dune plants, monitoring, and the designation of one dune access path for each of the four newly created parcels. The City approved the subject LCP amendment and subdivision on January 22, 2007, with a special condition requiring implementation of the proposed restoration plan. The City's Biological Review Sheets are attached as Exhibit 12.

After the City acted upon the subject LCP amendment and transmitted the amendment to the Coastal Commission, further studies were conducted by consultants of the property owner in order to further address habitat issues raised by Commission staff.

According to a November 2007 report on the coastal dune morphology of the site prepared by the property owner's consulting coastal geomorphologist, Dr. Norbert P. Psuty, the subject site contains a primary foredune and associated foredune topography, i.e. gaps in foredune ridge, secondary mobile hummocks and stable sandy hummocks. However, active dunal topography is limited to the seaward portion of the site. According to Dr. Psuty, the remainder of the property had not recovered from prior grading disturbance and remains devoid of active dunal features (**Exhibit 20, spiral-bound**).

Another biological assessment of the on-site dune community was conducted, entitled "Biological Resources Assessment" by R. Hamilton, D. Cooper, W. Ferren, and C. Sandoval (March 2008) (**Exhibit 20, spiral-bound**). The Hamilton et al. (2008) report found that coastal dune ESHA is present on the subject property. The site's foredune ridge supports native Red Sand Verbena (*Abronia maritima*), Beach Bursage (*Ambrosia chamissonis*), and Beach Primrose (*Chamissonia cheiranthifolia*). The area also contains exotic Highway Iceplant and Sea Rocket. The mobile and stable hummocks inland from the foredune ridge support similar stabilizing vegetation. The portion of the subject parcel that is landward of a "stringline" between the seaward limit of adjacent residences consists of ruderal vegetation, dominated by introduced weeds and grasses. Hamilton et al. (2008) found that the stringline itself marks the break between the ruderal and backdune ESHA areas, save two small exceptions where a ruderal area in the center of the site extends seaward and where a backdune area on the eastern side of the property extends landward of the "stringline" (**Exhibit 19**). Hamilton et al. (2008) single out a small section of the backdune area as a "primrose/lupine" area, but consider it disturbed and distinct from the dune habitat, as it is not maintained by natural processes. Psuty (2008) characterizes the "primrose/lupine" area as geomorphologically

disconnected from the foredune system due to the interference of fencing and landscaping on upcoast properties.

In addition, focused surveys were conducted on or near the project site. Glenn Lukos Associates surveyed for the Silvery Legless Lizard (*Anniella pulchra pulchra*), a California Department of Fish & Game "Species of Concern". Although the subject property contains suitable habitat for this species, no silvery legless lizards were observed. The project site lies within critical habitat for the federally threatened Western Snowy Plover (*Charadrius alexandrinus vivosus*). However, no plovers have been observed in the vicinity of the project site. The property owner requested concurrence from the U.S. Fish & Wildlife Service (FWS) regarding their determination that the proposed project would not impact any federally listed species. In a letter dated February 13, 2007, FWS concurred that the proposed project would not result in take of the western snowy plover because they are not known at present to nest at Broad Beach or occur in the area of the proposed project.

Dr. Cristina Sandoval surveyed for the Globose Dune Beetle (*Coelus globosus*), a California "Special Animal" and federal "Species of Concern". In 2007, Dr. Sandoval found both Globose Dune Beetles and Ciliate Dune Beetles (another dune beetle similar to the globose but which has a relatively wider distribution and habitat use) on the site's foredune system. In follow-up to the survey, Dr. Sandoval conducted another Globose Dune Beetle survey to compare the beetle's abundance and distribution in dunes with and without the presence of residences. The subject vacant property and four adjacent residential properties were sampled. Dr. Sandoval's survey found that Globose Dune Beetles were less abundant where there was exotic vegetation, particularly Highway Iceplant. The beetles were also less abundant in irrigated dunes versus non-irrigated dunes. The presence of houses inland from the foredunes did not affect the density of Globose Dune Beetles when compared to the vacant project site. However, the beetles were found farther inland at the project site than at parcels with residences. This result appears to have to do with the presence of a larger area of sandy hummock on the subject property, compared to the broader distribution of Highway Iceplant and artificial irrigation on the lots with houses. At its closest point, beetle habitat is approximately 45 feet away from the parcel's rear yard "stringline".

According to the "Biological Resources Assessment" by R. Hamilton, D. Cooper, W. Ferren, and C. Sandoval (March 2008), as well as related focused surveys, three special status species were detected on or flying above the project site: Red Sand Verbena (*Abronia maritima*), Globose Dune Beetle (*Coelus globosus*), and White-tailed Kite (*Elanus caeruleus*). However, these species do not occur or utilize habitat in the area of the parcel proposed for development. The Hamilton et al. (2008) report found that the "stringline" approximates the boundary between landforms and organisms, including special status species, that are dependant on coastal processes, and those that are not. Hamilton et al. also found no biological evidence that would require an ESHA buffer inland from the stringline, and instead recommended placing the area of the property between the beach and the stringline under a conservation easement, implementing the proposed Restoration Plan (Read, 2005) with a few modifications,

establishing two dune paths instead of four, and normalizing the boundary between development and the dune restoration area by building on approximately 415 sq. ft. of disturbed dune habitat that occurs landward of the stringline in exchange for restoring approximately 1,710 sq. ft. of ruderal habitat that extends seaward of the stringline (**Exhibit 20**).

Commission biologist, Dr. Jonna Engel, visited the Broad Beach property on May 17, 2007 and has reviewed all relevant reports and documents. Dr. Engel, in her memorandum dated May 15, 2008, which is attached as **Exhibit 15**, concurred with the Hamilton, et. al.'s delineation of dune ESHA, with the exception of the "primrose/lupine" area. Dr. Engel states that the "primrose/lupine" area should also be considered ESHA for the following reasons:

1. As Hamilton et al. (2008) acknowledge, the area was historically part of the dune system on the site. There is no obstruction between the foredunes and this adjacent backdune area. Sand continues to be in a dynamic state in this area, moving to and from the foredunes due to wind, storms, and seasonal changes.
2. The primary substrate characterizing this patch is sand.
3. In spite of the intensive disturbance history of the site, dune hummocks and mounds, dominated by native foredune plant species, continue to persist in this area. Dune hummock and mound persistence through time is evident in the historical photographic record presented in both Read (Oct. 2006) and Hamilton et al. (2008) (see Figures 2-8 and Figures 2-8 & 13, respectively). Based on the photographs documenting mounds and hummocks in this area and the connection of this backdune area to the foredunes and beach, I do not agree that the contemporary dune topography found in this patch is an artificial creation resulting from sand build-up along the chain link fence west of the property.
4. Given the rarity of dune habitats across the state and the ease with which they are degraded by human activities, dune features that support native vegetation meet the definition of environmentally sensitive habitat area under the Coastal Act. In past actions, the Commission has considered coastal dunes, even those that are significantly degraded, to meet the definition of ESHA.

As such, based on the reports of the landowner's consultants, and the review of Dr. Engel, the Commission finds that the southern foredune community, including the lupin/primrose area on the subject property, as generally shown on **Exhibit 17**, meets the Coastal Act definition of ESHA, which is incorporated into the Malibu LCP by reference.

Since the proposed LCP amendment will set up a future subdivision of a property that contains dune ESHA into four parcels, it is important to note that LUP Policy 3.44 specifies that land divisions for property that includes area within or adjacent to an ESHA shall only be permitted if each new parcel being created could be developed without building in ESHA or ESHA buffer.

While the Malibu LCP designates dunes as ESHA, it does not contain a policy with a specific buffer size for protecting dunes. LUP Policy 3.16 states that dune ESHA shall be protected and, where feasible, enhanced. LUP Policy No. 3.23 states, in part:

Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width...

However, Chapter 4 of the LIP contains more specific buffer standards for different habitat types, such as riparian, wetland, and chaparral. Although dune ESHA is not specified, LIP Section 4.6.1.G states that for all other ESHA areas, the buffer recommended by the Environmental Review Board or City Biologist, in consultation with the California Department of Fish & Game, as necessary to avoid adverse impacts to the ESHA shall be required. When the City considered the amendment request from 2005 to 2007, the on-site dune ESHA was delineated in a different configuration than it is currently (per the 2008 biological assessment report). At that time, the City Biologist, Dave Crawford, concurred with the consulting biologists' (Dr. Edith Read) recommendation of restoring the on-site dunes and maintaining a 10 foot buffer from the restored dune area. However, the 10 foot buffer recommendation did not set back the development inland from the rear yard stringline. The dune ESHA and proposed restoration area just happened to be situated that distance away from the rear yard stringline.

The City has recently received the property owners' supplemental biological information. Upon reviewing the additional information, the City's Biologist, Dave Crawford, provided Commission staff with an update letter, dated April 10, 2008 (**Exhibit 13**). The letter states that Mr. Crawford concurs with the conclusions of the updated dune habitat assessment by Hamilton et al. (2008) and the associated revised dune ESHA delineation. Mr. Crawford goes on to state that because the remnant dunes of Malibu are highly disturbed and have limited function and value, he and the Environmental Review Board have established a standard buffer policy for dune habitat on beachfront properties that requires development go no further seaward than the "stringline", and requires preparation and implementation of a dune restoration plan. No biologically-based rationale for this new City-wide dune buffer policy is provided. However, in this case, the City Biologist concurs with the biological conclusions of the Hamilton et al. (2008) report.

Commission biologist, Dr. Jonna Engel, addresses the buffer issue in her memorandum dated May 15, 2008 (**Exhibit 15**). Dr. Engel disagrees with the consulting biologists' and the City Biologists' conclusion that no buffer ("stringline") is appropriate in this case. Dr. Engel states that the dunes on the subject property are some of the most pristine dunes along this stretch of coast and that the documented correlation between land use history and decline of dune habitat is clear evidence of biological impacts warranting a buffer.

Furthermore, the results from Sandoval's (2008) study on globose dune beetles demonstrate that development, irrigation, and invasive species all negatively impact the abundance and distribution of this special status species. Dr. Engel concludes that a buffer is necessary to protect the functioning of the southern foredune ESHA at the subject site and recommends a 25 foot minimum buffer.

Given the proximity of dune ESHA on the property and assuming a 25 foot buffer is applied, it is possible to site future development for four separate parcels without building in ESHA or ESHA buffer. This is consistent with the land division and ESHA policies of the Malibu LUP. However, because dune ESHA is situated essentially up to the "stringline" across about three quarters of the property, a 25 foot buffer would significantly reduce the amount of buildable area for most of the newly created parcels. The Commission recognizes that the subdivision will accommodate infill development and it is important to consider what would be both equitable and most protective of coastal resources. If ESHA and a 25 foot ESHA buffer were strictly delineated for siting future development of the newly created parcels, the result would be a much smaller available development area than is allowed by the existing development pattern along this densely developed stretch of Broad Beach. However, providing no buffer in exchange for restoration (as was determined sufficient by the City and the applicant's biological consultants) is inconsistent with LUP Section 3.23, which requires buffer areas around ESHA's to serve as transitional habitat and provide distance and physical barriers to human intrusion in order to preserve the biological integrity of the ESHA. Construction, maintenance, and use of single family residences inevitably involve activities that extend beyond the footprint of the structure. While fuel modification is not required in the case of a beachfront infill property, ordinary construction and maintenance activities will be necessary in the side and rear yard areas of the structures. If development were allowed right up to the edge of ESHA, then ordinary home maintenance would require intrusion into the ESHA itself, with attendant impacts to sensitive plants and animals. In this case, the rear yards front dune ESHA and a maintenance buffer of at least five feet would serve as adequate space to construct and maintain a residence without encroaching into the ESHA and restoration area. Therefore, the Commission finds that a five foot buffer from the designated ESHA areas in this case would be both equitable and protective of the biological integrity of the on-site dune ESHA, especially after implementation of the Dune Restoration Plan.

In addition, as mentioned previously, there are two small areas of the property in which the "stringline" does not mark the break between the ruderal and backdune ESHA areas: where a 0.04-acre ruderal area in the center of the site extends seaward and where a 0.01-acre backdune area on the eastern side of the property extends landward. The consulting biologists recommended exchanging these two areas because it would serve to both gain a net increase in restored dune ESHA, and to normalize the boundary between development and ESHA across the property. Staff cannot support this exchange because it would result in the loss of habitat that is designated ESHA. However, for the area of the site that is near the 0.04-acre ruderal area, the use of a stringline to limit seaward development would be appropriate, rather than the ESHA buffer.

As such, the Commission finds it necessary to suggest **Modification No. 1**, which require special site-specific regulations be applied to the subject property. The modification is incorporated into the LIP as an Overlay District to be only applicable to the subject property at 30732 Pacific Coast Highway. In particular, Modification No. 1 includes provisions requiring that the rear yard setback in this area, shall be determined by either a stringline or a five foot minimum buffer between new development and the landwardmost limit of dune ESHA (as shown on Exhibit 17), whichever is more landward; the recordation of an Open Space Conservation Easement between the landwardmost limit of ESHA to the ambulatory seawardmost limit of dune vegetation as generally shown on Exhibit 18; a revised Dune Restoration Plan; and implementation of the Revised Dune Restoration Plan for the property. As modified, the proposed modification to the lot width standard will result in a subdivision that creates lots where the development areas are not within ESHA or ESHA buffer. As such, the LIP will assure consistency with the ESHA policies of the Land Use Plan.

Visual Resources

The City of Malibu LCP contains provisions for protection of views to the ocean that apply to beachfront development along several public roads. The LCP policies and LIP standards require that new development provide for ocean views over the top of structures, where the topography of the site descends from the road. Where the topography of the site does not allow for views to be maintained over the top of structures, such as the subject property, the LCP requires that new development provide a view corridor from the road to the ocean. Pacific Coast Highway is a designated scenic highway in the Malibu LCP. The intent of the LCP's view corridor provision is to break up the "solid wall" of development along the beach front in portions of Malibu which prevents any view of the ocean as seen from public roads and highways. The LCP view corridor provision requires that buildings occupy a maximum of 80 percent of a site's lineal frontage, while the remaining 20 percent of the lineal frontage is maintained as a contiguous view corridor, except on lots 50 feet or less in width, in which case the view corridor may be split into two 10 percent view corridors on either side of the residence.

Reducing the minimum lot width development standard for beachfront residential parcels, as proposed in the subject LCP amendment, would essentially increase the number of smaller-sized lots and each would be associated with a smaller view corridor. Existing residential development on narrow lots on many sections of the Malibu shoreline has created a solid wall of development. This development pattern has completely blocked or severely impeded views of the ocean and beach as seen from public roadways. The proposed narrow lot configuration is a continuation of this existing development pattern that has resulted in significant adverse impacts to scenic views of the ocean and beach along the Malibu shoreline. Coastal Act Section 30251, which is incorporated into the Malibu LUP, requires that "permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the

character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.”

However, as mentioned previously, the subject parcel is the only undeveloped beachfront property in the City’s SF-M zone district that would be impacted by the proposed minimum lot width standard. Future subdivision of the subject property as a result of the LCP amendment request will result in four approximately 50 foot wide parcels with only a 5-foot view corridor on either side of each parcel. Compared to two 100 foot wide lots with 20-foot view corridors each, or one 200 foot wide lot with a 40 foot view corridor that is currently allowed under the LCP, reducing the minimum lot width standard to accommodate the subdivision will adversely impact views of the beach and ocean from Pacific Coast Highway. While the total width of view corridor provided would be the same, one corridor would obviously provide greater view opportunities than several separate corridors. Thus, the proposed amendment is not consistent with the scenic and visual resource policies of the LCP.

In an effort to maximize public views, the property owner had proposed to retain a contiguous 20 percent (10 foot wide) view corridor on each of the four newly created parcels and situate each view corridor such that it is contiguous with one other view corridor (**Exhibit 16**). The result is two 20 foot wide view corridors across the entire 200 foot wide property, instead of several 10 foot wide corridors. Although more protective than what the LCP requires, the property owners’ proposal will provide maximum protection of visual resources while still accommodating subdivision of the property.

However, if views are obstructed by existing, unpermitted development, then required view corridors are functionless and do not serve to protect view to and along the ocean. In this case, existing landscaping shrubs and trees along the on-site retaining wall and gates adjacent to Pacific Coast Highway currently obstruct ocean views from the highway. The landscaping does not appear to be associated with a coastal development permit, including the 1995 coastal permit that authorized the on-site retaining wall and access road, but not the gates or wrought iron fencing. However, the landscaping appears to have been planted at approximately the same time as the retaining wall and access road. Policy 6.15 of the LUP specifies that fencing, walls, and landscaping shall not block views of scenic areas from scenic roads. The property owner has proposed to remove the existing landscaping that obstructs the future public view corridors. In order to ensure that the proposed view corridor plan and landscaping removal is implemented, the Commission finds **Modification No. 1** is necessary to incorporate a special site-specific regulation requiring that the future view corridors be deed restricted under the terms and configuration proposed by the property owner. As modified, the Commission finds that the proposed amendment will minimize impacts to visual resources, consistent with the policies of the Coastal Act and the Malibu LUP.

VII.CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Malibu LCP Amendment 1-07 consists of an amendment to both the Land Use Plan (LUP) Local Implementation Plan (IP) portions of the certified LCP.

As outlined in this staff report, the LUP amendment is consistent with the Chapter 3 policies of the Coastal Act, as submitted. However, the LIP amendment is inconsistent with the ESHA and visual resource protection policies of the certified Land Use Plan as submitted. If modified as suggested, the LIP amendment will be consistent with the ESHA and visual resource policies of the Land Use Plan. Thus, the Commission finds that the proposed LCP amendment, as modified, meets the requirements of and conforms with the policies of the Coastal Act and certified LUP. Therefore, the Commission finds that approval of the LCP amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP amendment request 1-07, if modified as suggested herein.

RECEIVED
MAR 06 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

(LCPA No. 05-002 and LCPA No. 06-001)

March 5, 2007

The existing language in the certified LCP is shown in straight type. The language proposed by the City of Malibu in this amendment to be deleted is shown in ~~strikethrough~~. The language proposed by the City of Malibu in this amendment to be inserted is shown underlined.

1. Land Use Plan

1.1 LUP Land Use Maps

APN	Address	Current Land Use Designation	Proposed Land Use Designation
4469-046-007	5920 Paseo Cayon (also known as 5924 Paseo Canyon)	Public Open Space (OS)	Single-family Low Density Residential (SF-L)

2. Local Implementation Plan

B¹.

2.1 Section 3.3.C (3) (Single Family Zone Lot Development Criteria) of the LIP is hereby amended to read as follows:

3. Lot Development Criteria

All new lots created within the SF District shall comply with the following criteria:

a. Minimum Lot Area. All new parcels created within the SF District shall comply with the minimum corresponding SF designation indicated on the Zoning Map as follows:

- i. SF-L: 0.5 unit per acre
- ii. SF-M: 1 unit per 0.25 acre
 - 1. Beachfront: 1 unit per 0.25 acre

- b. Minimum Lot Width: 80 feet
 - 1. Beachfront Minimum Lot Width: 45 feet

Exhibit 1
Malibu LCPA 1-07
City LCP Amendment
Text, dated 3/5/07

- c. Minimum Lot Depth: 120 feet
 - 1. Beachfront Minimum Lot Depth: 120 feet

2.2 LIP Zoning Maps

APN	Address	Current Zoning	Proposed Zoning
4469-046-007	5920 Paseo Cayon (also known as 5924 Paseo Canyon)	Public Open Space (OS)	Single-family Low Density Residential (SF-L)

ex. 1

ORDINANCE NO. 302

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 06-001, AMENDING THE ZONING FOR 5920 PASEO CANYON DRIVE FROM PUBLIC OPEN SPACE (POS) TO SINGLE-FAMILY LOW DENSITY (SFL)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

A. On February 28, 1993, the City Council adopted the Interim Zoning Map and designated the parcel at 5920 Paseo Canyon Drive as Open Space. This designation was based on the tax assessor's records which identified the parcel as publicly owned.

B. On February 3, 1995, the City of Malibu initiated Zoning Map Amendment No. 95-001 to establish the appropriate zoning designation for the subject parcel recognizing it as a privately held parcel distinct from the adjacent, publicly held parkland area.

C. On March 13, 1995, the City Council conducted a duly noticed public hearing regarding Zoning Map Amendment No. 95-001. The zoning map amendment requested a change in the current Interim Zoning Map designation of Open Space (OS) to Single-Family Low Density (SF-L). Accordingly, the City Council adopted Resolution No. 95-379, adopting Negative Declaration No. 95-01.

D. On March 27, 1995, Ordinance No. 123 was adopted by the City Council changing the zoning from OS to SF-L for the parcel at 5920 Paseo Canyon Drive.

