

CALIFORNIA COASTAL COMMISSION

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

Th 6a



DATE: October 27, 2010

TO: Commissioners and Interested Persons

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

SUBJECT: City of Malibu Local Coastal Program Amendment No. 3-09 for Public Hearing and Commission Action at the November 18, 2010 Commission Meeting in Santa Monica.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu's proposed amendment to both the Land Use Plan (LUP) and Local Implementation Plan (LIP) portions of the certified Local Coastal Program (LCP) consists of changes to the Transfer of Development Credit (TDC) provisions to give parties seeking TDC credits two additional options for completing the process. First, it would allow the parties to merge the TDC donor parcels with adjacent "buildable" lot(s), rather than only being allowed to merge them with adjacent already developed lot(s). Alternatively, it would allow the parties to transfer ownership of TDC donor parcels to a public entity willing to accept title in lieu of having to combine the parcels.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission deny the proposed City of Malibu LCP Amendment MAL-MAJ-3-09 as submitted and approve the amendment if modified as suggested. The motions to accomplish this are found on Pages 4-6 of this staff report. The standard of review for the changes to the Land Use Plan is whether the amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed changes to the Local Implementation Plan is whether the amendment conforms with and is adequate to carry out the provisions of the Land Use Plan (LUP) portion of the certified City of Malibu Local Coastal Program.

SUBSTANTIVE FILE DOCUMENTS

City of Malibu City Council Ordinance No. 340 and Resolution No. 09-49 approving Local Coastal Program Amendment 09-002; Local Coastal Program Amendment No. 09-002 Text, dated September 14, 2009; City of Malibu certified Local Coastal Program, adopted September 2002.

TABLE OF CONTENTS

I. PROCEDURAL ISSUES.....	3
A. STANDARD OF REVIEW	3
B. PUBLIC PARTICIPATION	3
C. PROCEDURAL REQUIREMENTS	4
II. STAFF MOTIONS, RESOLUTIONS, & RECOMMENDATIONS	4
A. DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED	4
B. CERTIFICATION OF THE LAND USE PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS.....	5
C. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED.....	5
D. CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS	6
III. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN AMENDMENT	7
IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT	8
V. FINDINGS FOR DENIAL OF THE CITY OF MALIBU LCP AMENDMENT AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF MALIBU LCP AMENDMENT, IF MODIFIED AS SUGGESTED	10
A. AMENDMENT DESCRIPTION AND BACKGROUND	10
B. NEW DEVELOPMENT AND CUMULATIVE IMPACTS.....	11
Coastal Act Policies	11
Malibu Land Use Plan (LUP) Policies.....	11
Discussion	12
C. CALIFORNIA ENVIRONMENTAL QUALITY ACT	15

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 proposed amendment to the Land Use Plan is whether the Land Use Plan as amended would be consistent with, and meet the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the Local Implementation Plan of the certified Local Coastal Program, pursuant to Section 30513 and 30514(b) of the Coastal Act, is whether the Implementation Plan as modified by the proposed amendment would be in conformance with, and adequate to carry out, the provisions of the Land Use Plan 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 public hearings (Planning Commission Hearing on May 19, 2009, and City Council Hearing on August 10, 2009) and received oral and written comments regarding the proposed changes 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 3-09 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 Resolution for this amendment states that the amendment will take effect automatically after Commission certification.

II. STAFF MOTIONS, RESOLUTIONS, & RECOMMENDATIONS

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

A. DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED

MOTION I: *I move that the Commission certify Amendment MAL-MAJ-3-09 to the City of Malibu Land Use Plan, as submitted by the City of Malibu.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **NO** vote. Following the staff recommendation will result in denial of the land use plan as submitted and adoption of the following resolution. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY CERTIFICATION OF THE LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of Amendment MAL-MAJ-3-09 to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan as modified by the proposed amendment does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan 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 land use plan as submitted.

B. CERTIFICATION OF THE LAND USE PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission certify Amendment MAL-MAJ-3-09 to the City of Malibu Land Use Plan, if modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY THE LAND USE PLAN WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Amendment MAL-MAJ-3-09 to the City of Malibu Land Use Plan if modified as suggested and adopts the findings set forth below on grounds that the land use plan as modified by the proposed amendment with the suggested modifications 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 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 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 that will result from certification of the land use plan if modified.

C. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED

MOTION I: *I move that the Commission reject Local Implementation Plan Amendment No. MAL-MAJ-3-09 as submitted by the City of Malibu.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment 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 LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the City of Malibu Local Implementation Plan Amendment MAL-MAJ-3-09 and adopts the findings set forth below on grounds that the Implementation Plan as modified by the proposed amendment does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan 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 Amendment as submitted.

D. CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission certify Local Implementation Plan Amendment No. MAL-MAJ-3-09 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 Plan 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 LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the City of Malibu Local Implementation Plan Amendment MAL-MAJ-3-09 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan as modified 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 Plan Amendment 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 Implementation Plan Amendment 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.

III. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified LCP is shown in straight type. Language proposed by the City of Malibu to be added or deleted as part of the subject LCP amendment is shown in underline or ~~striketrough~~, respectively. Language recommended by Commission staff to be inserted is shown **bold underline**. Language recommended by Commission staff to be deleted is shown in **~~bold striketrough~~**. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in *italics*.

SUGGESTED MODIFICATION NO. 1

Policy 5.29

Any coastal development permit for a parcel map, tract map, or certificate of compliance (pursuant to Policy 5.42 or 5.43) that would result in the creation of additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development **credits rights on an undeveloped buildable parcel(s).** **That condition shall state that it must be satisfied** prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through: **A) the recordation of ~~an offer to a document~~ dedicateing an open space easement over the entire parcel to a public entity and the merging or recombination of the retired parcel(s) with a contiguous parcel where the development potential is not retired, ~~or evidence that ownership of the donor lot has been transferred to a public entity~~ **B) the recordation of an open space deed restriction over the entirety of the parcel(s) to be retired and evidence that fee title to that retired lot(s) has been transferred to a public entity.****

SUGGESTED MODIFICATION NO. 2

Policy 5.30

The City shall coordinate with the County of Los Angeles to ensure that lots retired through the TDC program are restricted, **and either** merged **with an adjacent developed or buildable parcel(s)** or transferred **in fee title** to a public entity, and that such actions are accurately reflected in the records of the County Tax Assessor.

IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified LCP is shown in straight type. Language proposed by the City of Malibu to be added or deleted as part of the subject LCP amendment is shown in underline or ~~strikethrough~~, respectively. Language recommended by Commission staff to be inserted is shown **bold underline**. Language recommended by Commission staff to be deleted is shown in ~~**bold strikethrough**~~.

SUGGESTED MODIFICATION NO. 3

7.8.3 Donor Credits Implemented

~~A.~~—The right to a TDC credit shall be granted by the Planning Manager's determination that the TDC conditions of development on a coastal development permit have been met prior to the issuance of the permit by submittal of evidence that all of the following:—~~steps have been completed for either one of the following two methods. Subsequent to completion of either one of the following two methods, the City shall provide the Executive Director of the Coastal Commission with copies of the required recorded documents to ensure coordination within the region-wide TDC program.~~

A. Open space easement dedication and the merging or recombination of the retired lot(s) with one or more adjacent developed or buildable parcel(s).

1. Evidence of the purchase of development rights on a one or more donor sites that have not been previously retired through the City's or Coastal Commission's TDC program (herein the terms "donor site" and "retired lot" are used interchangeably) and recordation with the Los Angeles County Recorder of a valid dedication to ~~the City of Malibu~~ a public entity of a permanent, irrevocable open space easement in favor of the City People of the State of California ~~on~~ over the entirety of the retired lot(s) that conveys an interest in the lot(s) that insures that future development on the lot(s) is prohibited and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Section 13.19 of the Malibu LIP (recorded legal documents). Recordation of said easement on the donor site shall be permanent; and
2. Evidence of recordation with the Los Angeles County Recorder of a voluntary merger or of a ~~recorded~~ deed restriction reflecting that the retired lots used to generate the credit(s) are combined with one or more adjacent;

~~unrestricted lot(s) through a process outlined in section 7.8.4 of the Malibu LIP, or evidence that ownership of the donor lot has been transferred to a public entity where one of the combined lots has no recorded restrictions on its development rights;~~ and

~~3. Evidence that recorded documents have been reflected in the Los Angeles County Tax Assessor Records.~~

~~B. Recordation of said easement on the donor site shall be permanent.~~

B. Open space deed restriction and transfer in fee title to a public entity.

1. Evidence of the purchase of development rights on one or more donor sites that have not been previously retired through the City's or Coastal Commission's TDC program and recordation with the Los Angeles County Recorder of an open space deed restriction that applies to the entirety of the donor site(s), that insures that the future development on the lot(s) is prohibited and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Section 13.19 of the Malibu LIP (recorded legal documents); and

2. Evidence that fee title to the donor site has been successfully transferred to a public entity after the recordation of the deed restriction listed in the prior paragraph and that the document effectuating the conveyance has been recorded with the Los Angeles County Recorder.