E. On September 12, 2002, the California Coastal Commission certified the City of Malibu Local Coastal Program (LCP). The City has since stated that the General Plan and Zoning Maps provided to the Commission during preparation of the LCP were not the most up to date maps that were adopted at the time (2000) and did not reflect certain zone changes that had already been approved prior to the adoption of the LCP.

F. On July 24, 2006, the City Council adopted Resolution No. 06-49 initiating a Local Coastal Program Amendment to correct a land use zoning discrepancy by changing the LCP zoning for the parcel located at 5920 Paseo Canyon Drive from Public Open Space (POS) to Single-Family Low Density (SFL). The Council directed staff to proceed with the amendment.

G. On August 10, 2006, pursuant to LCP Section 19.3.1, a quarter page Notice of Availability was published in a newspaper of general circulation within the City of Malibu indicating the availability of the proposed amendment to the certified Local Coastal Program. The document was made available at Malibu City Hall, the Malibu Public Library, the California Coastal Commission South Central Coast Office and on the City of Malibu website.

H. On August 10, 2006, a Notice of Availability was mailed to var agencies and private parties.

Exhibit 2
Malibu LCPA 1-07
City-Approved Resolution and Ordinance for LCPA No. 06-001 (Paseo)

I. On October 5, 2006, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on October 5, 2006, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property

J. On October 17, 2006, the Planning Commission held a duly noticed public hearing on Local Coastal Program Amendment No. 06-001, reviewed and considered written reports, public testimony, and related information, and adopted Planning Commission Resolution No. 06-82 recommending the City Council proceed with the Local Coastal Program Amendment.

K. On November 2, 2006, pursuant to LCP Section 19.3.2, a 10-day, quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on November 13, 2006 to consider an amendment of the certified Local Coastal Program. In addition, on November 2, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property

L. On November 13, 2006, the City Council continued the hearing to the meeting of December 11, 2006 so that a General Plan Amendment could be included in the project.

M. On November 16, 2006, pursuant to Malibu Municipal Code Section 17.74.030 (B) and LCP Section 19.3.2, a 21-day, quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on December 11, 2006 to consider an amendment of the certified Local Coastal Program and General Plan. In addition, on November 16, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property, and to interested parties.

Section 2. Environmental Review.

In accordance with the California Environmental Quality Act, Section 21080.9, approval by a local agency as necessary for the preparation and adoption of a Local Coastal Program is statutorily exempt from the requirements of the California Environmental Quality Act.

Section 3. Local Coastal Program Amendment Findings.

Pursuant to LCP Local Implementation Chapter 19.6, the City Council hereby find as follows:

1. The proposed amendments to the Local Coastal Program Local Implementation Plan meet the requirements of, and are in conformance with the policies and requirements of Chapter 3 of the California Coastal Act.
2. The amendments to the Local Coastal Program Local Implementation Plan meet the requirements of, and are in conformance with the goals, objectives and purposes of the LCP.

Section 4. Approval of Amendments to the Certified Local Coastal Program LIP.

Subject to the contingency set forth in Section 5, the City Council hereby adopts Local Coastal Program Amendment No. 06-001, amending LIP Zoning Map to rezone the property at 5920 Paseo Canyon to Single-Family Low Density (SFL).

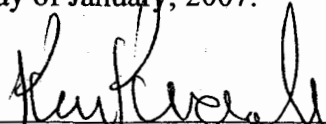
Section 5. Local Coastal Program Amendment Condition of Effectiveness.

This ordinance shall become effective only upon certification of the Local Coastal Program amendments by the Coastal Commission.

Section 6. Certification.


The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 17th day of January, 2007.



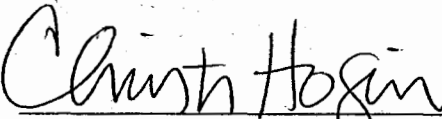
KEN KEARSLEY, Mayor

ATTEST:



LISA POPE, City clerk
(seal)

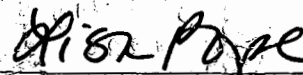
APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 302 was passed and adopted at the adjourned regular City Council meeting of January 17, 2007, by the following vote:

AYES: 5 Councilmembers: Barovsky, Conley Ulich, Stern, Jennings, Kearsley
NOES: 0
ABSTAIN: 0
ABSENT: 0



LISA POPE, City Clerk
(seal)

Planning

RESOLUTION NO. 06-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT (LCPA) NO. 06-001 AMENDING THE LAND USE PLAN PARKLAND AND LAND USE MAP AND GENERAL PLAN AMENDMENT (GPA) NO. 06-001, TO UPDATE THE GENERAL PLAN LAND USE MAP FOR THE PARCEL LOCATED AT 5920 PASEO CANYON DRIVE TO REFLECT THE CITY'S CURRENT ZONING DESIGNATION OF SINGLE-FAMILY LOW DENSITY

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

Section 1. Recitals.

A. On February 28, 1993, the City Council adopted the Interim Zoning Map and designated the parcel at 5920 Paseo Canyon Drive as Open Space. This designation was based on the tax assessor's records which identified the parcel as publicly owned.

B. On February 3, 1995, the City of Malibu initiated Zoning Map Amendment No. 95-001 to establish the appropriate zoning designation for the subject parcel recognizing it as a privately held parcel distinct from the adjacent, publicly held parkland area.

C. On March 13, 1995, the City Council conducted a duly noticed public hearing regarding Zoning Map Amendment No. 95-001. The zoning map amendment requested a change in the current Interim Zoning Map designation of Open Space (OS) to Single-Family Low Density (SF-L). Accordingly, the City Council adopted Resolution No. 95-379, adopting Negative Declaration No. 95-01.

D. On the March 27, 1995, Ordinance No. 123 was adopted by the City Council changing the zoning from OS to SF-L for the parcel at 5920 Paseo Canyon Drive.

E. On September 12, 2002, the California Coastal Commission certified the City of Malibu Local Coastal Program (LCP). The City has since stated that the General Plan and Zoning Maps provided to the Commission during preparation of the LCP were not the most up to date maps that were adopted at the time (2000) and did not reflect certain zone changes that had already been approved prior to the adoption of the LCP.

F. On July 24, 2006, the City Council adopted Resolution No. 06-49 initiating a Local Coastal Program Amendment to correct a land use zoning discrepancy by changing the LCP zoning for the parcel located at 5920 Paseo Canyon Drive from Public Open Space (POS) to SFL. The Council directed staff to proceed with the amendment.

G. On August 10, 2006, pursuant to LCP Section 19.3.1, a quarter page Notice of Availability was published in a newspaper of general circulation within the City of Malibu indicating the availability of the proposed amendment to the certified

Local Coastal Program. The document was made available at Malibu City Hall, the Malibu Public Library, the California Coastal Commission South Central Coast Office and on the City of Malibu website.

H. On August 10, 2006, a Notice of Availability was mailed to various governmental agencies and private parties.

I. On October 5, 2006, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on October 5, 2006, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property

J. On October 17, 2006, the Planning Commission held a duly noticed public hearing on Local Coastal Program Amendment No. 06-001, reviewed and considered written reports, public testimony, and related information, and adopted Planning Commission Resolution No. 06-82 recommending the City Council proceed with the Local Coastal Program Amendment.

K. On November 2, 2006, pursuant to LCP Section 19.3.2, a 10-day quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on November 13, 2006 to consider an amendment of the certified Local Coastal Program. In addition, on November 2, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property, and to interested parties.

L. On November 13, 2006, the City Council continued the hearing to the meeting of December 11, 2006 so that a General Plan Amendment could be included in the project.

M. On November 16, 2006, pursuant to Malibu Municipal Code Section 17.74.030 (B) and LCP Section 19.3.2, a 21-day, quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on December 11, 2006 to consider an amendment of the certified Local Coastal Program and General Plan. In addition, on November 16, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property, and to interested parties.

Section 2. Environmental Review.

In accordance with the California Environmental Quality Act, Section 21080.9, approval by a local agency as necessary for the preparation and adoption of a Local Coastal Program is statutorily exempt from the requirements of the California Environmental Quality Act.

Section 3. Local Coastal Program Amendment Findings.

Pursuant to LCP Local Implementation Section 19.6, the City Council hereby finds as follows:

A. The proposed amendments to the Local Coastal Program Land Use Plan meet the requirements of, and are in conformance with the policies and requirements of Chapter 3 of the California Coastal Act.

B. The amendments to the Local Coastal Program Land Use Plan meet the requirements of, and are in conformance with the goals, objectives and purposes of the LCP as identified in the LCP.

Section 4. Approval of Local Coastal Program Land Use Plan Amendment.

LCP Land Use Parklands map and Land Use map shall be amended to change the land use designation for the parcel located at 5920 Paseo Canyon to Single-Family Low Density (SFL). The City Council hereby approves amendments to the Land Use Plan of the Local Coastal Program.

Section 5. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 06-001 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulations, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et seq.

Section 6. Approval of Amendment to the City of Malibu General Plan Land Use Map.

The Land Use Map in the City of Malibu General Plan will be updated to reflect the legal land use designation of the parcel. This update will provide for consistency with the Local Coastal Program and the established zoning designation for the property. Additionally, the adoption of this General Plan Amendment would not impede the implementation of goals or policies of the City of Malibu's General Plan. The City Council hereby approves amendments to the General Plan.

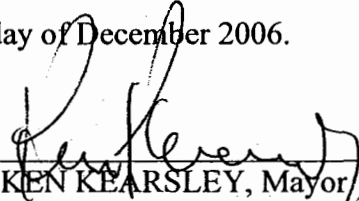
Section 7. Effectiveness.

The LCP Amendments approved in this resolution shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 8. Certification.

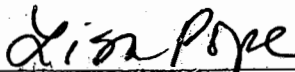
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 11th day of December 2006.



KEN KEARSLEY, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

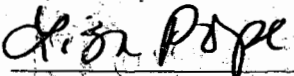


CHRISTI HOGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Municipal Code and Code of Civil Procedure Section 1094.6.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 06-71 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 11th day of December, 2006, by the following vote:

AYES: 5 Councilmembers: Barovsky, Conley Ulich, Stern, Jennings, Kearsley
NOES: 0
ABSTAIN: 0
ABSENT: 0



LISA POPE, City Clerk
(seal)

Planning

ORDINANCE NO. 304

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN AMENDMENT NO. 05-002, AMENDING THE SINGLE-FAMILY MEDIUM ZONING DISTRICT TO INCLUDE A 45 FOOT MINIMUM LOT STANDARD FOR BEACHFRONT LOTS

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

A. On July 29, 2005, the Malibu Bay Company applied for a Coastal Development Permit (CDP No. 05-136) with a Local Coastal Program Amendment request (LCPA No. 05-002) to subdivide into four lots a 2.08 acre parcel located at 30732 Pacific Coast Highway.

B. The subdivision would not have been allowed under the current lot width standards. Staff presented two options to the Council. One option required a Local Coastal Program Land Use Amendment, a Local Coastal Program Local Implementation Plan Amendment, General Plan Amendment, General Plan Map Amendment, and Zoning Map Amendment. The preferred alternative requires only a Local Coastal Program Local Implementation Plan Amendment amending the existing SFM zoning district to include a beachfront lot width standard of 45 feet and this is the preferred alternative.

C. On January 22, 2007, the City Council 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 and Mitigated Negative Declaration.

Pursuant to Public Resources Code sections 21080.5 and 21080.9, the City is not required to undertake a full-blown CEQA analysis in connection with proposed amendments to a certified local coastal program, as those amendments are of no force or effect unless and until they are ultimately certified by the California Coastal Commission pursuant to its certified regulatory program. Nevertheless, in the interest of fostering the most informed decision-making process practicable, and without waiving the applicable statutory exemption, staff prepared a Revised Mitigated Negative Declaration in connection with the project which includes an analysis of LCPA 05-002. The Revised Mitigated Negative Declaration was certified by this Council on January 22, 2007 upon adoption of Resolution No. 07-07. The Revised Mitigated Negative Declaration satisfies any obligation the City may have pursuant to CEQA Guideline section 15252.

Section 3. Local Coastal Program Amendment No. 05-002 Findings.

The City of Malibu Local Coastal Program Amendment No. 05-002 involves changes to the Local Implementation Plan (LIP) of the certified Local Coastal Program. Amendments to the LIP are identified in Section 4 of this ordinance. Pursuant to LIP Section 19.6, the City Council hereby finds as follows.

Exhibit 3
Malibu LCPA 1-07
City-Approved Resolution and Ordinance LCPA No. 05-002 (SF-M Zone)

A. The proposed amendments to the LIP meet the requirements of, and are in conformance with the policies and requirements of Chapter 3 of the California Coastal Act. The proposed amendment does not change any land uses in the residentially zoned area; it primarily and merely changes the lot width requirement so that the lot sizes are consistent with similarly zoned parcels.

B. The amendments to the LIP meet the requirements of, and are in conformance with the goals, objectives and purposes of the LCP.

C. The adoption of the LIP amendments would not impede the implementation of goals or polices of the City of Malibu's General Plan as the amendment conforms the subject parcel to the same standards to which neighboring parcels are already developed.

Section 4. Local Coastal Program Local Implementation Plan Amendment No. 05-002.

A. Section 3.3.C(3) (Single Family Zone Lot Development Criteria) of the LIP is hereby amended to read as follows:

3. Lot Development Criteria

All new lots created within the SF District shall comply with the following criteria:

a. Minimum Lot Area. All new parcels created within the SF District shall comply with the minimum corresponding SF designation indicated on the Zoning Map as follows:

- i. SF-L: 0.5 unit per acre
- ii. SF-M: 1 unit per 0.25 acre
 - 1. Beachfront: 1 unit per 0.25 acre

b. Minimum Lot Width: 80 feet

- 1. Beachfront Minimum Lot Width: 45 feet

c. Minimum Lot Depth: 120 feet

- 1. Beachfront Minimum Lot Depth: 120 feet

Section 5. Approval of Amendments to the Certified Local Coastal Program LIP.

Based upon the evidence in the record, the City Council hereby adopts Local Coastal Program Amendment No. 05-002, subject to the contingency set forth in Section 6 of this ordinance.

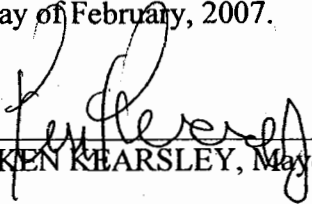
Section 6. Local Coastal Program Amendment Condition of Effectiveness.

The ordinance Local Coastal Program Local Implementation Plan Amendment approved by this Ordinance shall become effective only upon certification by the California Coastal Commission.

Section 7. Certification.

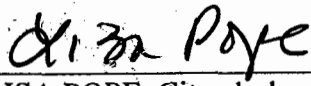
The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2007.



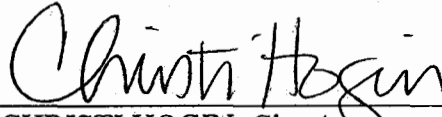
KEN KEARSLEY, Mayor

ATTEST:



LISA POPE, City clerk
(seal)

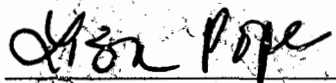
APPROVED AS TO FORM:



CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 304 was passed and adopted at the regular City Council meeting of February 12, 2007, by the following vote:

AYES: 5 Councilmembers: Barovsky, Conley Ulich, Stern, Jennings, Kearsley
NOES: 0
ABSTAIN: 0
ABSENT: 0



LISA POPE, City Clerk
(seal)

RESOLUTION NO. 07-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 06-013 AND CERTIFYING REVISED MITIGATED NEGATIVE DECLARATION 06-004 AND CONDITIONALLY APPROVING COASTAL DEVELOPMENT PERMIT NO. 05-136 AND VESTING TENTATIVE PARCEL MAP NO. 99-002 TO SUBDIVIDE THE SUBJECT PROPERTY INTO FOUR 47 TO 50 FOOT LOTS (MALIBU BAY COMPANY)

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

Section 1. Recitals.

A. On July 29, 2005, the Malibu Bay Company applied a Coastal Development Permit (CDP) No. 05-136 with a Local Coastal Program Amendment request (LCPA No. 05-002) to subdivide into four lots a 2.08 acre parcel located at 30732 Pacific Coast Highway.

B. On June 8, 2006, a Notice of Intent to Adopt Mitigated Negative Declaration (MND) No. 06-004 was published in a newspaper of general circulation within the City of Malibu. In addition, on June 30, 2006, Initial Study (IS) No. 06-002 and MND No. 06-004 were routed to applicable agencies and interested parties.

C. On June 27, 2006, the application was reviewed by the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES). ZORACES recommended minor changes to the proposed language which have been incorporated into the proposed amendments.

D. On September 5, 2006, the Planning Commission held a duly noticed public hearing and adopted Planning Commission Resolution No. 06-71, adopting MND 06-004, IS No. 06-002, conditionally approving CDP No. 05-136 and TPM No. 99-002 to subdivide the subject property into four, 47 to 50 foot parcels., and recommending approval of ZTA No. 05-001, General Plan Amendment (GPA) No. 05-001 and LCPA 05-002 for the applicant requested creation of a new land use designation zoning district of Single-Family Beachfront (SFBF).

E. On September 15, 2006, Ellia Thompson, on behalf of the Ross Family Trust and other nearby property owners, filed a timely appeal of the Planning Commission's adoption of MND No. 06-004 and IS No. 06-002 and the conditional approval of CDP No. 05-136 and TPM No. 99-002.

F. On November 8, 2006, a Notice of Intent to Adopt a Revised MND No. 06-004 was published in a newspaper of general circulation within the City of Malibu. In addition, on November 8, 2006, IS No. 06-002 and Revised MND No. 06-004 were routed to all of the applicable agencies and interested parties.

G. On December 11, 2006, the item was continued at the applicant's request in order to allow time to respond to comments received on the Revised MND.

H. On January 22, 2007, the City Council 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 and Revised Mitigated Negative Declaration.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed subdivision project, and after reviewing IS No. 06-002 has determined that the project will not have a significant effect on the environment. Accordingly, a project description, Initial Study and Revised MND were circulated for public review, and based on the entire record and comments received, the City Council has determined that (i) there is no substantial evidence that the request set forth in this resolution will have a significant effect on the environment and (ii) the Revised Mitigated Negative Declaration prepared for this request reflects the City's independent judgment and analysis. The City Council hereby adopts Revised MND No. 06-004.

Pursuant to Public Resources Code sections 21080.5 and 21080.9, the City is not required to undertake a full-blown CEQA analysis in connection with proposed amendments to a certified local coastal program, as those amendments are of no force or effect unless and until they are ultimately certified by the California Coastal Commission pursuant to its certified regulatory program. Nevertheless, and without waiving the applicable statutory exemption, staff prepared a Revised MND in connection with the project which includes an analysis of LCPA 05-002. The Revised MND satisfies any obligation the City may have pursuant to CEQA Guideline section 15252.

Section 3. Appeal of Action.

A. The appellant, Ellia Thompson on behalf of the Ross Family Trust and other nearby property owners, filed Appeal No. 06-013, appealing the Planning Commission's adoption of MND No. 06-004 and IS No. 06-002 and conditional approvals of CDP No. 05-0136 and TPM No. 99-002. The appellant contends that: 1) the findings or conditions are not supported by the evidence, or the decision is not supported by the findings; and 2) the decision was contrary to law.

B. The appellant's submittal included several categories of statements, which form the basis of the appeal. These categories are summarized as follows: A) the adequacy of the Mitigated Negative Declaration; B) Environmentally Sensitive Habitat Area (ESHA) on the subject site; C) CEQA findings not supported in fact; and D) the CDP and TPM findings are not supported by evidence in the record.

Section 4. Findings Denying Appeal No. 06-013.

Based on evidence in the record as a whole and in the Council Agenda Report for the January 22, 2007 City Council meeting, the City Council hereby makes the following findings of fact denying Appeal No. 06-013, certifying Revised MND 06-004, approving LCPA 05-002, and conditionally approving CDP No. 05-136 and Vesting TPM No. 99-002, affirming that the approval was in accordance with the LCP and applicable State and local laws and 1) the findings and conditions are supported by evidence and the decision is supported by the findings; and 2) the Planning Commission decision was consistent with the law.

A. The appellants asserted that the project description is misleading and inaccurate and that use of an MND is improper because the evidence supports a fair argument that the Planning Commission action may cause adverse impact on the environment and that an environmental impact report (EIR) should be prepared.

The project description in the MND circulated on May 31, 2006, did not include the alternative proposal of modifying the SFM zoning district to include a beachfront lot width standard of 45 feet. It was not included because this option was developed during additional lot width analysis while drafting the staff report, subsequent to the circulation of the MND.