SUGGESTED MODIFICATION NO. 4

Section 7.8.4 Combining of Donor Lots

- A. Upon recordation of an easement pursuant to **Section 7.8.3(A)(1)** of the Malibu LIP, a retired parcel that has qualified to be used for TDC credits shall be combined with an adjacent already developed lots ~~unless ownership has been transferred to a public entity already developed or buildable parcel(s), or with multiple contiguous parcels, at least one of which has no recorded restrictions on its development rights and all of which are in the same tax rate area and in common ownership.~~ The ~~donor site retired lot~~ and adjacent parcel(s) shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, lease, development, taxation or encumbrance.
- B. The mechanism used to accomplish the combination shall make clear that the single parcel created herein shall not be divided or otherwise and none of the

original parcels shall be alienated from each other or from any portion of the combined and unified parcel hereby created.

C. A deed restriction shall be recorded reflecting restrictions of this section.

D. The combining of lots shall occur through one of the following mechanisms:

1. Voluntary merger of lots pursuant to the Subdivision Ordinance Chapter 15 of the Malibu LIP;
2. Recorded Declaration of Restrictions that includes a legal description and graphic depiction of the parcels being recombined; states that it runs with the land, binding all successors and assigns; and is recorded free of prior liens, including tax liens.

~~E. The City shall notify the Los Angeles County Assessor of either the voluntary merger or that there is no development potential on the restricted parcel and request that the Assessor modify the assessed value of the lots. The permittee shall provide evidence that a copy of the recorded merger or deed restriction has been provided to the Los Angeles County Tax Assessor with a written request that the assessor's office: (1) revise its records and maps to reflect the combination of the parcels, including assigning a new, single assessor's parcel number (APN) for the unified parcel, and (2) send the City and Coastal Commission notice when it has done so, indicating the new, single APN.~~

~~F. The permittee shall provide evidence that the combined parcels appear on a preliminary report (regarding title) as a single parcel (which may require the property owner re-conveying the combined property to him/her/itself, presumably via a quitclaim deed).~~

V. FINDINGS FOR DENIAL OF THE CITY OF MALIBU LCP AMENDMENT AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF MALIBU LCP AMENDMENT, IF MODIFIED AS SUGGESTED

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

A. AMENDMENT DESCRIPTION AND BACKGROUND

The City of Malibu's proposed LCP amendment consists of changes to the Transfer of Development Credit (TDC) policies and provisions contained in Chapter 5 of the Land

Use Plan portion of the certified LCP and Chapter 7 of the Local Implementation Plan portion of the certified LCP to allow ownership of TDC donor parcels to be transferred to a public entity willing to accept title, and to allow TDC donor parcels to be merged with adjacent “buildable” lot(s) rather than adjacent “already developed” lot(s). The stated intent of the subject amendment request is to allow greater flexibility for retiring eligible lots, consistent with the intent of the TDC program. The proposed amendment text is attached as Exhibit 1.

The subject LCP amendment was approved/certified by the Malibu City Council on September 14, 2009. The City’s resolution and ordinance approving the subject LCP amendment (No. 09-002) is attached as Exhibits 2-3. The LCP amendment was submitted to the Commission on September 21, 2009. After the submittal was reviewed by Commission staff, the amendment was determined to be complete on October 5, 2009. At the December 9, 2009 Commission hearing, the Commission extended the deadline to act on LCPA 3-09 for a period of one year.

B. NEW DEVELOPMENT AND CUMULATIVE IMPACTS

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...

Malibu Land Use Plan (LUP) Policies

- 5.26 *A Lot Retirement Program will be implemented in order to minimize the individual and cumulative impacts to coastal resources of the buildout of existing parcels in sensitive and constrained areas and to allow for new development in areas less constrained. The Lot Retirement Program shall comprise the following components:*
- a. Transfer of Development Credit Program*
 - b. Expedited Reversion to Acreage Process*
- 5.27 *The Transfer of Development Credit (TDC) Program shall be implemented in order to ensure that the individual and cumulative impacts of creating new lots or developing multi-family residential units are minimized and mitigated through the retirement of an equivalent number of development credits from existing lots that meet the qualification criteria of the program. Lots that contain ESHA, are located in small-lot subdivisions, or are located adjacent to parklands can be retired for transfer of development credits.*

- 5.28 *One TDC Program shall be implemented on a region-wide basis for the Santa Monica Mountains Coastal Zone, including the City of Malibu and the County of Los Angeles. Credits to mitigate development approved in the City may be generated from qualifying lots anywhere within this region.*
- 5.29 *Any coastal development permit for a parcel map, tract map, or certificate of compliance (pursuant to Policy 5.42 or 5.43) that would result in the creation of additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development credits prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through the recordation of an offer to dedicate an open space easement and the merging or recombination of the retired parcel(s) with a contiguous parcel where the development potential is not retired.*
- 5.30 *The City shall coordinate with the County of Los Angeles to ensure that lots retired through the TDC program are restricted, merged, and that such actions are accurately reflected in the records of the County Tax Assessor.*

Discussion

City of Malibu Land Use Plan (LUP) Policies 5.26 through 5.30 requires that the TDC program be implemented on a region-wide basis, including the City of Malibu, as well as the unincorporated area of the Santa Monica Mountains within the Coastal Zone. The TDC program policies of the LCP are designed to minimize the individual and cumulative impacts of the potential buildout of existing parcels that are located in ESHA or other constrained areas and still allow for new development and creation of parcels in areas with fewer constraints. New development that results in the creation of new parcels, or multi-family development that includes more than one unit per existing parcel, except for affordable housing units, must retire an equivalent number of existing parcels that meet the qualification criteria of the program. These policies address Section 30250 of the Coastal Act, which requires that development occur in existing developed areas able to accommodate it. The City's Local Implementation Plan (LIP) portion of the LCP includes TDC requirements (Chapter 7) that carries out the LUP Policies 5.26-5.30 by ensuring that density increased through new land divisions or multifamily unit development will be offset by the retirement of development rights on existing lots throughout the Santa Monica Mountains Area.

One of the underpinnings of the TDC Program is Section 30250(a) of the Coastal Act that requires that new development be located within, contiguous with, or in close proximity to existing developed areas able to accommodate it. The areas where new development created through land divisions or multi-family projects may be accommodated are designated as "receiver areas". The LIP Section 7.6 designates receiver areas as residential zones, including multifamily zones, within the City where new lots and multifamily units may be created, if it complies with the applicable land use designation, consistent with LUP Policy 5.27. LUP Policy 5.27 also identifies the areas where development rights should be retired through the program. Consistent with that policy, LIP Section 7.7 identifies donor areas where credits may be obtained through purchase of development rights throughout the Santa Monica Mountains Area, in:

- Parcels in small lot subdivisions;
- Parcels identified as consisting of predominately environmentally sensitive habitat;
- Parcels within significant watersheds;
- Parcels immediately adjacent to public parklands where development cannot be sited to avoid encroachment of fuel modification onto public parklands; and
- Parcels in designated wildlife corridors.

These donor sites are identified as sensitive areas where the development rights of existing inappropriately designed or located parcels should be retired.

LIP Section 7.8 establishes the criteria for determining if specific lots qualify to be retired as mitigation. While lots may be reviewed for qualification at any time, the actual retirement of development credit(s) on the TDC lot(s) will take place after approval of the project, as condition compliance. LIP Section 7.8.3 specifies the process by which the City will qualify development credits. The procedures assure that where development rights are retired, the lots are protected from future development through the recordation of a permanent irrevocable open space easement in favor of the City that conveys an interest in the lots that insure that future development is prohibited. In addition, Sections 7.8.3 and 7.8.4 requires that retired lots are either merged or recombined with other adjacent unrestricted lots through a recorded deed restriction or through a voluntary merger. These recordations are to be reflected in Los Angeles County Tax Assessor records. This provision is intended to assure that once development potential on a lot is retired that this information is considered in future land assessments. It will also ensure that through recombination the mitigation on these retired lots will remain in effect and enforced. Potential tax defaults and involuntary, unplanned transfer (through tax lien foreclosure sales) of these lots will be minimized.

The proposed amendment to the LUP portion of the certified LCP seeks to modify LUP Policies 5.29 and 5.30 to allow the option of transferring ownership of a donor lot to a public entity in order to demonstrate lot retirement. The proposed amendment language to LIP Section 7.8.3(A) regarding the required steps for implementing donor credits would similarly allow the option of providing evidence that the ownership of a donor lot has been transferred to a public entity (instead of providing evidence of a lot merger or recombination with an adjacent unrestricted lot) after an irrevocable open space easement is recorded. Lastly, the proposed amendment to LIP Section 7.8.4(A) regarding the combining of donor lots specifies that a retired parcel shall be combined with an adjacent “buildable” lot, rather than an “already developed” lot, and that such a lot combination is not required if ownership of the retired lot is transferred to a public entity. The intent of the subject amendment request is to allow greater flexibility for retiring eligible lots.