Staff re-circulated the Revised MND with an analysis of the staff-generated legislative alternative. Although the City is not required to prepare an initial study, negative declaration, or EIR for a proposed LCP amendment, the proposed amendment was analyzed by staff in the revised IS/MND to provide the Council with meaningful information to assist in the decision-making process. In preparing the Initial Study/Revised MND, the Lead Agency (City of Malibu) relied upon expert opinion supported by facts (Biology Reports, as well as the City Biologist, City Geologist, City Coastal Engineer, and City Environmental Health Specialist review), technical studies (EIR and Geology reports referenced in the MND and Revised MND), and other substantial evidence (visual analysis, aerial photos, General Plan, M.M.C. and LCP). Evidence in the record supporting the request includes:

1. Aerial Photos from the City of Malibu Geographic Information System
2. Aerial Photos from the California Coastal Records Project (Images No. 3797, 20040567, 200500177, and 200601652)
3. Coastal Development Permit Nos. 4-99-129, 4-95-002, 4-95-004, 4-95-005
4. Coastal Development Permit Waiver No. 4-95-100
5. City of Malibu, City of Malibu General Plan, November 1995
6. City of Malibu, Final EIR for the City of Malibu Draft General Plan. November 1995
7. City of Malibu, Local Coastal Program, September 2002
8. City of Malibu, Municipal Code
9. City of Malibu Biological Referrals, December 12, 2005 and March 9, 2006
10. Consulting Engineers and Land Surveyors of California. California

- Environmental Quality Act, CEQA Guidelines, 2004
11. City of Malibu, Geology Review Referral, August 22, 2005
 12. City of Malibu, Coastal Engineering Referral, October 27, 2005
 13. Envicom Corporation, Malibu Bay Company Development Agreement Project Final Environmental Impact Report, July 2003
 14. Forde, Andrew McGinn, Forde Biological Consultants, "Biological Inventory 30732 Pacific Coast Highway (APN 4469-026-005) in the City of Malibu", November 15, 2005
 15. Geosystems, "Updated Soils and Engineering-Geologic Investigation for Proposed Four Single-Family Residences Tentative Parcel Map 24070, +/- 30744 Pacific Coast Highway Malibu, California", November 2, 1998
 16. Geosystems, "Updated Soils and Engineering-Geologic Investigation and Liquefaction Hazard Analysis +/- 30724 Pacific Coast Highway, Malibu, California", July 2, 2003
 17. City of Malibu Public Works Referral, August 25, 2005
 18. Los Angeles County Fire Department Referral, August 9, 2005 and April 10, 2006
 19. Public Resources Code, 2002
 20. Read, Edith, Psomas and Associates, "Vegetation and Sensitive Resource Evaluation, Tentative Parcel Map No. 24070 (Trancas Canyon/Broad Beach Property), Malibu Bay Company", July 19, 1999
 21. Read Ph.D., Edith, for Forge Biological Consulting, "Restoration Plan for Coastal Foredunes, 30732 Pacific Coast Highway (Broad Beach) Malibu, California", December 1, 2005
 22. Read, Ph.D., Edith, Assessment of Historic and Current Biological Resources, 30732 Pacific Coast Highway (Broad Beach), October 23, 2006
 23. Trip Generation, 7th Edition, Institute of Transportation Engineers
 24. View Corridor Analysis consisting of drawing showing the view corridors of the site as one parcel and as four parcels
 25. Visual Analysis consisting of Architectural Renderings of either one large house on the site or four smaller homes on the site
 26. City of Malibu Environmental Health Referral Approval, October 31, 2005

A MND was prepared only after the Mandatory Findings of Significance proved that the project would not substantially degrade the quality of the environment, does not achieve short-term goals to the disadvantage of long-term environmental goals, does not have possible cumulatively considerable environmental effects, and that the project will not cause substantial adverse effects on human beings, either directly or indirectly and that an EIR was not required.

There is no conflicting evidence in the record regarding the potential for a significant effect. The LCP development standards regulate all aspects of development and are not required to be restated as mitigation measures. However, as discussed at length in the associated Council Agenda report, mitigation measures with regard to protection of biological resources have been incorporated into the project.

B. The appellant asserts that the Planning Commission failed to recognize the site's Environmentally Sensitive Habitat Area (ESHA). The site is not a mapped ESHA and as such, if sensitive resources exist on site, per LCP 4.3.A, additional studies must be conducted to determine the physical extent of habitat meeting the definition of "environmentally sensitive area" on the project site. Studies were conducted by Dr. Edith Read and Consulting Biologist Andrew Forde which indicate that a portion of the site, outside of the development envelope, contains remnants of a coastal dune.

C. The appellant asserts that the CEQA findings were not supported by substantial evidence. The substantial evidence to support the adoption of a Revised MND is discussed in subsection A above.

D. The appellant asserts the Planning Commission's findings that the project, as proposed, conforms to the City of Malibu's Local Coastal Program are not supported by substantial evidence. As stated above, the substantial evidence to support the findings is discussed in subsection A above.

The LCP development standards, specifically for this site, use a stringline to determine the seaward encroachment of development. This stringline effectively prohibits any encroachment into the dune area. The Planning Commission is very familiar with the stringline development standard and recognized that development could not encroach further seaward.

Section 5. Coastal Development Permit Approval and Findings.

The proposed project has been reviewed by the City's Coastal Engineer, Geologist, Environmental Health Specialist, Biologist, and Public Works Department, as well as the Los Angeles County Fire Department. The project site has also been evaluated for potential impacts to archaeological resources per adopted City Cultural Sensitivity Maps and it has been determined to have a very low probability of containing archeological or paleontological resources.

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, as conditioned, and subject to approval of LCPA No. 05-002, will conform to the certified LCP in that it will meet the required beachfront lot size standards of the SFM zoning district and land use designation.

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. However, the proposed TPM and potential residential development is 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 approximately 300-feet to the east at the Zuma Beach County Park. In addition, the applicant has offered to provide lateral access easements across each parcel; therefore, the project conforms to the public access and recreation policies.

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

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), an initial study to determine whether the proposed project may have a significant effect on the environment was prepared for the project. The initial study determined that the proposed project will not have a potentially significant effect on the environment, and a mitigated negative declaration has been prepared. Therefore, the proposed project is determined to be consistent with CEQA and the policies of the Coastal Act.

There are three alternatives that were determined to be the least environmentally damaging.

1. No Project – The no project alternative would avoid any change in the project site, and hence, any change in visual resources. However, the project site is residentially zoned and could potentially be developed with LCP beachfront development standards (no limit on total development square footage) with a 38,750 square foot single-family residence, (a 200-foot lot, minus a 40-foot view corridor, minus a 5-foot side yard setback, with a 125-foot length to the rear yard setback, amounts to 155 square feet of frontage by 125-feet of length, which equals 19,375 square feet for the first floor and 19,375 square feet for the second floor, for a total of 38,750 square feet). Therefore, the no project alternative (no LCPA, no parcel map) could potentially result in the construction of a large and significantly larger structure than four structures permitted under the proposed new lot width development standard. This is not the least environmentally damaging alternative.
2. Larger Project – The applicant could have requested to subdivide the subject 2.0 acre-parcel into eight lots, which would be consistent with the General Plan land use designation of two to 4 lots per acre. The lot width of each of the eight parcels would be 25-feet in width. While this is similar in size to the parcel immediately west, which is 28-feet in width, it would not be consistent with the majority of single-family beachfront development. This is not the least damaging alternative.

3. Proposed Project - The proposed project consists of a TPM subdividing one legal parcel into four legal parcels. The subject parcel is addressed as 30732 Pacific Coast Highway and is zoned SFM. The proposed tentative parcel map consists of two .52 acre parcels and two .51 acre parcels with identified building sites. The identified building sites do not encroach on or into ESHA or ESHA buffer area. The four parcels are consistent with the General Plan land use designation which allows the creation of up to four lots per acre. This application is for two lots per acre. The lot widths average 48.5-feet and are consistent citywide with established beachfront lot sizes in the SFM zoning district. The proposed TPM is consistent with the SFM zoning density and General Plan land use density. The project will not result in potentially significant impacts on the physical environment. Therefore, the proposed project is the least environmentally damaging alternative.

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

The project was reviewed by the Environmental Review Board (ERB) and Subdivision Review Committee (SRC). Recommendations of both boards have been incorporated into the TPM in this resolution.

A. Environmentally Sensitive Habitat Area (LIP - Chapter 4)

As discussed above, the subject TPM and potential development will result in less than significant impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable. Nevertheless, the supplemental findings can be made:

Finding 1. Application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel.

The proposed TPM will create four undeveloped parcels all of which have identifiable building sites which do not encroach into ESHA or ESHA buffer.

Finding 2. The use proposed by the applicant is consistent with the applicable zoning.

The proposed single-family use is consistent with the existing and proposed zoning designations.

Finding 3. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay ordinance and it complies with the provisions of

Section 4.7 of the Malibu LIP.

As stated in Section A. General Coastal Development Permit, Finding A of this resolution, the proposed project is consistent with all provision's of Malibu's certified LCP, with the exception of the lot width standard in the SFM zoning district. The proposed TPM and identified building sites are in compliance with ESHA development standards. In addition, the project includes a dune restoration plan for the site which will enhance the existing coastal dune habitat.

As discussed above, the subject parcel is not designated as ESHA and the City Biologist has determined that the project is not expected to result in any new biological impacts. Accordingly, the findings in the ESHA Overlay are not applicable.

C. Native Tree Protection Ordinance— (LIP - Chapter 5)

No native trees are proposed for removal as part of this application.

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

The Scenic, Visual and Hillside Resource Protection Ordinance governs those Coastal Development Permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. This project is visible from a scenic road (Pacific Coast Highway); therefore, the Scenic, Visual and Hillside Resource Protection Ordinance applies and the five findings set forth in LIP Section 6.4 are hereby made as follows:

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.

The proposed TPM will create four parcels on Pacific Coast Highway which is a designated scenic highway. These parcels would each be developed with a single-family residence at a future date. The LIP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and by incorporating design measures to limit the appearance of bulk, ensuring visual compatibility with the character of surrounding areas, and by using colors and materials that are similar and blend in with the natural materials on the site. Walls and landscaping must not block public viewing areas.

Development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structure. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site. The existing lot is 200 feet in width. The proposed project includes division of the lot to four 46- to 50-foot wide lots. The lot is legally developable whether it is divided or not.

The aesthetics analysis of the certified Environmental Impact Report (EIR) by Envicom Corporation, entitled, "Malibu Bay Company Development Agreement Project Final Impact Report" dated July 2003 page 5.1-22, describes the site as follows:

"The Broad Beach site consists of 2.0-acre, 200 foot wide beachfront site located along Pacific Coast Highway opposite the Trancas Commercial site immediately east of the intersection with Trancas Canyon Road. The site abuts several other lots with single-family residences to the east and a single-family residence is under construction on the adjoining lot to the west. The presence of the 200-foot frontage of the subject property along Pacific Coast Highway is noticeable primarily as a gap in the row of 2-story beachfront homes behind a roadside view-blocking fence constructed along Broad Beach. Views of the property vary according to direction and speed of travel on Pacific Coast Highway. An existing 6.0 foot high shade-covered fence and a border of 8.0 to 10.0 foot high mature landscaping shrubs and small trees combine to block views of the coastal site from Pacific Coast Highway. The fence and landscaping is continuous along the entire frontage of the site except for an entry drive and shaded gate at the western side of the property frontage. Views of the site from the westbound lanes of Pacific Coast Highway the beachfront site is most noticeable as a brief gap in the row of primarily 2-story beachfront homes. Views of the shoreline and sandy beach are scarcely discernable through the fence and landscaping. As eastbound traffic approaches the driveway gate, the undeveloped beachfront lot constitutes the visual break between residences that line the beach. The gap provides a viewing angle across the site that may permit a glimpse of ocean from passing vehicles. The duration of any potential view may be short depending on the rate of traffic speed through the nearby intersection."

Further, the visual resource analysis in the EIR (page 5.1-45) states the following:

"The subject beach lot constitutes a brief visual gap in the rooflines of existing residences lining the ocean side of the Pacific Coast Highway. The immediate roadside frontage of the residential strip is characterized by shaded fencing and landscaping that all but eliminates ocean or beach views from Pacific Coast Highway. The elevation along the centerline of Pacific Coast Highway in front of the beach lot is 16.5 feet and the pads for the proposed residences would be graded at 13.5 feet. The slightly higher elevation of Pacific Coast Highway is not enough to allow significant ocean, shoreline, or beach views across through the roadside bordering fence and landscaping buffer. At the 50 mph speed limit posted for this segment of Pacific Coast Highway

motorists would pass by the beach lots in approximately 2.7 seconds.

The addition of five single-family residences [*previous proposal*] on adjacent beachfront lots would result in a continuation of beach front residential land uses and would not significantly impact visual resources in the project vicinity.”

The proposed TPM creating four parcels will still be required to provide the required view corridor. Rather than providing one view corridor of 40-feet in length on the 200-foot long lot, there will now be several opportunities for visual relief as the view corridors on each parcel would still be required to be 20 percent of the lineal frontage and maintain side yard setbacks. The visual analysis found in Attachment 9 of the January 22, 2006, City Council Agenda Report, shows the proposed view corridors.

The proposed project may have an impact on the existing visual character of the site because eventually construction of four single-family residences will occur on the newly created vacant lots and be visible from Pacific Coast Highway. However, there are properties in the vicinity that are currently improved with single-family residences similar in size and bulk to what could be proposed on the newly created lots. The development would not be inconsistent with the adjacent properties and would have a less than significant impact on visual resources.

Land Use Objective 2.3, Development of Appropriate Scale and Context, from the City of Malibu General Plan states the following policies:

- Land Use Policy 2.3.2: The City shall discourage “mansionization” by establishing limits on height, bulk, and square footage for all new and remodel single-family residences; and
- Land Use Policy 2.3.1: The City shall protect and preserve the unique character of Malibu’s many distinct neighborhoods.

The construction of four smaller residences, in lieu of one large building would be more consistent with the established scale and context of the neighborhood.

In addition, LIP policies require that the design of land divisions ensure that the building sites are clustered, that the length of the driveways are minimized, that shared driveways are provided, that grading is minimized, and that all graded slopes are revegetated. Any proposed residences would be required to be clustered to minimize visual impact and public view corridors would be required for each lot. Vehicular access would be taken via a shared driveway similar to other properties in the area that share a driveway accessing from Broad Beach Road in lieu of Pacific Coast Highway; thus, eliminating the need to have individual driveways accessing onto Pacific Coast Highway. In addition, a dune restoration plan is proposed to restore the existing dune area outside of the development envelopes in order to enhance the natural character of the site.

Furthermore, in accordance with LIP Section 6.5, which is included as a standard condition of approval; any proposed residences, driveways, and associated development would be limited to colors compatible with the surrounding environment (earth tones). White, light shades and bright tones are prohibited. Reflective, glossy, polished and/or roll-formed type metal siding except for solar energy panels or cells would be prohibited. Use of non-glare glass for windows shall be required. The exterior siding of the residences would be limited to brick, wood, stucco, metal, concrete or other similar materials. Lighting for walkways would 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. Security lighting controlled by motion detectors may be attached to the residences provided that the lighting is directed downward and is limited to 60 watts or the equivalent. Driveway lighting shall be limited to the minimum lighting necessary for vehicular use. The lighting would be limited to 60 watts or the equivalent. Lights at entrances in accordance with building codes would be permitted provided that such lighting does not exceed 60 watts or the equivalent. Site perimeter lighting would be prohibited. Outdoor decorative lighting for aesthetic purposes is prohibited. Night lighting for sports courts or other private recreational facilities is also prohibited.

All development projects in the City of Malibu must conform to the City's standard conditions of approval and the LCP provisions detailed herein. Therefore, the project as proposed (including a lighting deed restriction at the time of permit approvals for the single-family residences), will result in a less than significant impact in terms of aesthetics.

Finding 2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated above in Finding 1, any subsequent development applications will require the submittal of a coastal development permit. The applications if approved will be subject to conditions which would minimize any potential visual impacts.

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 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 project as conditioned will result in no 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 as conditioned will have no significant scenic and visual impacts.

E. Transfer Development Credits (LIP – Chapter 7)

Malibu Local Coastal Program, Local Implementation Plan (LIP) Chapter 7 (Transfer of Development Credits) applies to land division and/or multi-family residential development in the Multiple Family (MF) or Multi-Family Beachfront (MFBF) zoning districts. The subject application is for a land division; therefore, the Transfer of Development Credit (TDC) requirement must be met. The intent of this Chapter is to ensure that density increased through new land divisions and new multi-family unit development in the City, excluding affordable housing units, will not be approved unless Transfer of Development Credits are purchased to retire development rights on existing donor lots in the Santa Monica Mountains Area. A lot from which development rights have been transferred is “retired”, and loses its building potential through recordation of a permanent open space easement. TDC Credit may be obtained through purchase of development rights on donor sites throughout the Santa Monica Mountains Area coastal zone, as defined in the LIP, from private property owners. The responsibility for initiation of a transfer of a development credit is placed on the applicant and the project will be conditioned that the TDC take place prior to final map recordation.

The proposed project is subject to the TDC requirements of Chapter 7 and the three findings set forth in LIP Section 7.9 are hereby made as follows:

Finding 1: The requirements for Transfer of Development Credits is necessary to avoid cumulative impacts and find the project consistent with the policies of the certified Malibu LCP.

As stated above, the TDC requirement is necessary as the proposed subdivision creates three additional legal parcels and pursuant to LIP Section 7.8.1 (a), the applicant shall be required to retire sufficient donor lots to provide one (1) TDC credit for each newly created lot authorized. Therefore, the TDC requirement for the proposed project is three (3) TDC credits.

Finding 2: The new residential building sites and/or units made possible by the purchase of TDC can be developed consistent with the policies of the certified Malibu LCP without the need for a variance or other modifications to LCP standards.

The proposed TPM has been conditioned and deed restrictions have been recorded which prohibit further subdivision of the subject parcels, modifications to or variance from the City of Malibu Zoning and Development Standards in effect at the time of final map recordation.

Finding 3: Open Space easements executed will assure that lot(s) to be retired will remain in permanent open space and that no development will occur on these sites.

The TDC candidate sites selected to be retired shall be reviewed by City staff in conjunction with a Subdivision Review Committee representative. This review shall ensure that the site selected for retirement meets the criteria desired for permanent open space. In addition, the three parcels selected to be retired shall be deed restricted prohibiting development into perpetuity. The TDC requirements must be met prior to final map recordation.

F. Hazards (LIP - Chapter 9)

The project was analyzed by staff for the hazards listed in the Local Implementation Plan Section 9.2.A.1-7. Review of the project by staff showed that there were no substantial risks to life and property with the proposed TPM as there is no proposed landform alteration. LIP Section 9.4.N. requires that land divisions and lot line adjustments demonstrate that a safe, legal, all weather access road can be constructed in conformance with applicable policies of the LCP and that all parcels and access roads comply with all applicable fire safety regulations. The County of Los Angeles Fire Department Land Development Unit has reviewed and approved the proposed project and existing access way.

G. 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 TPM and potential residential development is 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 approximately 300 feet to the east at the Zuma Beach County Park. In addition, the applicant has offered to provide lateral access easements across each parcel; therefore, the proposed project will have no significant adverse impacts on public access.

The Wave Uprush Study by Pacific Engineering Group in 1996 and May 22, 2003, states:

“Any proposed residential development should be setback approximately 174 feet from the highest (most landward) mean high tide line and have a finished floor elevation of at least 13.5 feet. Conversely, the maximum wave uprush at the subject site will occur approximately 155 feet seaward of the Pacific Coast Highway right-of-line (125 feet seaward of the 30 foot wide private access road) at an elevation of +8.7 mean sea level-North American Vertical Datum (MSL-NGVD). Since, the 100-year flood zone only affects from Trancas Canyon up to an elevation of about 10 feet, no significant impacts involving flood hazards are expected as a result of the project.

Any future residential development would involve the use of private septic systems (alternative onsite wastewater tertiary treatment) and should be located no further than 140 feet seaward from the Pacific Coast Highway right-of-way line (no more than 100 feet seaward of the private access road setback line). A septic system located within 140 feet from the Pacific Coast Highway right-of-way line will be located a minimum 15 feet landward of the wave uprush limit and would not require a protective bulkhead (Pacific Engineering Group, May 22, 2003).”

Therefore, it is 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 G. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Coastal 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 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 G. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Coastal 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 G. Shoreline and Bluff Development Finding 1 above, the proposed TPM and potential residential development will not require a shoreline protective device and is the least environmentally damaging alternative.

However, as a condition of approval (Condition No. 17) , new development of a vacant beachfront or bluff-top lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be sited and designed so as to not require a shoreline protection structure as part of the proposed development or at anytime during the life of development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30232.

H. Public Access (LIP - Chapter 12)

The subject site is located between the first public road and the sea, on the ocean-side of Pacific Coast Highway at Trancas / Broad Beach. The project involves subdivision into four parcels with future development potential of four single-family residences. No onsite vertical or lateral access is currently provided on the subject parcel. 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 in 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.

Trail Access

The project site does not include, or have any access ways to existing or planned

public trail areas; therefore, no condition for trail access is required by the Local Coastal Program.

Lateral Access

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 lateral access easements along each parcel 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.

Vertical Access.

As indicated above, the project is located along the shoreline; however, adequate public access is available nearby at Zuma County Beach Park. Consistent with LIP Section 12.6, due to the ability of the public, through other reasonable means to reach nearby coastal resources, an exception for public vertical access has been determined to be appropriate for the project and no condition for vertical access has been required. 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 could impact fragile coastal resources (coastal dune ESHA) as it is situated along the width of the property and could be easily damaged by excessive foot traffic. There is no issue of a public safety concern nor a military facility located nearby. The basis for the exception to the requirement for vertical access is associated with the availability of access nearby as described above.

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 stated above in Finding A, vertical access across the site could impact fragile coastal resources. Per the Restoration Plan for Coastal Foredunes, prepared by Dr. Edith Read and dated December 1, 2005, the coastal foredunes are in a degraded form and the practical success of restoration and enhancement of the sand dunes will require that beach access from the potential single-family dwellings via small trails skirting the sand dunes to the extent possible.

There is no issue of a public safety concern nor a military facility located nearby. The basis for the exception to the requirement for vertical access is associated with the

availability of access nearby as described above.

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 project as proposed does not block or impede access to the ocean. The project site is not located on a public beach nor accessed via a public road. Adequate public access is available nearby at Zuma County Beach Park approximately 300-feet to the east. No legitimate governmental or public interest would be furthered by requiring access at the project site because: a) existing access to coastal resources is adequate; b) the proposed project will not impact the public's ability to access the shoreline or other coastal resources; and c) the project site is not within the vicinity of a public beach.

I. Land Division (LIP - Chapter 15)

Pursuant to LIP Section 15.2, the City Council may approve or conditionally approve a land division application only if the City Council affirmatively finds that the proposal meets all of the following:

Finding 1. Does not create any parcels that do not contain an identified building site that: a. Could be developed consistent with all policies and standards of the LCP; b. Is safe from flooding, erosion, geologic and extreme fire hazards; c. Is not located on slopes over 30% and will not result in grading on slopes over 30%. All required approvals certifying that these conditions are met shall be obtained.

The TPM indicates identified building sites (Attachment 7 – September 5, 2006 Planning Commission Agenda Report) which could be developed consistent with all policies and standards of the LCP; would be safe from flooding, erosion, geologic and extreme fire hazards if constructed per the recommendations and requirements of the City Geologist, City Coastal Engineer, City Public Works Department and LACFD; and are not on slopes over 30 percent.

Finding 2. Is designed to cluster development, including building pads, if any, to maximize open space and minimize site disturbance, erosion, sedimentation and required fuel modification.

The proposed TPM clusters development to the front and landward portion of the parcel in order to minimize site disturbance and impacts to ESHA. Per the wave uprush study referenced earlier, the residences cannot be sited further seaward than 155-feet from Planning Commission right-of-way line or 125-feet from the private access road. This is greater than the rear yard setback (stringline) development standard would allow which is approximately 120-feet from the private access road. The ESHA restoration areas identified by Dr. Read are well seaward of any proposed

development. In addition, there are no fuel modification requirements for the subject site.

Finding 3. Does not create any parcels where a safe, all-weather access road and driveway cannot be constructed that complies with all applicable policies of the LCP and all applicable fire safety regulations; is not located on slopes over 30% and does not result in grading on slopes over 30%. All required approvals certifying that these conditions are met shall be obtained.

Access to all the four parcels on the proposed TPM have already been constructed and approved by the LACFD during development of the homes to the east. Access way improvements were approved via a Coastal Development Permit Waiver-De Minimis No. 4-95-100.

Finding 4. Does not create any parcels without the legal rights that are necessary to use, improve, and/or construct an all-weather access road to the parcel from an existing, improved public road.

As stated above in Finding 3, the access way has been previously approved and constructed.

Finding 5. Is designed to minimize impacts to visual resources by complying with the following: a. Clustering the building sites to minimize site disturbance and maximize open space; b. Prohibiting building sites on ridgelines; c. Minimizing the length of access roads and driveways; d. Using shared driveways to access development on adjacent lots; e. Reducing the maximum allowable density in steeply sloping and visually sensitive areas; f. Minimizing grading and alteration of natural landforms, consistent with Chapter 8 of the Malibu LIP; g. Landscaping or revegetating all cut and fill slopes and other disturbed areas at the completion of grading, consistent with Section 3.10 of the Malibu LIP; h. Incorporating interim seeding of graded building pad areas, if any, with native plants unless construction of approved structures commences within 30 days of the completion of grading.

As stated in Finding 1 above, the building sites have been clustered in order to minimize site disturbance and impacts to sensitive resources. Any other form of clustering would require unavoidable impacts to the onsite ESHA. The site does not contain ridgelines. Access for all four proposed parcels is a shared existing private drive which does not require lengthening. There are no slopes to be graded on the site. The alteration of natural landforms does not extend outside the proposed building site development envelope (those areas do not contain any identified coastal dune habitat) other than the proposed improvement of the degraded coastal dune habitat via the restoration plan.

Finding 6. Avoids or minimizes impacts to visual resources, consistent with all scenic and visual resources policies of the LCP.

As discussed in D. Scenic Visual and Hillside Resource Protection Ordinance, Finding 1, the proposed TPM is consistent with all scenic and visual resource policies of the LCP.

Finding 7. Does not create any additional parcels in an area where adequate public services are not available and will not have significant effects, either individually or cumulatively, on coastal resources.

The proposed land division application was routed to all applicable public agencies and no issue relative to public services was noted. The land division will not have an effect on coastal resources either individually or cumulatively as the subject site has a land use designation of SFM which allow up to four single-family homes per acre (1 residence per .25 acre), the applicant has requested a TPM of four parcels on two acres instead of the eight allowed by the land use designation. The residential use of the site was anticipated by its zoning designation and will not result in impacts individually or cumulatively on coastal resources.

Finding 8. Does not create any parcels without the appropriate conditions for a properly functioning septic system or without an adequate water supply for domestic use. All required approvals certifying that these requirements are met must be obtained.

The proposed land division application was reviewed and approved by the City's Environmental Health Specialist and onsite wastewater treatment systems (tertiary) will be required for any future development on the site. In addition, the application was reviewed by the Los Angeles County Waterworks Districts No. 29 and the applicant received the required "will serve" letters which indicate the adequate water supply exists to serve the parcels.

Finding 9. Is consistent with the maximum density designated for the property by the Land Use Plan map and the slope density criteria (pursuant to Section 15.6 of the Malibu LIP).

The subject site has a land use designation of SFM which allow up to four single-family homes per acre (1 residence per .25 acre), the applicant has requested a TPM of four parcels on two acres instead of the eight allowed by the land use designation.

The slope density criteria are not applicable as it only applies to parcels zoned Rural Residential.

Finding 10. Does not create any parcels that are smaller than the average size of surrounding parcels.

As indicated in the Citywide Lot Width Analysis Table in the September 5, 2006 Planning Commission Agenda Report, the TPM requested lot size is consistent with not only the surrounding parcels but is the average parcel size for all beachfront

zoned SFM parcels citywide. The proposed TPM does not create any parcels smaller than the average size of surrounding parcels.

Finding 11. Does not subdivide a parcel that consists entirely of ESHA and/or ESHA buffer or create a new parcel that consists entirely of ESHA and/or ESHA buffer.

The subject parcel does contain coastal dune ESHA which has been delineated in biological inventories and the dune restoration plan by Dr. Edith Read. The parcel does not consist entirely of ESHA or ESHA buffer. Section 4.6.1 of the LIP, Buffers, lists the types of ESHA and its respective buffer standards. There is no specific listing for coastal dune ESHA. Under Section 4.6.1.G, Other ESHA, it states "For other ESHA not listed above, the buffer recommended by the Environmental Review Board or City Biologist, in consultation with the California Department of Fish and Game, as necessary to avoid adverse impacts to the ESHA shall be required." The buffer recommended by the City Biologist is the beachfront rear yard stringline development standard. This standard has been consistently used throughout the Broad Beach area for development on lots with coastal dunes. Therefore, the proposed TPM does not create lots that consist entirely of ESHA or ESHA buffer.

Finding 12. Does not create any new parcels without an identified, feasible building site that is located outside of ESHA and the ESHA buffer required in the LCP and that would not require vegetation removal or thinning for fuel modification in ESHA and/or the ESHA buffer.

The proposed TPM identifies feasible building sites which are located outside of the ESHA area and are consistent with the stringline / ESHA buffer development standards of the area. No vegetation removal for fuel modification is proposed for the site. A coastal dune restoration plan is proposed for the site.

Finding 13. Does not result in construction of roads and/or driveways in ESHA, ESHA buffer, on a coastal bluff or on a beach.

Access to the site was permitted and constructed and is not located in ESHA, ESHA buffer, on a coastal bluff or on a beach.

Finding 14. Does not create any parcel where a shoreline protection structure or bluff stabilization structure would be necessary to protect development on the parcel from wave action, erosion or other hazards at any time during the full 100 year life of such development.

No new parcels are being created that would require future development of a shoreline protection structure. Per the Wave Uprush Study conducted by Pacific Engineering Group dated March 22, 2003, "A septic system located within 140 feet from the Pacific Coast Highway right-of-way line will be located a minimum of 15 feet landward of the wave uprush limit and would not require a protective bulkhead."

Finding 15. If located on a beachfront parcel, only creates parcels that contain sufficient area to site a dwelling or other principal structure, on-site sewage disposal system, if necessary, and any other necessary facilities without development on sandy beaches or bluffs.

The proposed TPM creates four beachfront parcels with sufficient area to site a dwelling and onsite wastewater treatment systems and will not require development on sandy beaches or bluffs. According to the Preliminary Soils and Engineering Geologic Investigation by GeoSystems, Environmental and Geotechnical Consultants, dated August 9, 1994, "A wedge of artificial fill is present along the northern portion of the site. This material is associated with the construction of Pacific Coast Highway." The identified building sites are located along the northern edge.

Finding 16. Includes the requirement to acquire transfer of development credits in compliance with the provisions of the LCP, when those credits are required by the Land Use Plan policies of the LCP.

The applicant shall comply with the requirements of Chapter 7 of the LIP which requires the retirement of one lot (in designated donor areas) per lot created. Therefore, the applicant must retire three lots prior to final map recordation.

J. Land Division (M.M.C. 16.12.130 Tentative Parcel Map)

Finding A: The proposed subdivision map is consistent with Malibu's General Plan.

Per the City's General Plan Land Use Designation definitions:

Single-Family Residential (SF): This land use designation includes all remaining single-family residential areas. It is intended to enhance the rural characteristics of the community by maintaining low-density single-family residential development on lots ranging from .25 to 1 acre in size in a manner, which respects surrounding property owners and the natural environment. Single-Family Low (SFL) allows for the creation of up to two lots per acre with a minimum lot size of .5 acre. Single-Family Medium (SFM) allows for the creation of up to four lots with a minimum lot size of .25 acre.

The City Council finds that the project is consistent with the adopted General Plan and does not adversely affect neighborhood character, in that the permitted land use and density of the single-family General Plan land use designation and that the lot-size and density are consistent with similar single-family parcels in the vicinity of the project site. The proposed map is consistent with the policies, goals and objectives set forth in the Land Use Element of the General Plan.

Finding B: The design and improvements of the proposed subdivision map is consistent with Malibu's General Plan.

The design of the proposed subdivision map is consistent with the General Plan in that the City's General Plan designation for the subject site is Single-Family Medium (SFM) and allows for the creation of up to four lots per acre with a minimum lot size of .25 acre. The proposed tentative parcel map consists of two .52 acre parcels and two .51 acre parcels, which are consistent with this General Plan land use designation. The project would also be consistent with the proposed General Plan land use designation of SFM.

Finding C: The site is physically suitable for the type of development proposed.

The subject site is physically suitable for the type of future development anticipated (single-family residences) in that each of the new parcels is of sufficient size and level topography to support a single-family home consistent with General Plan, City of Malibu Municipal Code (M.M.C.) Zoning and Residential Development Standards and Local Coastal Program Local Implementation Plan Residential Development Standards. In addition, the TPM shall be subject to conditions which will be recorded on the final parcel map, which limit development to current zoning standards and prohibit the granting of any variances or modifications for future development. The proposed subdivision will also be conditioned so that any required street improvements are made to final certificate of occupancy on any future residential development.

Finding D: The site is suitable for the proposed density of development.

The site is suitable for the proposed density of development in that each of the new parcels will contain one single-family residence. The General Plan land use designation and zoning designation for the subject site is Single-Family Medium (SFM) which allows for the creation of up to four lots per acre with a minimum lot size of .25 acre. The proposed tentative parcel map consists of two .52 acre parcels and two .51 acre parcels, which exceeds the minimum lot size standard. The newly created half acre lots would be suitable for the proposed density and are consistent with zoning and General Plan designations.

Finding E: The design of the development and the proposed improvements are not likely to cause substantial environmental damage or substantially injure fish or wildlife or their habitat.

The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially injure fish or wildlife or their habitat because the development will not encroach into the environmentally sensitive, coastal dune habitat areas on the site. Future development on the site would not

encroach into the dune habitat as seaward development is limited by the rear yard setback (i.e. stringline) standards. Further, the TPM shall be subject to conditions which will be recorded on the final parcel map, which limit development to current zoning standards and prohibit the granting of any variances (including stringline) or modifications for future development.

Finding F: The design of the development and the type of improvement are not likely to cause serious public health hazards.

The design of the development and the type of improvements are not likely to cause serious public health hazards since the project consists of a residential subdivision in an existing residential area and has no associated public health hazards.

Finding G: The design of the development and the type of improvements will not conflict with any public easements.

The design of the development and the type of improvements will not conflict with any public easements in that there are no public easements associated with the proposed tentative parcel map. Utility easements and private access easements will be maintained and recorded on the final parcel map.

K. Onsite Wastewater Treatment System (LIP - Chapter 18)

LIP Chapter 18 addresses Onsite Wastewater Treatment Systems (OWTS). LIP Section 18.7 includes specific siting, design and performance requirements. The project has been reviewed by the City Environmental Health Specialist and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C., and the LCP.

Section 6. City Council Action.

Based on the foregoing findings and substantial evidence contained within the record, including the analysis contained in the associated Agenda Report, the City Council denies Appeal No. 06-013, certifies Revised MND No. 06-004, and approves CDP No. 05-136 and Vesting TPM No. 99-002 (Map No. 24070) subject to the conditions listed below:

Conditions of Approval

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 a tentative parcel map to subdivide one approximately 2.08 acre parcel into two .52 acre parcels and two .51 acres. Future development on any of these parcels shall be limited to LCP Zoning and Development Standards in effect at the time of final map recordation. No variances or modifications to the Zoning and Development Standards shall be granted for future development on the subject parcels. In addition, a deed restriction shall be in-place that prohibits any further subdivision of the subject parcels. Said deed restriction shall be submitted for review and approval to the Planning Division prior to Final Parcel Map recordation.
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. The CDP for vesting TPM No. 99-002 shall not become effective unless and until the LCPA No. 05-002 is approved and in effect.
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. 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 Malibu Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
7. The vesting tentative parcel map shall conform to the requirements of the City of Malibu Environmental and Building Safety Division, and to all City Geologist, City Environmental Health Specialist, City Biologist, and Los Angeles County Fire Department requirements, as applicable and conditioned in the department review sheets found in Attachment 6 of the September 5, 2006 Planning Commission Agenda Report. Notwithstanding this review, all required permits shall be secured.

8. All conditions required for the Tentative Parcel Map approval TPM No. 99-002 (Map No. 24070) shall remain in effect.
9. The Coastal Development Permit runs with the land and binds all future owners of the property.
10. The applicant shall be required to retire sufficient donor lots to provide one (1) Transfer of Development Credit (TDC) for each newly created lot authorized. Therefore, the TDC requirement for the proposed project is two (2) TDC credits.
11. TDC candidate sites selected to be retired shall be reviewed by City staff in conjunction with a Subdivision Review Committee representative. This review shall ensure that the site selected for retirement meets the criteria desired for permanent open space.
12. The three parcels selected to be retired shall be deed restricted prohibiting development into perpetuity.
13. The TDC requirements must be met prior to final map recordation.
14. Violation of any of the conditions of this approval shall be cause for evocation and termination of all rights thereunder.
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. 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 agency 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 for lateral public access shall be located the entire width of the property from the mean high tide line landward to the ambulatory seaward most limit of dune vegetation. 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.

17. As a condition of approval of new development on a vacant beachfront or bluff-top lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be sited and designed so as to not require a shoreline protection structure as part of the proposed development or at anytime during the life of development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30232.

Section 7. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 05-002 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulations, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et seq.

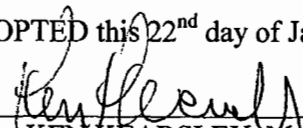
Section 8. Effectiveness.

The LCP Amendments approved in this resolution shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 9. Certification.

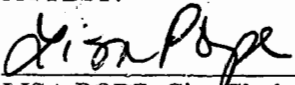
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 22nd day of January, 2007.



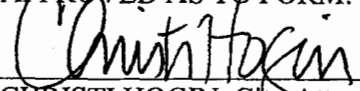
KEN KEARSLEY, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:



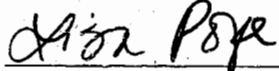
CHRISTI HUGIN, City Attorney

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the City Council's decision regarding the Coastal Development Permit 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.