Regarding the issue of combining retired lots used to generate credits with adjacent, unrestricted lots to assure that the retirement remains in effect, it is only in LIP Section 7.8.4(A) that the term “adjacent already developed” lot is used. Elsewhere in the applicable LUP and LIP sections regarding the TDC program, it is only specified that adjacent lots for lot combination must be unrestricted, where the lot’s development

potential has not been retired. In the uncertified Santa Monica Mountains coastal zone of unincorporated Los Angeles County, where the Commission implements the TDC program in permit actions, retired/donor lots are required to be merged or recombined with adjacent developed or developable/buildable lot(s). This more expansive allowance is consistent with the intent of the lot combination requirement of the TDC program. The City's proposal to modify LIP Section 7.8.4(A) in the amendment request to expand the eligibility requirements for lots that retired lots can be combined with is generally consistent with the intent of the TDC program of the LCP. However, to provide greater clarification in order to adequately carry out the relevant policies of the LUP, minor changes are needed to the proposed amendment language of LIP Section 7.8.4(A). As such, **Suggested Modification 3** is required.

The proposed amendment would also modify LUP policies and LIP provisions to allow for the option of transferring ownership of a TDC donor lot to a public entity instead of merging/recombining the donor lot with an adjacent unrestricted lot to assure it remains in effect and enforced. While this proposal, in concept, is consistent with the intent of the TDC program and would provide increased options for assuring that the development potential of retired lots is permanently extinguished, the amendment language, as proposed, is potentially problematic and would not allow the provisions to be carried out effectively. Legally, the public entity that holds the open space easement cannot also be the public entity that holds fee title of the property without the easement being eliminated. Individuals or public entities cannot hold an easement on a property that they own in fee title. In addition, it is more assured that the open space easement area will be enforced when a third party public entity with no financial interest in the property is the easement holder. Therefore, as the amendment language is proposed, applicants would have to find one public entity to accept the open space easement and another to accept fee title of the parcel. This alternative would be difficult to implement because there are limited public entities in the region that are interested in holding open space easements or acquiring title of restricted properties. To require applicants to find two, rather than one, public entity to carry out the requirements of this provision would be unnecessarily complex and burdensome.

In order to simplify the process and avoid the potential issues discussed above, staff recommends **Suggested Modifications 1-4** to provide two methods for implementing required donor credits that applicants can choose from: 1) an open space easement dedication and the merging or recombination of the retired lot(s) with one or more adjacent developed or buildable lot(s), or 2) an open space deed restriction and transfer in fee title to a public entity. An open space deed restriction is the more appropriate mechanism to ensure that a donor parcel is protected as open space in instances where the property is dedicated in fee title to a public entity. **Suggested Modifications 3-4** also include minor changes that are required to provide greater clarification and specificity regarding the process for each of the two methods of implementing donor credits. In particular, the LIP Section 7.8.3(A) currently requires that open space easements on donor parcels be dedicated to the City of Malibu. As part of Suggested Modification 3, staff recommends replacing City of Malibu with "public entity" to provide greater flexibility for what public entity may accept an open space easement dedication.

This is important because the City's TDC program in the LCP reflects the mitigation of impacts throughout the Santa Monica Mountains coastal zone region. While coastal development permits will be authorized for the area within the City, development potential can be retired on parcels in other unincorporated areas of the Santa Monica Mountains coastal zone and the City of Malibu would likely not be interested in accepting open space easement dedications in those areas. In addition, as part of Suggested Modification 3, staff recommends adding a provision that requires the City to provide the Coastal Commission with a copy of the recorded TDC documents to ensure coordination within the region-wide TDC program. This provision would allow the Commission to be aware of lots that are retired under the City's TDC program so that they may not be inadvertently used for donor credit again in the Commission's implementation of the TDC program in unincorporated Los Angeles County.

The Commission finds that the suggested modifications to the LUP policies of the proposed amendment are required to ensure that the City's request to allow donor lots to be conveyed to public entities is carried out legally and in a manner that is simplified and ensures the donor lots are preserved as open space, consistent with the applicable policies of Chapter 3 of the Coastal Act. The Commission also finds that the suggested modifications to the LIP provisions of the proposed amendment are required to ensure that they are consistent with all applicable LUP policies and adequate to carry out all provisions of the LUP.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT

California Public Resources Code (PRC) Section 21080.9 – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, because the Natural Resources Agency found the Commission's LCP review and approval program to be functionally equivalent to the EIR process, see 14 C.C.R. § 15251(f), PRC Section 21080.5 relieves the Commission of the responsibility to prepare an EIR for each LCP. Nevertheless, some elements of CEQA continue to apply to this review process.