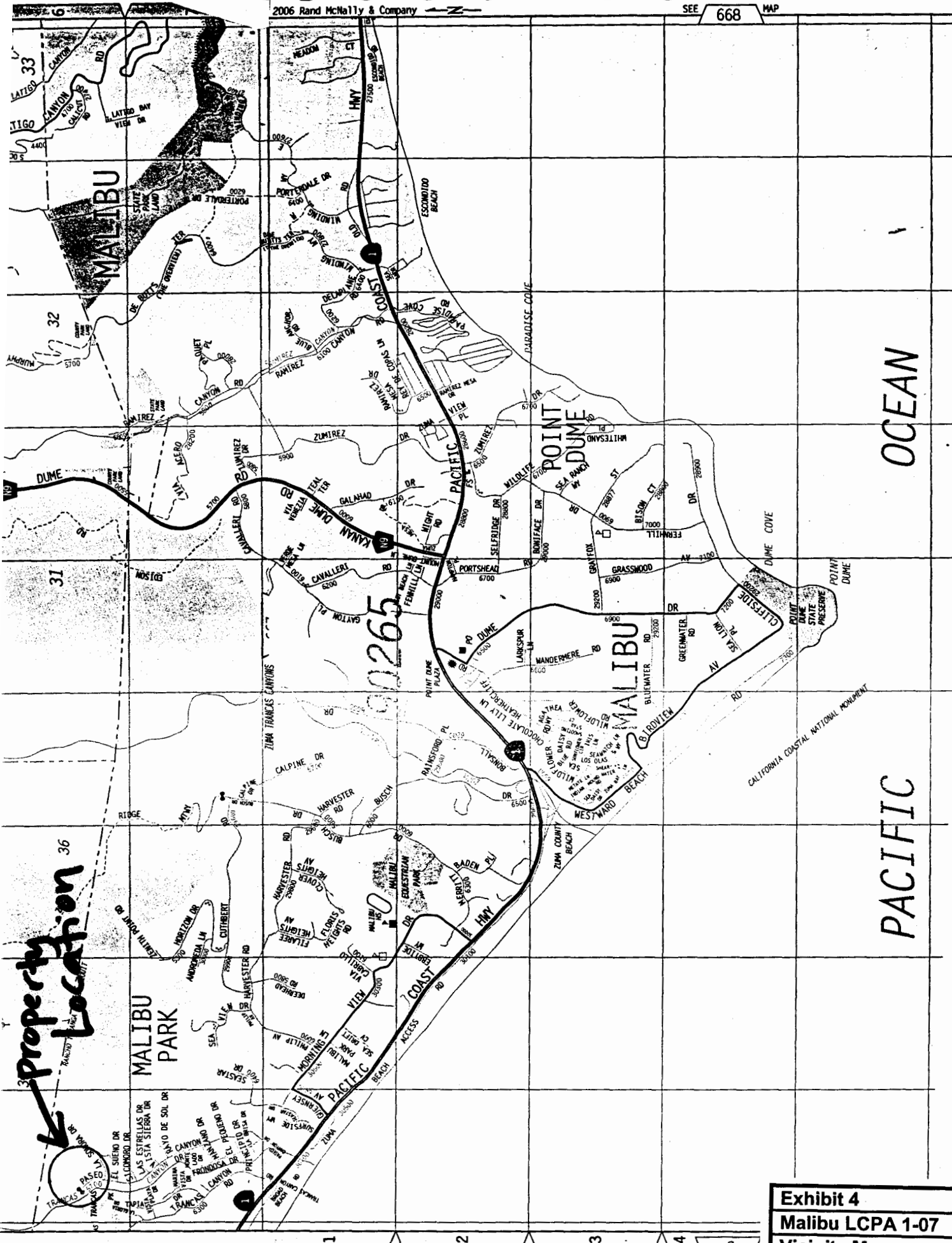
Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Municipal Code and Code of Civil Procedure.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 07-07 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 22nd day of January, 2007, by the following vote:

AYES:	4	Councilmembers:	Barovsky, Jennings, Kearsley, Stern
NOES:	1	Councilmembers:	Conley Ulich
ABSTAIN:	0		
ABSENT:	0		



LISA POPE, City Clerk
(seal)



Property Location

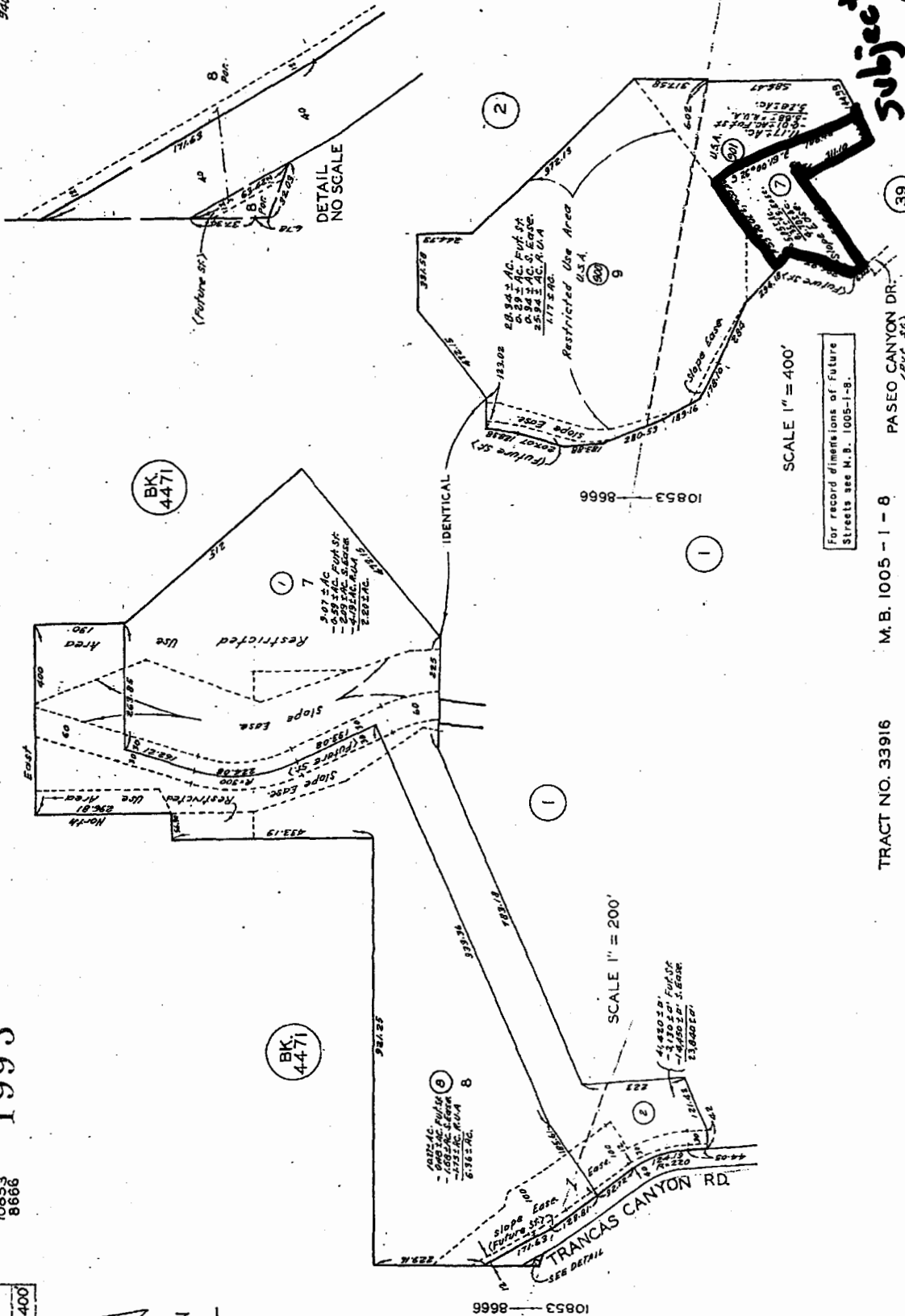
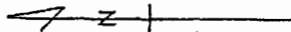
Exhibit 4
Malibu LCPA 1-07
Vicinity Map -
5920 Paseo Cyn Road

01 00 00 00 00
310610
940518000000-07

TRA 10853 8666
1995

4469 46

SCALE 1" = 200 & 400



Subject parcel

MAY 26 1994

M.B. 1005 - 1 - 8

TRACT NO. 33916

PASEO CANYON DR.

4469-1-26 & 28
4471-26 & 28

Exhibit 5
Malibu LCPA 1-07
Parcel Map -
5920 Paseo Cyn Road

CALIFORNIA COASTAL COMMISSION

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



October 13, 2006

C.J. Amstrup
 Planning Manager
 City of Malibu
 23815 Stuart Ranch Road
 Malibu, CA 90265

Date Received 10/13/06 Time 2:15 PM
 Planning Commission meeting of 10/17/06
 Agenda Item No. S.A. & U.A.
 Total No. of Pages 1

RECEIVED

OCT 13 2006

PLANNING DEPT.

Dear Mr. Amstrup:

We have reviewed the staff reports for the coastal development permits that will be considered by the City of Malibu Planning Commission on October 17, 2006. We would like to offer the following comments regarding two of these projects.

Local Coastal Program Amendment No. 06-001 regarding 5920 Paseo Canyon Road (APN 4469-046-007)

This LCP Amendment concerns changing the zoning designation of APN 4469-046-007 located at 5920 Paseo Canyon Road from Open Space (OS) to Single-Family Low Density (SF-L) in order to correct a discrepancy between the City's zoning map and the City's LCP zoning map.

Details behind how the subject parcel was created and how it was indicated to be in public ownership at one time is not discussed in the staff report. When and by what method the subject parcel was created, and whether the created lot received all applicable governmental approvals (including a CDP) for its creation, should be addressed.

Coastal Development Permit No. 06-018 and Conditional Use Permit No. 05-008 for 28128 Pacific Coast Highway (Block)

Since the staff report for this project is not available at this time, we request an opportunity to review the staff recommendation and attachments before the City acts on this application.

Thank you for your consideration of these comments. If you have questions, please feel free to contact me.

Very Truly Yours,







Deanna Christensen
 Coastal Program Analyst

CC: PC, CC, CA, PM, ECD Director, Planner, File,
 Counter, PC Corres., Rec. Secretary
 + applicants

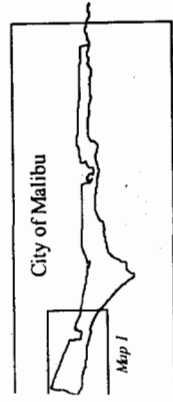
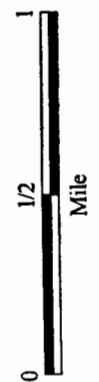
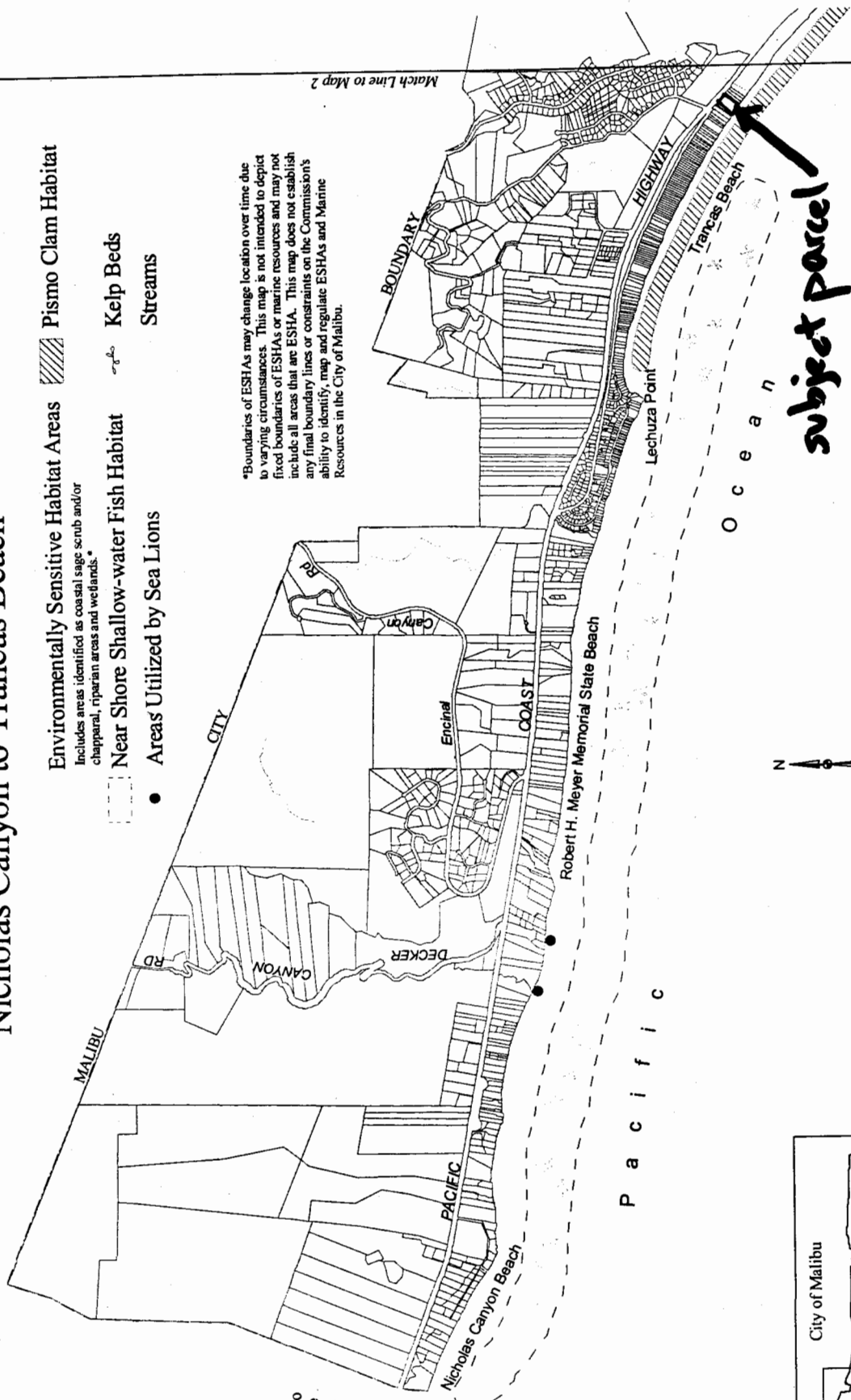
Exhibit 6
Malibu LCPA 1-07
CCC Staff Comment
Letter on LCPA 06-001,
dated 10/13/06

Local Coastal Program - City of Malibu

ESHA Overlay Map 1: Nicholas Canyon to Trancas Beach

-  Environmentally Sensitive Habitat Areas
Includes areas identified as coastal sage scrub and/or chaparral, riparian areas and wetlands.*
-  Near Shore Shallow-water Fish Habitat
-  Pismo Clam Habitat
-  Kelp Beds
-  Streams
-  Areas Utilized by Sea Lions

*Boundaries of ESHAs may change over time due to varying circumstances. This map is not intended to depict fixed boundaries of ESHAs or marine resources and may not include all areas that are ESHA. This map does not establish any final boundary lines or constraints on the Commission's ability to identify, map and regulate ESHAs and Marine Resources in the City of Malibu.



City of Malibu
Map 1
California Coastal Commission
Technical Services Division

Exhibit 7
Malibu LCPA 1-07
Vicinity Map -
30732 PCH

Sources: Malibu/Santa Monica Mountains Area Plan, Marine Resources map, LA County LCP, 1987, LA County Parks and Recreation, 1983, FCC Staff, 2001-2002.

DSM, JVC Revised 8/02

CALIFORNIA COASTAL COMMISSION

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



September 1, 2006

C.J. Amstrup
 Planning Manager
 City of Malibu
 23815 Stuart Ranch Road
 Malibu, CA 90265

Dear Mr. Amstrup:

We have reviewed the staff reports for the coastal development permits that will be considered by the City of Malibu Planning Commission on September 5, 2006. We would like to offer the following comments regarding two of these projects.

Zoning Text Amendment No. 05-004, Zoning Map Amendment No. 05-001, General Plan Amendment No. 06-001, General Plan Map Amendment No. 05-001, Coastal Development Permit No. 05-136, Vesting Tentative Parcel Map No. 99-002, Initial Study No. 06-002, Mitigated Negative Declaration No. 06-004, and Local Coastal Program Amendment No. 05-002 for 30732 Pacific Coast Highway (Malibu Bay Company)

The proposed project consists of a Coastal Development Permit for a Tentative Parcel Map to subdivide a 2.08-acre parcel into four half-acre parcels, as well as the above-mentioned legislative amendments for establishing a Single-family - Beachfront zoning district and associated development standards (with a proposed minimum lot width of 45 feet). City staff has also identified a legislative amendment alternative, requiring only a Zoning Text Amendment and a Local Coastal Program Amendment, which would involve adding a proposed 45-foot minimum lot width development standard to the existing Single-family - Medium zoning district to be applicable to single-family beachfront properties. Please note that the Coastal Development Permit for the proposed subdivision should not be approved prior to Coastal Commission approval of the LCP Amendment. The Coastal Development Permit cannot be found consistent with the LCP until the LCP amendment is approved and certified by the Coastal Commission. If the City approves the CDP for the subdivision it is likely the Coastal Commission will appeal the Coastal Development Permit for the subdivision because the subdivision will not be consistent with the adopted LCP.

Regarding the proposed LCP Amendment, reducing the minimum lot width development standard for beachfront residential parcels would essentially increase the number of smaller-sized lots and each would be associated with a smaller view corridor. Existing residential development on narrow lots on many sections of the Malibu shoreline has created a solid wall of development. This development pattern has completely blocked or severely impeded views of the ocean and beach as seen from public roadways. The

Exhibit 9
Malibu LCPA 1-07
CCC Staff Comment Letters on LCPA 05-002, dated 9/1/06, 12/8/06

proposed narrow lot configuration is a continuation of this existing development pattern that has resulted in significant adverse impacts to scenic views of the ocean and beach along the Malibu shoreline. Coastal Act Section 30251 requires that "permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas." The proposed amendment will result in several very narrow view corridors between residential structures that will adversely impact views of the beach and ocean from Pacific Coast Highway. Thus, the amendment would not be consistent with Section 30251 of the Coastal Act. In addition, the creation of three additional building sites and associated dune trails on a parcel that contains coastal dune ESHA would not be consistent with Section 30240 of the Coastal Act, which requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat areas.

Regarding the Coastal Development Permit for subdivision of the subject parcel, the staff report indicates that an existing 6-foot high shade covered fence and 8-10 foot high hedge of landscaping currently blocks ocean and beach views across the site's entire frontage from Pacific Coast Highway. The applicant's visual analysis concludes that due to the presence of the fence and landscaping, combined with the presence of residential rooflines on adjacent parcels, the addition of four future houses on the proposed subdivided lot would not significantly impact visual resources. The existing landscaping between the existing driveway and PCH appears to be unpermitted development and should not be considered part of the site's existing condition when analyzing visual impacts of the proposed subdivision.

The staff report also states that instead of one 40-foot wide view corridor associated with the subject parcel upon development, the subdivision would provide several opportunities for visual relief since each created parcel would have a 10-foot wide view corridor. We do not agree with the conclusion that the view corridor for development of the existing parcel would somehow be enhanced if the parcel were subdivided into four parcels. While the total width of view corridor provided would be the same, one corridor would obviously provide greater view opportunities than several separate corridors. In this way, the proposed subdivision is inconsistent with Section 15.2(B)(6) of the LIP because it has not been demonstrated that the proposed land division avoids or minimizes impacts to visual resources, consistent with all scenic and visual resource policies of the LCP.

As stated in LUP Policy 3.1, dunes are considered ESHA. The site-specific biological reports on the subject site identified coastal dune habitat that meets the definition of ESHA. LIP Section 15.2 does not allow for the creation of new parcels unless all parcels contain a building site that is outside of ESHA and required ESHA buffers. The staff report states that future building sites on the four parcels would not encroach into ESHA or ESHA buffer. However, it is unclear from the staff report and associated exhibits

which areas of the onsite dune system have been delineated as ESHA. It appears that only the vegetated dune areas were circled and labeled 'coastal foredune' on Attachment 10 of the staff report and the unvegetated open sand between these areas was labeled 'sand' and apparently not considered coastal dune habitat. It should be noted that coastal dunes are dynamic environments and the constant transport of mobile sand creates areas of bare sand that also have habitat value. Coastal dune habitat is not limited to the portions of the dune system that are stabilized by vegetation.

Since coastal dune ESHA is present on the site, a buffer area to serve as transitional habitat and to provide distance and physical barriers to human intrusion must be provided. As a coastal dune ESHA buffer standard is not specified in the LIP, the City Biologist recommended the buffer for this project be the beachfront rear yard stringline development standard. Yet the staff report does not address how much buffer this standard provides for each parcel, nor provides analysis regarding if this buffer is of a sufficient size to ensure biological integrity and preservation of the habitat that it is designed to protect, pursuant to LIP Section 4.6.1. In addition, there is no analysis provided regarding potential impacts to ESHA in consideration of alternative number of building sites and alternative siting locations. However, it appears that the creation of three additional building sites on the parcel, with the associated three additional dune trails between the houses and the beach, will inevitably increase the potential impacts to dune ESHA on the site. In addition, restoration of dune areas outside the development areas does not provide adequate mitigation for impacts as there would still be a net loss of habitat.

For the reasons discussed above regarding visual resource and ESHA impacts associated with the proposed project, the proposed coastal development permit and LCP amendment should not be approved as proposed.

Coastal Development Permit No. 05-087, Lot line Adjustment No. 02-002, Initial Study 06-003, and Negative Declaration No. 06-005 for 5902-5908 Latigo Canyon Road (Schmitz)

This project is for a lot line adjustment of four existing parcels. The staff report indicates that the Solstice Segment of the Malibu Pacific Trail (Coastal Slope Trail) runs along the northern boundary of one of the subject parcels. Issues of public prescriptive rights and historic public use of a trail across the site have been raised and the City reviewed information to make a substantial evidence determination. The staff report states that evidence has been presented that the trail had been utilized, however, the City concludes that whether or not historic use is substantial has not been verified. The City should further analyze the issue of historic public trail use across the site and consider conducting a more extensive prescriptive rights study for this trail.

Policy 2.5 of the Malibu LUP states that:

New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or

avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist.

Even if the identified development sites on the reconfigured parcels do not obstruct the existing trail, the project should be conditioned to require that development not obstruct or impede public use of the existing trail. Alternatively, adverse impacts to the trail could be mitigated through an offer-to-dedicate a trail easement across the site, as provided by LUP Policy 2.5. Further, LIP Section 12.5 provides, in part, that an offer to dedicate a public access easement or a grant of easement shall be required (and supported by findings required by Sections 12.8.3-12.10) as a condition of approval and prior to issuance of a permit for new development on any parcel or location specifically identified in the Land Use Plan or in the LCP zoning districts as appropriate for or containing a historically used or suitable public access trail or pathway. The trail issue should be resolved before an action is taken on this coastal development permit.

Thank you for your consideration of these comments. If you have questions, please feel free to contact me.

Very Truly Yours,

Deanna Christensen
Coastal Program Analyst

CALIFORNIA COASTAL COMMISSION

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



December 8, 2006

C.J. Amstrup
Planning Manager
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265

Dear Mr. Amstrup:

We have reviewed the staff reports for Appeal No. 06-013 and Local Coastal Program Amendment No. 06-001 that will be considered by the Malibu City Council on December 11, 2006. We would like to offer the following comments regarding these projects. -

Mitigated Negative Declaration No. 06-004, Initial Study No. 06-002, Conditionally Approving Coastal Development Permit No. 05- 136, Vesting Tentative Parcel Map No. 99-002, and consider Zoning Text Amendment No. 05-004, Zoning Map Amendment No. 05-001, General Plan Amendment No. 06-001, and two alternatives for Local Coastal Program Amendment No. 05-002 for 30732 Pacific Coast Highway (Malibu Bay Company)

The proposed project consists of a Coastal Development Permit for a Tentative Parcel Map to subdivide a 2.08-acre parcel into four half-acre parcels, as well as the above-mentioned legislative amendments for establishing a Single-family - Beachfront zoning district and associated development standards (with a proposed minimum lot width of 45 feet). City staff has also identified a legislative amendment alternative which would involve adding a proposed 45-foot minimum lot width development standard to the existing Single-family - Medium zoning district to be applicable to single-family beachfront properties.

Please note that the Coastal Development Permit for the proposed subdivision should not be approved, or conditionally approved, prior to Coastal Commission approval of the LCP Amendment. The Coastal Development Permit cannot be found consistent with the LCP until the LCP amendment is approved and certified by the Coastal Commission. If the City conditionally approves the CDP for the subdivision it is likely the Coastal Commission will appeal the Coastal Development Permit for the subdivision because the subdivision will not be consistent with the adopted LCP.

Regarding the proposed LCP Amendment, reducing the minimum lot width development standard for beachfront residential parcels would essentially increase the number of smaller-sized lots and each would be associated with a smaller view corridor. Existing residential development on narrow lots on many sections of the Malibu shoreline has created a solid wall of development. This development pattern has completely blocked or severely impeded views of the ocean and beach as seen from public roadways. The proposed narrow lot configuration is a continuation of this existing development pattern that has resulted in significant adverse impacts to scenic views of the ocean and beach along the Malibu shoreline. Coastal Act Section 30251 requires that "permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and

enhance visual quality in visually degraded areas." The proposed amendment will result in several very narrow view corridors between residential structures that will adversely impact views of the beach and ocean from Pacific Coast Highway.

Regarding the subject property, the staff report states that instead of one 40-foot wide view corridor associated with the subject parcel upon development, the subdivision would provide several opportunities for visual relief since each created parcel would have a 10-foot wide view corridor in addition to a 5-foot wide side yard setback. It should be noted that this visual analysis is misleading in light of the Commission's recent approval of Local Coastal Program Amendment No.1-06, which modified the LIP view corridor policy in that beachfront lots with a width of 50 feet or less may split the required view corridor (20% of the lot width) to provide a contiguous view corridor of not less than 10% of the lot width on each side. This would allow only a 5-foot view corridor on either side of each lot. As such, we do not agree with the conclusion that the view corridor for development of the existing parcel would somehow be enhanced if the parcel were subdivided into four parcels. While the total width of view corridor provided would be the same, one corridor would obviously provide greater view opportunities than several separate corridors. Thus, the amendment would not be consistent with Section 30251 of the Coastal Act. In addition, it has not been demonstrated that the proposed land division avoids or minimizes impacts to visual resources, consistent with all scenic and visual resource policies of the LCP.

As per Policy 3.1 of the LUP, dunes are considered ESHA, whether they are disturbed or not. LIP Section 15.2 does not allow for the creation of new parcels unless all parcels contain a building site that is outside of ESHA and ESHA buffers. Maintaining the parcel in its existing configuration would allow flexibility in siting and designing future development to maximize setback from ESHA and ESHA buffer. The creation of four parcels, with three additional building sites and dune trails, on a lot that contains coastal dune ESHA will inevitably create a development pattern that decrease setbacks from ESHA and increase the potential impacts to sensitive dune habitat on the site. This is inconsistent with Section 30240 of the Coastal Act, which requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat areas.

Local Coastal Program Amendment No. 06-001 regarding 5920 Paseo Canyon Road (APN 4469-046-007)

This LCP Amendment concerns changing the zoning designation of APN 4469-046-007 located at 5920 Paseo Canyon Road from Open Space (OS) to Single-Family Low Density (SF-L) in order to correct a discrepancy between the City's zoning map and the City's LCP zoning map. The stated reason for the discrepancy was that the parcel had been in public ownership at one time and the change to private ownership was not yet reflected on the tax assessor record maps when the City initiated preparation of its Land Use and Interim Zoning Maps.

However, it is still unclear how and why the subject parcel was conveyed from public to private ownership. A memo from City planner Richard Mollica, dated October 17, 2006, provides information on how the lot was "legalized" by the County. The information does not indicate that the parcel had received all applicable governmental approvals (including a CDP) for its creation. The memo states that a 40-acre parcel in this area was acquired by the National Park Service in 1990. The subject parcel (5-acres), which was originally part of the larger, 40-acre parcel, was created in 1990 as a privately-held lot. In August 1990, the County of Los Angeles issued a

Conditional Certificate of Compliance (90-1481331) to "legalize" the subject property pursuant to the Subdivision Map Act. In November 1990 the County of Los Angeles issued a clearance of conditions on Certificate of Compliance 90-1481331. The issuance of the 1990 Conditional Certificate of Compliance that "legalized" the subject lot pursuant to the Subdivision Map Act is, in effect, a subdivision of land and, therefore, requires a coastal development permit. However, the landowner at the time failed to secure a coastal development permit for the underlying subdivision that created the parcel.

Therefore, it appears that the proposed amendment to the LUP and LIP zoning maps to change the zoning designation for the subject parcel would not conform to Coastal Act Section 30250 (included by reference into the certified LUP), as the subject parcel had not received all applicable governmental approvals for its creation and is therefore not considered a legal lot. The Conditional Certificate of Compliance must first be "legalized" through a coastal development permit process.

Thank you for your consideration of these comments. If you have questions, please feel free to contact me.

Very Truly Yours,

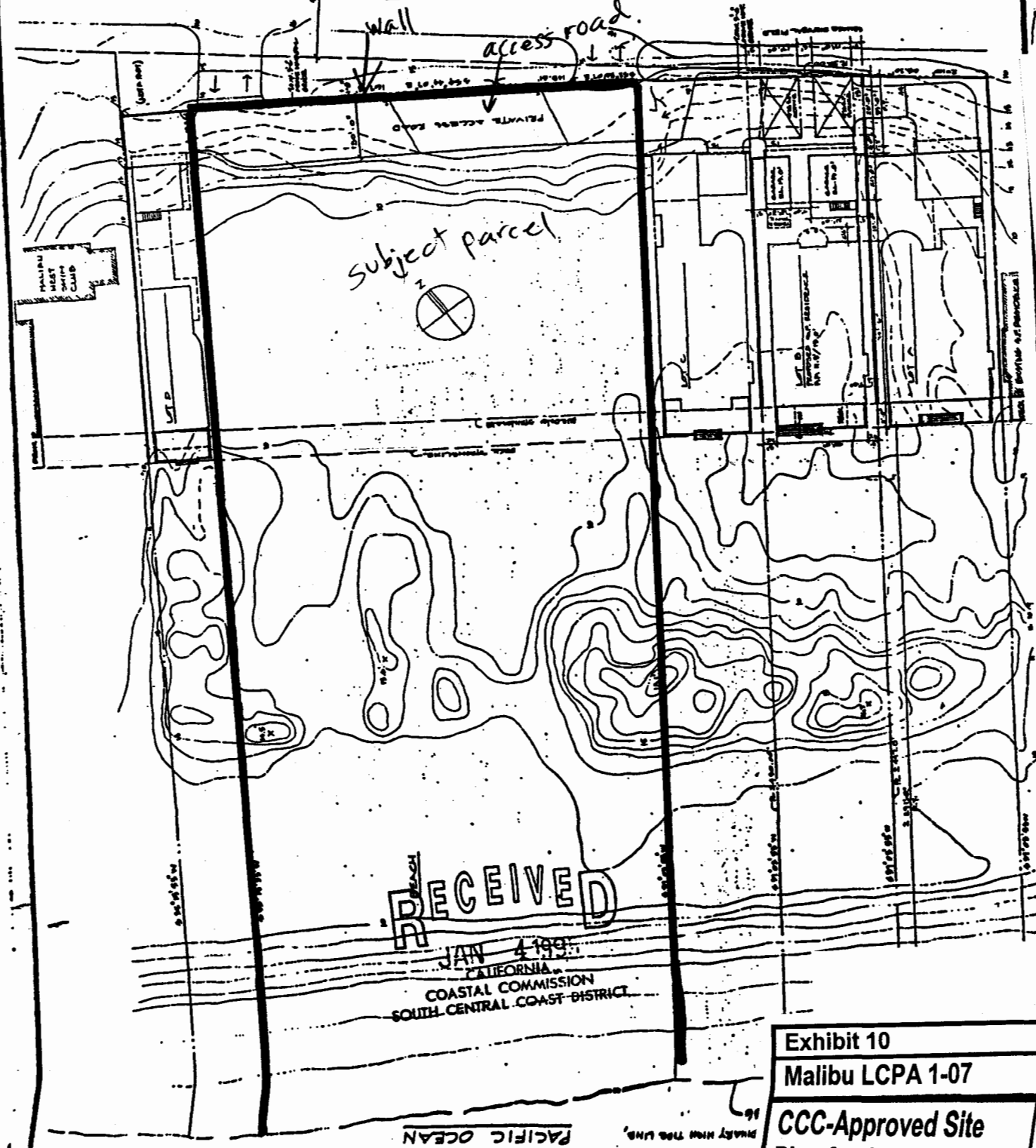
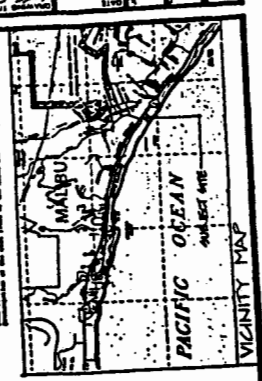
Deanna Christensen
Coastal Program Analyst

GOLDMAN FIRTH BOCCATO ARCHITECTS 2495 PACIFIC COAST HIGHWAY, SUITE A202 MALIBU, CALIFORNIA (310) 456-1831		DATE: _____ DRAWN BY: _____ CHECKED BY: _____ NO. OF SHEETS: _____ SHEET NO.: _____	PROJECT: MALIBU TRAPLUSTAL SHEET: MALIBU TRAPLUSTAL SCALE: 1" = 20'	113
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RECEIVED
 JAN 4 1993
 CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT
 4-95-100

PROJECT DATA - LOT 8
 OWNER: MALIBU DDT CO.
 27105 PACIFIC COAST HWY. D-2
 MALIBU, CA 90265
 ADDRESS: PARCEL NO. 4441-044-001
 ZONING: _____
 CONSTRUCTION: 072, TYPE V
 LOT SIZE: 2.243 A.C.
 IMPERMEABLE COVERAGE: 1.715 A.C. (32%)
 SQUARE FOOTAGE:
 1ST FLOOR: 2454 S.F.
 2ND FLOOR: 5971 S.F.
 TOTAL: 8425 S.F.
 GARAGE: 631 S.F.
 MAXIMUM HEIGHT: 28 FT.

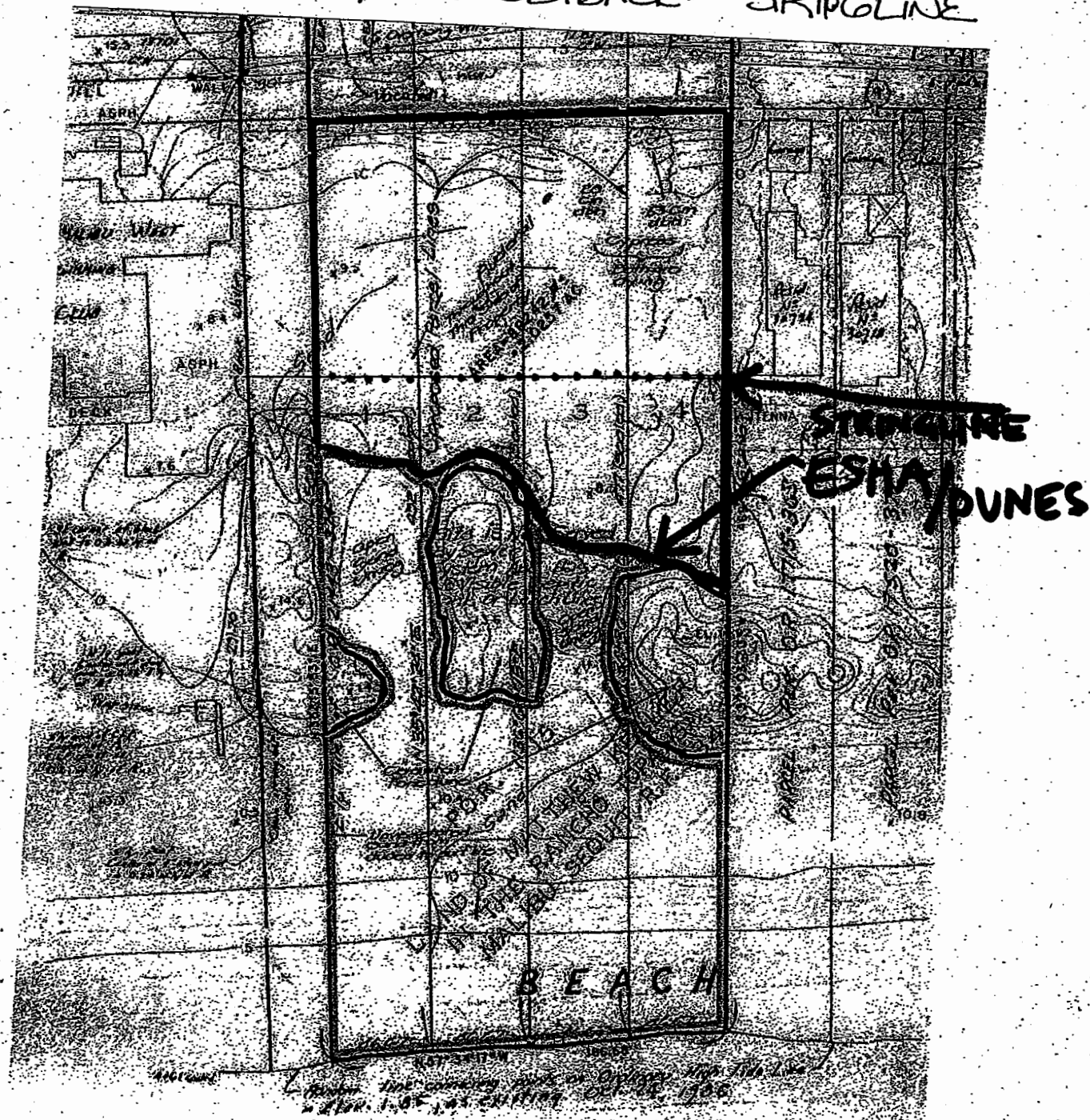
The following information is provided for your information and is not to be construed as a warranty or representation of any kind. The information is based on the best available information and is subject to change without notice. The information is provided for your information and is not to be construed as a warranty or representation of any kind. The information is based on the best available information and is subject to change without notice.



RECEIVED
 JAN 4 1993
 CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

Exhibit 10
 Malibu LCPA 1-07
 CCC-Approved Site
 Plan for CDP Waiver
 No. 4-95-100 (Ioki)

Rear Yard Setback - Stringline



Sand

Asphalt

Ruderal

Dune

Exhibit 11
Malibu LCPA 1-07
Dr. Edith Read ESHA
Delineation from 1999
Biological Report

City of Malibu

23815 Stuart Ranch Road, Malibu, California 90265
(310) 456-2489 Fax (310) 456-7650

Planning Department

BIOLOGICAL REVIEW

Site Address: 30732 Pacific Coast Highway
Applicant/Phone: Sheryl Beebe/ 310.463.7755
Project Type: Subdivision
Project Number: CDP 05-136
Project Planner: Stefanie Edmonson

RESOURCES: Coastal Foredunes

RECOMMENDATIONS:

- I. The project is APPROVED with the following conditions:
 - A. The 'Restoration Plan for Coastal Foredunes' prepared for the applicant shall be implemented upon completion of development of the subject property.

Reviewed By: _____

Dave Crawford, City Biologist

310-456-2489 ext.227 (City of Malibu); e-mail drcrawford@ci.malibu.ca.us

Available at Planning Counter Mondays and Thursdays 8:30 a.m. to 12:30 p.m.

Date: _____

12/12/05

Exhibit 12
Malibu LCPA 1-07
City Biological Review Sheets, dated 12/12/05 and 3/9/06

City of Malibu

23815 Stuart Ranch Road, Malibu, California 90265
(310) 456-2489 Fax (310) 456-7650

Planning Department

BIOLOGICAL REVIEW

Site Address: 30732 Pacific Coast Highway
Applicant/Phone: Sheryl Beebe/ 310.463.7755
Project Type: Subdivision
Project Number: CDP 05-136
Project Planner: Stefanie Edmonson

RESOURCES: Coastal Foredunes

RECOMMENDATIONS:

1. The project is APPROVED with the following conditions:

A. The 'Restoration Plan for Coastal Foredunes' prepared for the applicant shall be implemented upon completion of development of the subject property.

On December 12, 2005 a biology approval was granted based on the submitted plans. The City Biologist has been made aware that the previous City Biologist, Ms. Marti Whitter, recommended that the proposed Zone Text Amendment be denied "...due to potential environmental impacts to a sensitive habitat area..." Therefore, the case planner has asked that I address the comments made in the original review dated April 28, 2000.

The first issue at hand is that this application is for a Coastal Development Permit which falls under the guidelines of the Local Coastal Program. Therefore, the reviewing standards are not necessarily the same as the standards utilized in 2000.

In her review, Ms. Whitter addresses the issue of coastal dunes. She stated that the intensification of use resulting from the approval of four lots would result in several specific impacts. The following pertain to the purview of the City Biologist:

- Accelerated loss of habitat and degradation of the southern foredune habitat from an increased development footprint and increased foot traffic associated with an increased number of future residences.
- Cumulative loss of undeveloped beach
- Location in the Trancas Creek floodplain (residential development and septic systems)

The applicant provided an updated biological assessment of the existing biological resources on site. The independent biologist that conducted part of the evaluation, Dr. Edith Read, indicated

that the existing habitat was highly disturbed and it was questionable if the "dunes" present on site were actually naturally occurring foredunes or if they were actually a result of piled sands from historic beach 'cleaning' that involved scraping the surface of the sands of debris and deposited at this location. Regardless, the existing conditions would benefit from a complete dune restoration plan that would include removal of non-native vegetation and planting of plant species native to natural dune systems in the area. The applicant has submitted a detailed dune restoration plan that would be implemented with development approval of each resulting lot.

The existing lot is 200 feet in width. The proposed project includes division of the lot to four 50-foot wide lots. The lot is legally developable whether it is divided or not. Based on the LIP standards, the amount of permitted development would be essentially the same for one 200-foot lot or four 50-foot wide lots with respect to the width of structures permitted on each lot. That is, 20 percent of any lot must be left open as a view corridor to the ocean. Therefore, the total loss of currently undeveloped beach would not be more cumulatively significant for one 200-foot wide lot than the development of four adjacent 50-foot wide lots.

With respect to increased residential development within the Trancas Watershed, the same issues pertain with respect to similar development area on one large lot or four smaller lots. Regarding the increased number of septic systems, the LCP development standards for beachfront properties require an alternative on-site wastewater treatment system that far exceeds the acceptable standards in place in 2000 when this project was first reviewed. There would ultimately be an increase in wastewater resulting from an increase in number of systems, but the wastewater is treated to a degree that the manufacturers state will not result in negative impacts to the local environment. It should further be noted that development of the maximum allowable square footage on a 200-foot wide lot would likely require a much larger system. As such, the difference in impacts between one larger system versus four smaller systems would not be substantial.

Ms. Whitter also brought up several additional issues that are outside of the review purview of the City Biologist and will be addressed by the case planner.

Reviewed By: _____

Dave Crawford, City Biologist

310-456-2489 ext.227 (City of Malibu); e-mail dcrawford@ci.malibu.ca.us

Available at Planning Counter Mondays and Thursdays 8:30 a.m. to 12:30 p.m.

Date: _____

3/9/06



City of Malibu

23815 Stuart Ranch Road - Malibu, CA 90265
(310) 456-2489 FAX (310) 456-7650

April 10, 2008

RECEIVED
APR 11 2008

California Coastal Commission
89 South California Street
Suite 200
Ventura, CA 93001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Reference: **30732 Pacific Coast Highway**

Dear Mr. Ainsworth:

In December 2005, the subject project and associated Local Coastal Program Amendment (LCPA) was approved by the City of Malibu staff. The City Planning Commission heard the project and approved it. The project was then appealed to City Council, who denied the appeal and approved the project by Council Ordinance 304 on January 22, 2007. The project was then appealed to Coastal Commission.