Specifically, pursuant to CEQA and the Commission's regulations (see 14 C.C.R. §§ 13540(f), 13542(a), and 13555(b)), the Commission's certification of this LCP amendment must be based in part on a finding that it meets the CEQA requirements listed in PRC section 21080.5(d)(2)(A). That section requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Land Use Plan amendment has been found not to be in conformance with the Chapter 3 policies of the Coastal Act regarding cumulative impacts. The Implementation Plan amendment has been found not to be in conformance with, or adequate to carry out, the provisions of the Land Use Plan portion of the certified LCP. To resolve the concerns identified, suggested modifications have been made to the proposed amendment. Without incorporation of the suggested modifications, the Land Use Plan amendment as submitted, is not adequate to carry out and is not in conformity with the Chapter 3 policies of the Coastal Act. Without incorporation of the suggested modifications, the Implementation Plan amendment as submitted, is not adequate to carry out and is not in conformity with the Land Use Plan. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report, if the LCP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LCP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT NO. 09-002

September 14, 2009

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 Amend LUP Chapter 5 (New Development) LUP Policy 5.29 to read as follows:

5.29 Any coastal development permit for a parcel map, tract map, or certificate of compliance (pursuant to Policy 5.42 or 5.43) that would result in the creation of additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development credits prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through the recordation of an offer to dedicate an open space easement and the merging or recombination of the retired parcel(s) with a contiguous parcel where the development potential is not retired, or evidence that ownership of the donor lot has been transferred to a public entity.

1.2 Amend LUP Chapter 5 (New Development) LUP Policies 5.30 to read as follows:

5.30 The City shall coordinate with the County of Los Angeles to ensure that lots retired through the TDC program are restricted, merged or transferred to a public entity, and that such actions are accurately reflected in the records of the County Tax Assessor.

2. Local Implementation Plan

2.1 Amend LIP Chapter 7 (Transfer Development Credits) Section 7.8.3 to read as follows:

7.8.3 Donor Credits Implemented

A. The right to a TDC credit shall be granted by the Planning Manager's determination that the TDC conditions of development on a coastal development permit have been met prior to the issuance of the permit by submittal of all of the following:

1. Evidence of the purchase of development rights on a donor site and recordation of a dedication to the City of Malibu of a permanent, irrevocable open space easement in favor of the City on the retired lot(s) that conveys an interest in the lot(s) that insures that the future development on the lot(s) is prohibited and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Section 13.19 of the Malibu LIP (recorded legal documents); and

Exhibit 1
Malibu LCPA 3-09
City of Malibu Proposed LCP Amendment Text

2. Evidence of a voluntary merger or of a recorded deed restriction reflecting that the retired lots used to generate the credit(s) are combined with one or more adjacent, unrestricted lot(s) through a process outlined in section 7.8.4 of the Malibu LIP, or evidence that ownership of the donor lot has been transferred to a public entity; and
3. Evidence that recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

B. Recordation of said easement on the donor site shall be permanent.

2.2 Amend LIP Chapter 7 (Transfer Development Credits) Section 7.8.4 to read as follows:

Section 7.8.4 Combining of Donor Lots

A. Upon recordation of an easement pursuant to 7.8.3 of the Malibu LIP, a retired parcel that has qualified for TDC credits shall be combined with an adjacent ~~already developed lot(s)~~ buildable lot(s) unless ownership has been transferred to a public entity. The donor site and adjacent parcel(s) shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, development, taxation or encumbrance.

B. The single parcel created herein shall not be divided or otherwise alienated from the combined and unified parcel.

C. A deed restriction shall be recorded reflecting restrictions of this section.

D. The combining of lots shall occur through one of the following mechanisms:

1. Voluntary merger of lots pursuant to the Subdivision Ordinance Chapter 15 of the Malibu LIP;
2. Recorded Declaration of Restrictions.

E. The City shall notify the Los Angeles County Assessor of either the voluntary merger or that there is no development potential on the restricted parcel and request that the Assessor modify the assessed value of the lots.

RESOLUTION NO. 09-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 09-002 TO AMEND LAND USE PLAN CHAPTER 5 (NEW DEVELOPMENT) TO ALLOW OWNERSHIP OF TRANSFER DEVELOPMENT CREDIT PARCELS TO BE TRANSFERRED TO A PUBLIC ENTITY WILLING TO ACCEPT TITLE TO THE PARCEL; AND CHANGE THE WORDING FROM "ADJACENT ALREADY DEVELOPED LOT(S)" TO "ADJACENT BUILDABLE LOT(S)"

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

Section 1. Recitals.

A. On March 23, 2009, the City Council initiated Local Coastal Program Amendment (LCPA) No. 09-002 and directed staff to present the amendments to the Planning Commission.

B. On April 30, 2009, a Notice of Availability for Local Coastal Program Documents was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; regional, state and federal agencies affected by the amendments; local libraries and media; and the California Coastal Commission.

C. On May 7, 2009, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; regional, state and federal agencies affected by the amendments; local libraries and media; and the California Coastal Commission indicating that the Planning Commission would hold a public hearing on May 19, 2009 to consider amendments to the Local Coastal Program (LCP).

D. On May 19, 2009, the Planning Commission held a duly noticed public hearing on LCPA No. 09-002, reviewed and considered written reports, public testimony, and other information and adopted Planning Commission Resolution No. 09-33 recommending that the City Council approve the proposed amendments.

E. On July 30, 2009, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; regional, state and federal agencies affected by the amendments; local libraries and media; the California Coastal Commission indicating that the City Council would hold a public hearing on August 10, 2009 to consider amendments to the LCP.

F. On August 10, 2009, the City Council held a duly noticed public hearing on the subject application, reviewed and considered written reports, public testimony, and related information.

Exhibit 2
Malibu LCPA 3-09
City of Malibu Resolution No. 09-49 Approving LCP Amendment

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposal as described above. The City Council has found that the subject amendment does not signify any new or different development. There is no possibility that the proposed Local Coastal Program Amendment may have significant impact on the environment. As such, if not already statutorily exempt, the provisions contained herein are categorically exempt under the common sense rule that CEQA only applies where the action may have a significant effect on the environment. See 14 Cal. Code Regs. § 15061(b)(3).

Section 3. Local Coastal Program Amendment No. 09-002.

Local Coastal Program Amendment No. 09-002 includes amendments to the certified LCP Land Use Plan and corollary amendments to the LIP. Corollary amendments to the LIP are identified in City Council Ordinance 340. Amendments to the LUP are as follows:

Amend LUP Chapter 5 (New Development) LUP Policies 5.29 and 5.30 to read as follows:

5.29 Any coastal development permit for a parcel map, tract map, or certificate of compliance (pursuant to Policy 5.42 or 5.43) that would result in the creation of additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development credits prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through the recordation of an offer to dedicate an open space easement and the merging or recombination of the retired parcel(s) with a contiguous parcel where the development potential is not retired, or evidence that ownership of the donor lot has been transferred to a public entity.

5.30 The City shall coordinate with the County of Los Angeles to ensure that lots retired through the TDC program are restricted, merged or transferred to a public entity, and that such actions are accurately reflected in the records of the County Tax Assessor.

Section 5. Local Coastal Program Amendment Findings.

Based on the evidence in the whole record, the City Council hereby finds that the proposed amendments meets the requirements of, and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act. The amendments to the Local Coastal Program meet the requirements of, and is in conformance with the goals, objectives and purposes of the LCP as identified in said document.

Section 6. Approval of Amendments to the Certified Local Coastal Program Land Use Plan.

Subject to the contingency set forth in Section 8, the City Council hereby adopts that portion of Local Coastal Program Amendment No. 09-002 amending the Land Use Plan.

Section 7. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 09-002 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulation, 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 amendment approved in this resolution shall become effective only upon certification by the California Coastal Commission of this amendment to the LCP.

Section 9. Certification.


The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th day of August 2009.



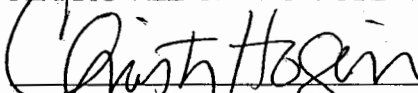
ANDY STERN, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

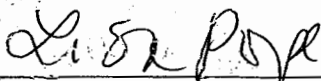
APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 09-49 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 10th day of August, 2009, by the following vote:

AYES: 4 Councilmembers: Conley Ulich, Sibert, Wagner, Stern
NOES: 0
ABSTAIN: 0
ABSENT: 1 Councilmember: Barovsky



LISA POPE, City Clerk
(seal)

ORDINANCE NO. 340

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU ADOPTING LOCAL COASTAL PROGRAM AMENDMENT NO. 09-002 AMENDING LOCAL IMPLEMENTATION PLAN (LIP) CHAPTER SEVEN TO ALLOW OWNERSHIP OF TRANSFER DEVELOPMENT CREDIT PARCELS TO BE TRANSFERRED TO A PUBLIC ENTITY WILLING TO ACCEPT TITLE TO THE PARCEL; AND CHANGE THE WORDING FROM "ADJACENT ALREADY DEVELOPED LOT(S)" TO "ADJACENT BUILDABLE LOT(S)"

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

Section 1. Recitals.