City Staff has since received supplemental information regarding an additional evaluation of dune habitat that occurs on the property. The City Biologist has reviewed the supplemental information and concurs with the conclusions of the dune habitat analysis and resulting boundaries of dune habitat on site.

The City upholds its recommendation for project approval and continues to support its application for the associated zoning change LCPA. Pursuant to Local Implementation Plan (LIP) Section 4.6.1(G), the City Biologist and the Environmental Review Board have established a standard policy that when a beachfront property supports dune habitat, the standard buffer or setback is to be consistent with the standard building and deck string line rules and a dune restoration plan shall be prepared and implemented. This policy was adopted because, with little variation, the remnant dune systems in Malibu are highly disturbed and very limited in function and habitat value.

The majority of the dunes remaining in Malibu support predominantly non-native and invasive ice plant, that not only out-competes (and often eliminates) the native dune vegetation, but over-stabilizes the dunes, thus resulting in an unnatural condition that prevents the natural 'movement' of the dunes and reduces their value as native habitat.

By allowing development consistent with string line standards, the City can condition these projects to incorporate dune restoration plans that over time are expected to dramatically improve the remnant dune biological functions and values. Conversely, if projects are required to meet the development standards of LIP Section 4.7.1 as Coastal Staff has indicated, then the

Exhibit 13
Malibu LCPA 1-07
City Biologist Letter, dated 4/10/08

Mr. Jack Ainsworth
California Coastal Commission
April 10, 2008

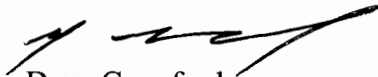
City has no authority to enforce dune restoration plans because the projects would otherwise meet the required development standards.

Numerous projects along Broad Beach road that have similar circumstances have been approved pursuant to the City's established policy of allowing string line development in conjunction with a dune restoration program.

Therefore, it is the position of the City of Malibu that the decisions made by the Planning Staff, Planning Commission, and the Malibu City Council regarding the associated project at 30732 Pacific Coast Highway and associated LCPA be upheld.

Thank you for your consideration. If you have any questions regarding this matter, please do not hesitate to contact Vic Peterson at extension 251 and/or City Biologist Dave Crawford at extension 277.

Sincerely,



Dave Crawford
Contract City Biologist



Vic Peterson
Environmental and Community
Development Department Director

Cc: Mr. David Resnick; Malibu Bay Company
Ms. Andi Culbertson; Attorney representing Malibu Bay Company
Dr. Stacey Rice; Planning Manager

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION

RECEIVED
APR 22 2008

FLORIDA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Date and time of communication: March 5, 2008

(For messages sent to a Commissioner
by mail of facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)

Location of communication: Telephone

Person (s) initiating communication: Andi Culbertson on behalf of Malibu Bay Company

Person (s) receiving communication: Commissioner Mike Reilly

Name or description of project: Broad Beach subdivision, Malibu Bay Company
An item which will be heard in May or June

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

The project is proposed by the City of Malibu on behalf of itself and the property owner, Malibu Bay Company. The proposed LIP amendment serves to correct an inadvertent error in the City's zoning code, which was imported into the LIP by the CCC. The lot width designated for Broad Beach is shown as 80 feet in the LIP – far wider than virtually any other lot in Broad Beach. There is no evidence in the record that the CCC intentionally established a wider lot width for this small property along Broad Beach, one of the last remaining vacant parcels in a virtually fully developed beachfront neighborhood.

The proposal of the City is to establish a Beachfront Single Family District zone with a lot width of 45 feet for this area of Malibu. The lot width would allow 4, instead of 2, lots, with the new lots averaging 50 feet over the frontage of this 200-foot wide property. There are only about two other places in the entire 27+ mile coastline of Malibu where this could conceivably result in a resubdivision of existing lots to provide more lots.

There is no evidence whatsoever that the CCC or the staff intended to regulate this 200-foot wide property in this way. In fact, quite to the contrary, the LCP emphasizes the importance of treating these types of lots in the same way as other similarly situated lots in the neighborhood – the “infill development” policy. Therefore, the current proposal does not violate the basic tenets of the LCP.

There are two issues which have been presented by staff. First, does the proposal result in less view corridor than would result from retaining the LCP as it is currently written? The answer is “no”. The current LCP allows 2 lots. The LCP does not specify that lots must combine their view corridors, and such an attempt would not present a basis for appeal in any event. It is undisputed

Exhibit 14
Malibu LCPA 1-07
Ex Parte Communications

that two lots – each 80 feet or more in width – could be created here without any LCP amendment and without presenting a basis for appeal on view corridors. Since the standard of review is expressly limited by the Coastal Act to the question of the amendment's relationship to the LUP as certified, there can be no effort to expand the reach of the LCP through the LIP amendment. Therefore, the 20 percent view corridor could be satisfied on both lots without the view corridors being required to be side-by-side. This would result (if the property were evenly divided into two 100-foot wide lots) in two 20 foot view corridors and two 5 foot sideyard setbacks for a total of 50 lineal feet of view corridor.

The applicant's proposal is to voluntarily combine the view corridors on the four lots with the side yard setbacks in a way that maximizes the view corridor potential. This innovative strategy actually results in MORE view corridor – 60 feet in all.

There is a serious question about whether a view corridor here is even critical, but the applicant provides it in any event. Four homes downcoast from this site, the traveler along PCH is greeted with approximately one mile of unobstructed ocean views over Zuma Beach. Upcoast, past the busy Trancas Creek Road intersection, the grade of PCH quickly rises such that the traveler is looking OVER Broad Beach homes to an unobstructed view of the ocean. Given the proximity of one of the few signalized intersections along PCH, the fast moving traffic, the proximity of Zuma Beach and the overlook of Broad Beach traveling upcoast, it is difficult to imagine that this property plays any critical role in the view experience along PCH. The property owner has agreed to remove myoporum which has grown up to block views, even though the CCC staff – in approving permits for the wall and road that now exist – did not regulate this landscaping.

The City and the property owner believe that the view goals of the LCP are amply met on this property even if the LIP is approved.

The second issue relates to ESHA designations. There is no ESHA designated on the certified LCP map for this property, or within 200-feet of this property. However, the LCP requires a site specific study to determine if there is any ESHA on the site. Moreover, the certified LCP delegates to the City biologist the task of determining whether any buffer is necessary. Finally, the infill development policies allow development up to the stringline.

Here, the applicant has performed two specific biological studies. The first, associated with the City approvals, reached certain conclusions about the ESHA locations for highly impacted dunes located seaward of the stringline. The property owner undertook a new study, led by a biologist who selected a team of professionals, to ascertain the accuracy of the prior study and to offer a peer-reviewed study of the site. This team has concluded that there is no ESHA in the development area except for a 415 square foot area of stable hummock in the most downcoast lot. The applicant has agreed to preserve this area. A prominent geomorphologist has made the determination of the actual extent of the dune complex as required by the LCP. The biologists ascertained whether there was any ESHA outside of the dune complex, and there was not. The highly qualified biological team has concluded no buffer is necessary. No reaction from staff to this study is available at the time of this writing.

In meetings staff has also mentioned buffer requirements. The City and the applicant believe that the emphasis placed on buffers is misplaced. The LCP requires that the City biologist establish the buffer with respect to dune ESHA, not the CCC. There is no proposal to amend that provision. And, the LCP amendment is not even the correct time to discuss buffers, for two reasons. First, the CDPs – not the LCPA – are the correct points to discuss this issue. Secondly, the entire Broad Beach area is governed by the stringline in terms of the division between developed and non-

developed area. The project intends to honor the stringline and nothing is proposed in terms of the LCPA to change that restriction.

3/12/08

Date


Signature of Commissioner

If the communication was provided at the same to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the Commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

RECEIVED
APR 01 2008

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Date and time of communication: March 19, 2008
(For messages sent to a Commissioner
by mail of facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)

Location of communication: Telephone

Person (s) initiating communication: Andi Culbertson on behalf of Malibu Bay Company

Person (s) receiving communication: Commissioner Dave Potter

Name or description of project: Broad Beach subdivision, Malibu Bay Company
An item which will be heard in May or June

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

The project is proposed by the City of Malibu on behalf of itself and the property owner, Malibu Bay Company. The proposed LIP amendment serves to correct an inadvertent error in the City's zoning code, which was imported into the LIP by the CCC. The lot width designated for Broad Beach is shown as 80 feet in the LIP – far wider than virtually any other lot in Broad Beach. There is no evidence in the record that the CCC intentionally established a wider lot width for this small property along Broad Beach, one of the last remaining vacant parcels in a virtually fully developed beachfront neighborhood.

The proposal of the City is to establish a Beachfront Single Family District zone with a lot width of 45 feet for this area of Malibu. The lot width would allow 4, instead of 2, lots, with the new lots averaging 50 feet over the frontage of this 200-foot wide property. There are only about two other places in the entire 27+ mile coastline of Malibu where this could conceivably result in a resubdivision of existing lots to provide more lots.

There is no evidence whatsoever that the CCC or the staff intended to regulate this 200-foot wide property in this way. In fact, quite to the contrary, the LCP emphasizes the importance of treating these types of lots in the same way as other similarly situated lots in the neighborhood – the “infill development” policy. Therefore, the current proposal does not violate the basic tenets of the LCP.

There are two issues which have been presented by staff. First, does the proposal result in less view corridor than would result from retaining the LCP as it is currently written? The answer is “no”. The current LCP allows 2 lots. The LCP does not specify that lots must combine their view corridors, and such an attempt would not present a basis for appeal in any event. It is undisputed

that two lots – each 80 feet or more in width – could be created here without any LCP amendment and without presenting a basis for appeal on view corridors. Since the standard of review is expressly limited by the Coastal Act to the question of the amendment's relationship to the LUP as certified, there can be no effort to expand the reach of the LCP through the LIP amendment. Therefore, the 20 percent view corridor could be satisfied on both lots without the view corridors being required to be side-by-side. This would result (if the property were evenly divided into two 100-foot wide lots) in two 20 foot view corridors and two 5 foot sideyard setbacks for a total of 50 lineal feet of view corridor.

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The City and the property owner believe that the view goals of the LCP are amply met on this property even if the LIP is approved.

The second issue relates to ESHA designations. There is no ESHA designated on the certified LCP map for this property, or within 200-feet of this property. However, the LCP requires a site specific study to determine if there is any ESHA on the site. Moreover, the certified LCP delegates to the City biologist the task of determining whether any buffer is necessary. Finally, the infill development policies allow development up to the stringline.

Here, the applicant has performed two specific biological studies. The first, associated with the City approvals, reached certain conclusions about the ESHA locations for highly impacted dunes located seaward of the stringline. The property owner undertook a new study, led by a biologist who selected a team of professionals, to ascertain the accuracy of the prior study and to offer a peer-reviewed study of the site. This team has concluded that there is no ESHA in the development area except for a 415 square foot area of stable hummock in the most downcoast lot. The applicant has agreed to preserve this area. A prominent geomorphologist has made the determination of the actual extent of the dune complex as required by the LCP. The biologists ascertained whether there was any ESHA outside of the dune complex, and there was not. The highly qualified biological team has concluded no buffer is necessary. No reaction from staff to this study is available at the time of this writing.

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developed area. The project intends to honor the stringline and nothing is proposed in terms of the LCPA to change that restriction.

3-25-08

Date

Dave Potter

Signature of Commissioner

If the communication was provided at the same to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the Commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

APR 03 2008

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

RECEIVED APR 01 2008 CALIFORNIA COASTAL COMMISSION

Date and time of communication: March 27, 2008 (For messages sent to a Commissioner by mail of facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Location of communication: Telephone

Person (s) initiating communication: Andi Culbertson on behalf of Malibu Bay Company

Person (s) receiving communication: Commissioner Bonnie Neely

Name or description of project: Broad Beach subdivision, Malibu Bay Company An item which will be heard in May or June

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

The project is proposed by the City of Malibu on behalf of itself and the property owner, Malibu Bay Company. The proposed LIP amendment serves to correct an inadvertent error in the City's zoning code, which was imported into the LIP by the CCC. The lot width designated for Broad Beach is shown as 80 feet in the LIP - far wider than virtually any other lot in Broad Beach. There is no evidence in the record that the CCC intentionally established a wider lot width for this small property along Broad Beach, one of the last remaining vacant parcels in a virtually fully developed beachfront neighborhood.

The proposal of the City is to establish a Beachfront Single Family District zone with a lot width of 45 feet for this area of Malibu. The lot width would allow 4, instead of 2, lots, with the new lots averaging 50 feet over the frontage of this 200-foot wide property. There are only about two other places in the entire 27+ mile coastline of Malibu where this could conceivably result in a resubdivision of existing lots to provide more lots.

There is no evidence whatsoever that the CCC or the staff intended to regulate this 200-foot wide property in this way. In fact, quite to the contrary, the LCP emphasizes the importance of treating these types of lots in the same way as other similarly situated lots in the neighborhood - the "infill development" policy. Therefore, the current proposal does not violate the basic tenets of the LCP.

In meetings staff has also mentioned buffer requirements. The City and the applicant believe that the emphasis placed on buffers is misplaced. The LCP requires that the City biologist establish the buffer with respect to dune ESHA, not the CCC. There is no proposal to amend that provision. And, the LCP amendment is not even the correct time to discuss buffers, for two reasons. First, the CDPs - not the LCPA - are the correct points to discuss this issue. Secondly, the entire Broad Beach area is governed by the stringline in terms of the division between developed and non-developed area. The project intends to honor the stringline and nothing is proposed in terms of the LCPA to change that restriction.

3-27-08

Date

Bonnie Speer
Signature of Commissioner

If the communication was provided at the same to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

EX PARTE

Date and time: March 17, 2008 10 a.m
Location of communication: K and S Ranch,
Person initiating communication: Andi Culbertson/Donna Andrews on behalf of Malibu Bay Company
Person receiving communication: Commissioner Steve Blank
Project: Broad Beach subdivision, Malibu Bay Co.

Description of content of communication:

The property owner wants to get two extra lots out of the subdivision than the current LIP zoning allows.

The applicants claim is that the proposed LIP amendment corrects an "inadvertent error" in the City's zoning code, one which was imported into the LIP by the CCC. The lot width designated for Broad Beach is shown as 80 feet in the LIP – far wider than virtually any other lot in Broad Beach. There is no evidence in the record that the CCC intentionally established a wider lot width for this small property along Broad Beach, one of the last remaining vacant parcels in a virtually fully developed beachfront neighborhood.

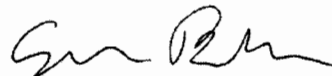
The proposal of the City is to establish a Beachfront Single Family District zone with a lot width of 45 feet for this area of Malibu. The lot width would allow 4, instead of 2, lots, with the new lots averaging 50 feet over the frontage of this 200-foot wide property. There are only about two other places in the entire 27+ mile coastline of Malibu where this could conceivably result in a resubdivision of existing lots to provide more lots.

The applicant's proposal is to combine the view corridors on the four lots with the side yard setbacks in a way that maximizes the view corridor to a 60' view corridor.

The second issue is ESHA designation. There is no ESHA designated on the certified LCP map for this property, or within 200-feet of this property. However, the LCP requires a site specific study to determine if there is any ESHA on the site. Moreover, the certified LCP delegates to the City biologist the task of determining whether any buffer is necessary. Finally, the infill development policies allow development up to the stringline.

The applicant has performed two specific biological studies.

In meetings staff has also mentioned buffer requirements. The City and the applicant believe that the emphasis placed on buffers is misplaced. The LCP requires that the City biologist establish the buffer with respect to dune ESHA, not the CCC. There is no proposal to amend that provision. And, the LCP amendment is not even the correct time to discuss buffers, for two reasons. First, the CDPs – not the LCPA – are the correct points to discuss this issue. Secondly, the entire Broad Beach area is governed by the stringline in terms of the division between developed and non-developed area. The project intends to honor the stringline and nothing is proposed in terms of the LCPA to change that restriction.



Monday, March 24, 2008

CALIFORNIA COASTAL COMMISSION

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

**MEMORANDUM**

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Deanna Christensen
Coastal Analyst

SUBJECT: Southern Foredune Community at 30732 Pacific Coast Highway

DATE: May 15, 2008

Documents reviewed:

Sandoval, C.P. May 5, 2008. Survey of Globose Dune Beetles at 30732 Pacific Coast Highway Malibu, CA, comparing distribution in dunes with or without houses. Prepared for Malibu Bay Company, Malibu, CA

City of Malibu. April 10, 2008. Letter from Dave Crawford and Vic Peterson to Mr. Ainsworth regarding 30732 Coast Highway.

Hamilton, R.A., D.S. Cooper, W.R. Ferren and C. P. Sandoval. March 6, 2008. Biological Resources Assessment, 30732 Pacific Coast Highway, Malibu, California. Prepared For: David Reznick, Malibu Bay Company, 23705 West Malibu Road, Suite D-2 Malibu, CA 90265

Bomkamp, T. (Glenn Lukos Associates). December 12, 2007. Jurisdictional Determination for Four Lots, Broad Beach, 30732 Pacific Coast Highway, Malibu, California. Prepared for: Robert A. Hamilton, Consulting Biologist.

Psuty, Norbert P. November 22, 2007. Final Report, Coastal Dunes, Broad Beach, Malibu, including site visit, October 30, 2007 and evaluation of other documents. Prepared for: Robert A. Hamilton, Consulting Biologist.

Read, E. July 30, 2007. Assessment of the Extent of Coastal Foredunes at 30732 Pacific Coast Highway (Broad Beach): A Review of the Science. Prepared for David Reznick, Malibu Bay Company.

USFWS. April 18, 2007. Letter from Steve Henry of the USFWS Ventura Field Office to M. Andriette Culbertson clarifying that the proposed project would include a 25-foot buffer from newly restored dunes instead of the 100-foot buffer referenced in the 13 February 2007.

Exhibit 15
Malibu LCPA 1-07
Dr. Jonna Engel's
5/15/08 Memo

USFWS. February 13, 2007. Letter from Chris Dellith of the USFWS Ventura Field Office to M. Andriette Culbertson concurring that the proposed MBC project would not result in take of western snowy plovers and that development would be more than 100 feet from the dunes.

Read, E. December 18, 2006. Memorandum to David Reznick, Malibu Bay Company. Subject: Rincon Consultants' Biological Constraints Discussion of MBC Property at 30732 Pacific Coast Highway

Read, E. October 23, 2006. Assessment of Historic and Current Biological Resources, 30732 Pacific Coast Highway (Broad Beach). Prepared for Malibu Bay Company.

Rincon Consultants, Inc. December 6, 2006. Subject: Biological Resources Constraints Discussion, 30732 Pacific Coast Highway (Broad Beach), City of Malibu, Los Angeles County, California.

Forde Biological Consultants. November 15, 2005. Biological Inventory 30732 Pacific Coast Highway (APN: 4469-026-005) in the City of Malibu.

Read, E. July 19, 1999. Vegetation and sensitive resource evaluation, Tentative Parcel Map No. 24070 (Trancas Canyon/Broad Beach Property), Malibu Bay Company.

Longcore, T. and C. Rich. November 8, 2002. Review of Biological Resources Analysis in Malibu Bay Company Development Agreement Draft EIR.

Rich, C. and T. Longcore. 1991. Ecological consequences of artificial night lighting. Island Press, Washington, DC. 483 pp.

The Malibu Bay Company (MBC) owns a 2.08 acre beachfront parcel at 30732 Pacific Coast Highway. MBC is proposing to subdivide this lot into four parcels and has prepared several biological and physical studies as part of their Local Coastal Plan (LCP) amendment application. MBC's parcel consists of a ruderal area adjacent to Pacific Coast Highway and a southern foredune community between the ruderal area and the sandy beach (see Figure 8, Hamilton, Cooper, Ferren, & Sandoval 2008). South of the parcel are four beachfront homes with restored dunes between the homes and the beach. Just beyond the most southern home is Trancas Creek and Zuma Beach. North of the parcel are hundreds of beachfront homes along Broad Beach. Dunes ranging from lightly to heavily impacted and invaded by non-native plants occur between the beach and most of these homes. The dunes on the MBC property are some of the most pristine dunes along this stretch of coast.

The dunes at Broad Beach are foreshortened due to development and only exhibit the nearshore dune zone. The dune community fronting homes along Broad Beach are southern foredunes, a habitat type identified as rare by the California Natural Diversity Data Base (CNNDDB) and the California Native Plant Society (CNPS) and identified as ESHA under the Malibu City LCP. While the Malibu City LCP designates dunes as ESHA, it does not contain a policy with a specific buffer size for protecting dunes. The

purpose of my memorandum is to review the status and biology of dunes in California, describe and delineate the dune community on the MBC parcel, and recommend a biologically sound buffer (set-back) dimension between dune ESHA and development. In order to accomplish this I have studied peer reviewed and gray literature, reviewed all the property biological survey reports and letters, and visited the MBC site.

California dune ecosystems have suffered a disproportionately high amount of human impact because the coast is a highly desirable area for residential settlements, industry, tourism, and recreation¹. Often the victim of these competing interests, undisturbed coastal dunes are becoming rarer and rarer in California. Statewide, coastal dunes have been reduced to less than 25% of the area they originally occupied². South of Point Conception there was once an estimated 5,100 acres of coastal dunes. Mattoni found that in 1990, less than 1,000 acres or 19%, were still recognizable as dunes³. The dunes that remain tend to reflect development impacts including non-native species invasion, erosion due to off-road vehicles and trampling, pollution, and loss of natural morphology due to destruction of vegetation. In spite of these impacts, many remaining dune communities continue to support an array of native plants and animals uniquely adapted to this transition zone between land and sea.

Dunes are a component of beach ecosystems and are typically described as having a number of zones: nearshore dunes, moving dunes, and backdunes⁴. Sandy beach lies between nearshore dunes and the ocean. The amount of sand between the ocean and dunes varies and depends on several factors including sand supply, coast exposure and topography, wind and wave patterns, and presence of artificial features such as jetties and seawalls.

In addition to their habitat and aesthetic values, dune ecosystems are recognized for providing important protection during storm events. Dunes provide a physical barrier against storm waves, reducing the risk of flooding for the natural and anthropogenic features behind them. Dunes are a dynamic buffer; eroding or growing as they are shaped by the seasonal dynamics of storms, wind, and wave action. Sand dunes are essential sand reserves for maintaining natural beach morphology. Dunes are sand reservoirs for the beach and beaches are buffers for dunes. The destruction of sand dunes and the placement of artificial shoreline protection structures have created sand depletion problems in California^{5,6,7}. Nordstrom and Psuty state that "Coastal foredunes have been recognized as a valuable form of natural protection to shorefront

¹ Pickart, A.J. and J.O. Sawyer. 1998. Ecology and restoration of northern California coastal dunes. California Native Plant Society, Sacramento, CA. 152 pp.

² Mattoni, R.H.T. 1990. Species diversity and habitat evaluation across the El Segundo Sand Dunes at LAX. Prepared by: Mattoni, R.H.T., Agresearch, Inc. Prepared for: Te Board of Airport Commissioners, One World Way West, Los Angeles, California 90009

³ Mattoni. 1990. Op cit.

⁴ Barbour, M.G. T.Keeler-Wolf and A.A. Schoenherr. 2007. Terrestrial Vegetation of California. University of California Press, Berkeley, CA. 712 pp.

⁵ California Department of Boating and Waterways and State Coastal Conservancy. January 2002. California Beach Restoration Study.

⁶ Patsch, K. & G. Griggs. October 2006. Littoral Cells, Sand Budgets, and Beaches: Understanding California's Shoreline. Institute of Marine Sciences, UCSB; California Department of Boating and Waterways; California Coastal Sediment Management Workgroup.

⁷ Everts Coastal. June 2002. Impact of Sand Retention Structures on Southern and Central California Beaches. Prepared for the California Coastal Conservancy.

properties...Dunes provide a barrier against storm wave overwash and flooding and a reservoir of sand for replenishment of losses to the beach during erosional events." They go on to say "Coastal dunes are rarely found in areas heavily impacted by coastal development. It is in these areas where they are most valuable as a form of protection"⁸.

The dune community on the MBC property has been subject to a number of disturbances including the creation of the Pacific Coast Highway. Read (Oct. 2006) reviewed the historical record in order to document the historical uses and natural resources on the MBC parcel through time. She concluded that historical photographs...

"...indicate that the dune features currently on the property derive from a combination of indigenous and artificial processes. An extensive coastal dune system was likely present historically across Broad Beach and the mouth of Trancas Creek, but by 1950 most of the historical dune system appears to have been eliminated by construction of PCH and early development of Broad Beach. The Broad Beach dune system was not reported as a major dune locality by the time Cooper published his review of California coastal dune communities in 1967. From 1972 into the 1990's, members of the Malibu Yacht Club who used the property recall moving boat trailers between "sand mounds" to the surf line for launching, a statement which suggests the dune features on the property remained relatively intact during that period despite intense use of the site."

Hamilton et al. (2008) state that "Coastal dunes are present on the project site, and they form part of a larger coastal dune ecosystem at Broad Beach."

Coastal dunes, once extending well into the present ruderal area (see Figures 3-8, Read Oct. 2006; Figures 3 & 5, Hamilton et al. 2008), have persisted on the MBC parcel in spite of intensive disturbance. Since the 1950's use of the site has been characterized by periods of intensive use and disturbance interspersed by spans of time when the site sat vacant. Examples of disturbance include construction staging, boating club activities and development, and beach access. The most recent use of the site has been as a staging area for adjacent construction projects and as an access way for beach goers.

On May 10, 2007, I visited the MBC parcel. The portion of the parcel landward of a "stringline" between the seaward edge of the adjacent houses is clearly ruderal in character and dominated by native and non-native weedy and invasive species such as telegraph weed, *Heterotheca grandiflora*, coastal goldenbush, *Isocoma menziesii*, European grasses such as Italian ryegrass, *Lolium multiflorum*, and ripgut brome, *Bromus diandrus*, highway iceplant, *Carpobrotus edulis*, and Australian saltbush, *Atriplex semibaccata*. Hamilton et al. (2008) describe the ruderal portion of the site as "an area that appears to have been filled with imported soil and gravel material at an unknown date, covers approximately 0.61 acre at the site's northern end (0.57 acre north of the stringline, 0.04 acre south of it)."

⁸ Nordstrom, K.F. and N.P. Psuty. 1983. The value of coastal dunes as a form of shore protection in California, USA. Proceedings of the Third Symposium on Coastal and Ocean Management. Coastal Zone '83.

Just seaward of the stringline is a backdune area behind remarkably intact foredunes which together form a nearshore southern foredune community. The backdune (also referred to as a deflation plain) consists of sand sheets or washover areas interspersed by dune mounds and hummocks and both native and non-native vegetation. The native plants are classic southern foredune species including beach evening primrose, *Chamissonia cheiranthifolia*, succulent lupine, *Lupinus succulentus*, and several individuals of the special status sand verbena, *Ambronina maritima*. Amongst the adult natives were hundreds of small recruits. Several non-native species occurred in this area including sea rocket, *Cakile maritime*, highway iceplant, Australian saltbush, and European grasses.

The adjacent foredunes exhibit characteristic dune morphology and are covered principally in native dune plants with a significant amount of the invasive highway iceplant. The dominant natives are the special status sand verbena and beach bursage, *Ambrosia chamissonis*, both consisting of large, robust patches. Other natives inhabiting the foredunes are saltbush, *Atriplex leucophylla*, beach evening primrose, and succulent lupine. In addition to the invasive iceplant, the non-native plant sea rocket also inhabits the foredunes. In early May Sandoval (2008) conducted a study; "Survey of Globose Dune Beetles at 30732 Pacific Coast Highway Malibu, CA, comparing distribution in dunes with or without houses"; and found globose dune beetles, *Coelus globosus*, a special status species, occupying the foredune habitat. She also found the ciliate dune beetle, *Coelus ciliatus*, in the foredunes.

In Figure 8, Hamilton et al. (2008) denote the stringline and delineate habitat boundaries. Hamilton et al. (2008) find that the stringline itself marks the break between the ruderal and backdune areas save two small exceptions where a ruderal area in the center of the site extends southward and where a backdune area on the eastern side of the property extends northward. Hamilton et al. (2008) single out a small section of the backdune area as a "primrose/lupine" area, but consider it disturbed and not maintained by natural processes. Psuty (2008) also characterizes this area as disturbed. I am in agreement with the habitat boundary determinations of both Hamilton et al. (2008) and Psuty (2008) except for the suggestion that the "primrose/lupine" area is not part of the nearshore dune system.

Hamilton et al. (2008) consider the primrose/lupine area as distinct from the dune habitat using the following logic;

"The area designated as primrose/lupine covers approximately 0.10 acre. This area's mixed substrate includes sand, coarser sand, silt, and some gravel. The area is dominated by the native, sand-dependent species, Beach Primrose (*Camissonia cheiranthifolia* ssp. *suffruticosa*) and the native Succulent Lupine (*Lupinus succulentus*) along with various introduced weedy species. The sand in this area is darker and coarser than the white, eolian sand of the foredunes, and is mixed with imported material as an apparent result of past site disturbance. It appears that this area historically was part of the broad foredune system; as reviewed in the previous section, white sand evident in this part of the site as of August 1976 had been removed by July 1977 as a result of activities associated with operation of the Malibu Yacht Club. Degradation resulting from human activities during that period, including the apparent importation of silt and gravel

into this area, as well as blockage of substantial sand transport into this part of the site (see Figure 10), stripped this area of most of its dune processes and features. Consistent with this interpretation, coastal geomorphologist Norbert Psuty (2007:12) did not classify this area among the site's dunal formations:

Related to form and function, these stabilized hummocks are not part of the normal foredune system and they were created by an unusual and presumably temporary condition from offsite [i.e., the chain-link fence erected by the nearby swim club].

Psuty incorporated these stabilized hummocks into the generalized area that he mapped as "disturbed," but we have called it out separately based on differences in soils and vegetation between this area and the ruderal zone to the north. Features that differentiate this area from the ruderal zone are sandy soils (but little or no wind-blown sand) and the prevalence of Beach Primrose, a native species that requires well-drained soils and that frequently occurs on coastal dunes. The presence of Beach Primrose does not, by itself, serve to delineate a dune ecosystem. For example, Ferren has recorded Beach Primrose on a coastal mesa in Santa Barbara County 100 feet above sea level. The primrose/lupine area appears, in some respects, like a "backdune" area, but we believe that this term is best restricted to an ecological community formed and maintained by natural processes. In light of these factors, we have classified this disturbed area according to its dominant native plant species."

I disagree with Hamilton et al.'s (2008) logic regarding the primrose/lupine patch and think that this area should be included within the environmentally sensitive disturbed southern foredune habitat area, i.e. EHSA, for the following four reasons:

- 1) As Hamilton et al. (2008) acknowledge, the area was historically part of the dune system on the site. There is no obstruction between the foredunes and this adjacent backdune area. Sand continues to be in a dynamic state in this area, moving to and from the foredunes due to wind, storms, and seasonal changes.
- 2) The primary substrate characterizing this patch is sand.
- 3) In spite of the intensive disturbance history of the site, dune hummocks and mounds, dominated by native foredune plant species, continue to persist in this area. Dune hummock and mound persistence through time is evident in the historical photographic record presented in both Read (Oct. 2006) and Hamilton et al. (2008) (see Figures 2-8 and Figures 2-8 & 13, respectively). Based on the photographs documenting mounds and hummocks in this area and the connection of this backdune area to the foredunes and beach, I do not agree that the contemporary dune topography found in this patch is an artificial creation resulting from sand build-up along the chain link fence west of the property.
- 4) Given the rarity of dune habitats across the state and the ease with which they are degraded by human activities, dune features that support native vegetation meet the definition of environmentally sensitive habitat area under the Coastal Act. In past actions, the Commission has considered coastal dunes, even those that are significantly degraded, to meet the definition of ESHA.

Generally, the Commission protects environmentally sensitive habitat, such as southern foredunes, with buffers or set-backs. Set-backs are necessary to insure that development will not significantly degrade the ESHA. Habitat buffers provide many functions, including keeping disturbance (noise, night lighting, domestic animals) at a distance, reducing the hazards of herbicides, pesticides and other pollutants, preventing or reducing shading, and reducing the effects of landscaping activities. Buffers also protect against invasive plant and animal species that are often associated with humans and development. Such invasive species arrive on car tires (both during and after construction), fill soils, construction materials, and in myriad other ways throughout the life of the development. Buffers may enable invasive species detection and eradication before they invade sensitive habitats. Critical to buffer function is the fact that a buffer area is not itself a part of the ESHA, but a "buffer" or "screen" that protects the habitat area from adverse impacts.

Sandoval's (2008) globose dune beetle study findings provide evidence supporting the use of a buffer between southern foredunes and development at the MBC property. Sandoval (2008) found a negative correlation between globose dune beetle abundance and irrigation; globose dune beetle abundance was lowest in front of homes with irrigation compared to homes without irrigation. Furthermore, globose dune beetles were distributed significantly further inland on the undeveloped project site compared to the developed adjacent sites. And Sandoval (2008) found that globose dune beetles were less abundant in the presence of invasive highway iceplant "both at the project site and at the lots with existing residences."

Hamilton et al. (2008) state in their summary, "We are not aware of any biological evidence that would require the establishment of an undeveloped buffer north of the stringline, but we will conduct supplemental beetle and legless-lizard surveys in order to reach a scientifically justified opinion in this regard.", implying that a buffer determination rests solely on the biology of special status animals. However, CNND and CNPS both recognize southern foredunes as a rare community or habitat type and the Malibu LCP recognizes dunes as ESHA, such that the entire dune habitat and associated organisms are what constitute the ESHA to be protected.

Hamilton et al. (2008) report that:

"A correlation exists between the land-use history of residential parcels along Broad Beach and the general decline of habitat value of the dunes for coastal-dependent special interest plants and animals. Widespread human-related disturbances, loss of habitat, and the ongoing spread of Highway Iceplant and other destructive exotic plant species are products of this land-use history. Measures likely to reverse this tendency toward habitat degradation consist of Construction Best Management Practices with any additional development, eradication of Highway Iceplant as part of a well-considered dune habitat restoration program, lighting restrictions, and focused human access through establishment of formal trails and interpretive signage. These measures are anticipated to result in overall enhancement of the existing conditions of the foredune system with or without the addition of a formal buffer area."

Although the use of Best Management Practices would be beneficial even in the absence of a buffer, the documented correlation between land-use history and decline of dune habitat is clear evidence of biological impacts warranting a buffer. Furthermore, the results from Sandoval's (2008) study on globose dune beetles demonstrate that development, irrigation, and invasive species all negatively impact the abundance and distribution of this special status species.

Dunes are dynamic systems that fluctuate between periods of sand accretion and sand depletion. A buffer zone between the dune ecosystem and development allows for the entire dune system to shift between these depositional and erosional phases. On top of this background dynamic, sea level rise is occurring and is predicted to continue. The Intergovernmental Panel on Climate Change predicts an increase of between 35 and 75 centimeters⁹ in the next century while a new model by Svetlana Jevrejeva¹⁰, of the Proudman Oceanographic Laboratory in Britain, predicts a 1.5 meter or 4.5 foot sea level rise by 2100. The buffer zone, combined with the dune ecosystem itself, provides additional protection from the predicted rise in future sea level.

For all the reasons cited above, a buffer (development set-back) is necessary to protect the functioning of the southern foredune ESHA at 30732 Pacific Coast Highway in Malibu California. To protect this ESHA I recommend a minimum 25 foot buffer between the dune ESHA and development. This distance is consistent with other Commission dune buffer determinations¹¹ and with the United States Fish and Wildlife Service's recommendation for this site documented in their April 18, 2007 letter as well as in person (pers. comm. Chris Dellith, USFWS Acting Assistant Field Supervisor, May 9, 2008). In conclusion, I recommend that the "primrose/lupine" area be included as ESHA in the southern foredune community delineation and that a minimum 25 foot buffer from ESHA be applied to this project.

⁹ Intergovernmental Panel on Climate Change. April 2007. The IPCC Special Report on Emission Scenarios.

¹⁰ Jevrejeva, S., A. Grinsted, J. C. Moore & S. Holgate. 2006. Nonlinear trends and multi-year cycle in sea level records. *Journal of Geophysical Research*, v. 111.

¹¹ Coastal Commission Permit # A-3-SLO-04-061, May 25, 2005. Oceano Pavillions 16 unit hotel and manager's unit.

BROAD BEACH - View Corridors 4

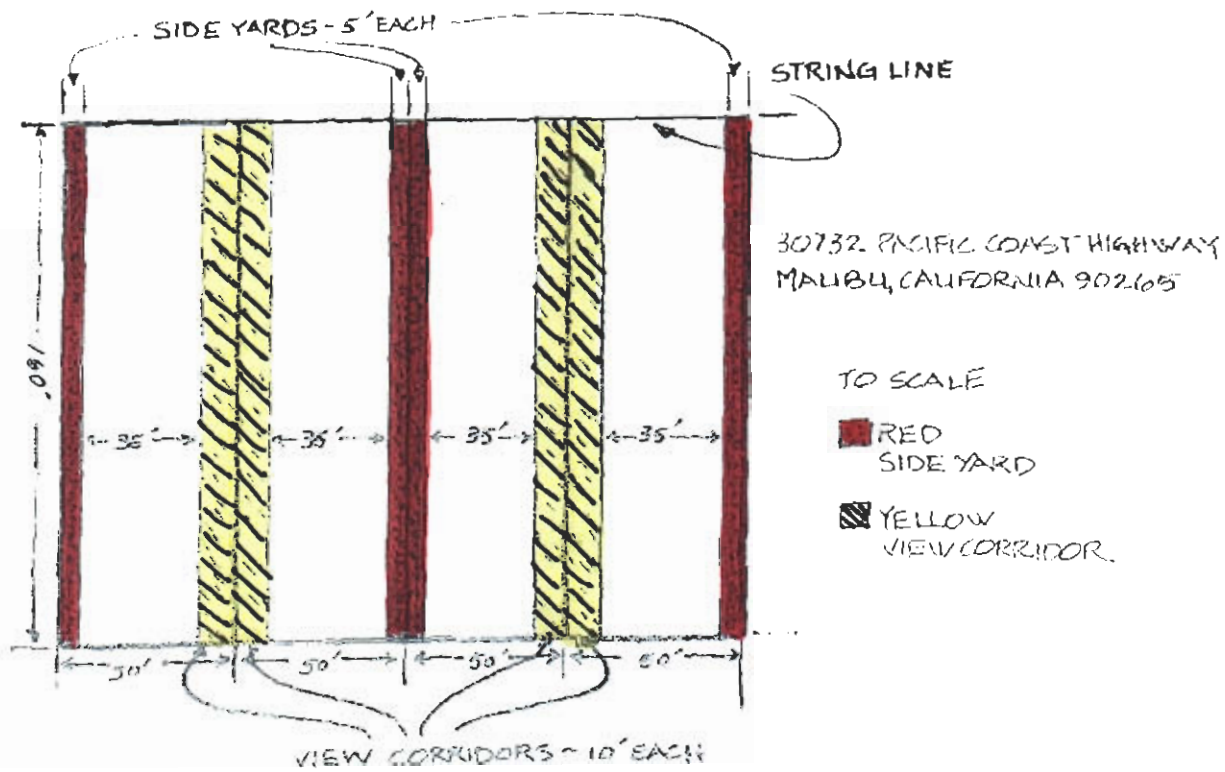




Exhibit 17
Malibu LCPA 1-07
Dr. Jonna Engel's ESHA Delineation for 30732 PCH




 Approximate
Open space
conservation easement
area

Exhibit 18
Malibu LCPA 1-07
Open Space Conserv. Easement Area for 30732 PCH



Figure 8 from Hamilton et al.'s biological report dated 6 March 2008.

Exhibit 19
Malibu LCPA 1-07
Hamilton et al.
Habitat Delineation
Map, from 3/6/08 Report

EXHIBIT 20
Malibu LCPA 1-07
3 Spiral-bound Documents:

1. "Biological Resources Assessment-30732 Pacific Coast Hwy, Malibu," prepared by Robert A. Hamilton, Daniel S. Cooper, Wayne R. Ferren, and Dr. Cristina P. Sandoval, dated March 6, 2008.

2. Other Reports:
"Final Report, Coastal Dunes, Broad Beach," prepared by Dr. Norbert P. Psuty, Coastal Geomorphologist, dated November 22, 2007;

"Results of Focused Surveys for the Silvery Legless Lizard (*Anniella pulchra pulchra*) for the 2.08-acre Broad Beach Property," prepared by Glenn Lukos Associates, dated February 15, 2008;

"Jurisdictional Determination for Four Lots, 30732 Pacific Coast Hwy, Malibu," prepared by Glenn Lukos Associates, dated December 12, 2007;

"Survey of Globose Dune Beetles at 30732 Pacific Coast Highway, Comparing Distribution in Dunes With or Without Houses," prepared by Dr. Cristina Sandoval, dated May 5, 2008.

3. Consultant Response Letters to Dr. Jonna Engel's Memorandum

EXHIBIT 20
Malibu LCPA 1-07
Spiral-bound Docs