The history of Local Coastal Program Amendment (LCPA) No. 09-002 is set forth in the recitals of Resolution No. 09-49, in which the City Council approved corollary amendments to the Local Coastal Program (LCP) Land Use Plan.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposal as described above. The City Council has found that the subject amendment does not signify any new or different development. There is no possibility that the proposed Local Coastal Program Amendment may have significant impact on the environment. As such, if not already statutorily exempt, the provisions contained herein are categorically exempt under the common sense rule that CEQA only applies where the action may have a significant effect on the environment. See 14 Cal. Code Regs. § 15061(b)(3).

Section 3. Local Coastal Program Amendment No. 09-002.

LCPA No. 09-002 includes amendments to the certified LCP Local Implementation Plan and corollary amendments to the Land Use Plan. Corollary amendments to the LUP are identified in City Council Resolution No. 09-49. Amendments to the LIP are as follows:

A. Amend LIP Chapter 7 (Transfer Development Credits) Section 7.8.3 to read as follows:

7.8.3 Donor Credits Implemented

- A. The right to a TDC credit shall be granted by the Planning Manager's determination that the TDC conditions of development on a coastal development permit have been met prior to the issuance of the permit by submittal of all of the following:
1. Evidence of the purchase of development rights on a donor site and recordation of a dedication to the City of Malibu of a permanent, irrevocable open space easement in favor of the City on the retired lot(s) that conveys an interest in the lot(s) the future development on the lot(s) is prohibited and that restrictions of the text of which has been approved pursuant to procedures in Section 7.8.3 of the Malibu LIP (recorded legal documents); and

Exhibit 3
Malibu LCPA 3-09
City of Malibu Ordinance No. 340 Approving LCP Amendment

2. Evidence of a voluntary merger or of a recorded deed restriction reflecting that the retired lots used to generate the credit(s) are combined with one or more adjacent, unrestricted lot(s) through a process outlined in section 7.8.4 of the Malibu LIP, or evidence that ownership of the donor lot has been transferred to a public entity; and
3. Evidence that recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

B. Amend LIP Chapter 7 (Transfer Development Credits) Section 7.8.4 to read as follows:

A. Upon recordation of an easement pursuant to 7.8.3 of the Malibu LIP, a retired parcel that has qualified for TDC credits shall be combined with an adjacent buildable lot(s) unless ownership has been transferred to a public entity. The donor site and adjacent parcel(s) shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, development, taxation or encumbrance.

B. The single parcel created herein shall not be divided or otherwise alienated from the combined and unified parcel.

C. A deed restriction shall be recorded reflecting restrictions of this section.

D. The combining of lots shall occur through one of the following mechanisms:

1. Voluntary merger of lots pursuant to the Subdivision Ordinance Chapter 15 of the Malibu LIP;
2. Recorded Declaration of Restrictions.

E. The City shall notify the Los Angeles County Assessor of either the voluntary merger or that there is no development potential on the restricted parcel and request that the Assessor modify the assessed value of the lots.

Section 4. Findings.

Based on the evidence in the whole record, the City Council hereby finds that the proposed amendments meets the requirements of, and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act. The amendments to the Local Coastal Program meet the requirements of, and is in conformance with the goals, objectives and purposes of the LCP as identified in said document.

Section 5. Approval

Subject to the contingency set forth in Section 7, the City Council hereby adopts LCPA No. 09-002 amending the LIP Sections 7.8.3(A)(2) and 7.8.4(A)(B).

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 09-002 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulation, 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 7. Effectiveness.

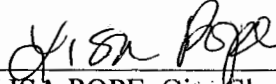
The LCP amendment approved in this ordinance shall become effective only upon certification by the California Coastal Commission.

Section 8. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 14th day of September, 2009.

ATTEST:

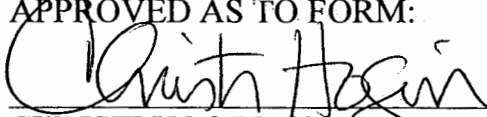


LISA POPE, City Clerk
(seal)



ANDY STERN, Mayor

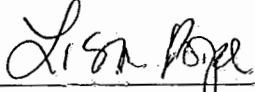
APPROVED AS TO FORM:



CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 340 was passed and adopted at the regular City Council meeting of September 14, 2009, by the following vote:

AYES: 5 Councilmembers: Conley Ulich, Sibert, Wagner, Barovsky, Stern
NOES: 0
ABSTAIN: 0
ABSENT: 0



LISA POPE, City Clerk
(seal)