

CALIFORNIA COASTAL COMMISSION

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DATE: February 24, 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 3-08 for Public Hearing and Commission Action at the March 10, 2010 Commission Meeting in Santa Cruz.

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 create a new overlay district (Town Center Overlay District) and applying the use restrictions and development standards of this overlay district to two existing parcels (APN 4458-022-023 and 4458-022-024) in the Civic Center area. LCPA 3-08 also includes the approval of a Development Agreement, between the City and property owner, to allow an increase in allowable floor area ratio (FAR) from 0.15 to 0.20, if certain public benefits are provided.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **deny** the proposed City of Malibu LCP Amendment MAL-MAJ-3-08 as submitted and **approve** the amendment subject to three suggested modifications. The motions to accomplish this are found on Pages 4-5 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.

Additional Information: For further information, please contact Deanna Christensen at the South Central Coast District Office of the Coastal Commission at (805) 585-1800. The proposed amendment to the City of Malibu Local Coastal Program (LCP) is available for review at the Ventura Office of the Coastal Commission or at the City of Malibu Planning Department.

SUBSTANTIVE FILE DOCUMENTS

City of Malibu City Council Ordinance Nos. 330 and No. 329 and Resolution No. 08-52 approving Local Coastal Program Amendment 06-003 and Development Agreement 07-001; Local Coastal Program Amendment No. 06-003 Text, dated November 10, 2008; "Final Environmental Impact Report – La Paz Development Agreement Project", prepared by

Christopher A. Joseph & Associates, dated July 24, 2008 (SCH#2003011131); City of Malibu Local Coastal Program, adopted September 2002.

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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 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 Local 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 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 Hearings on November 6, 2007, January 22, 2008, and October 21, 2008, and City Council Hearings on May 12, 2008, September 22, 2008, and November 10, 2008) 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 3-08 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.

I. 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-3-08 to the City of Malibu Land Use Plan, as submitted by the City of Malibu.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **NO** vote. Failure of this motion 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-3-08 to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan as submitted 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-3-08 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-3-08 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 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-3-08 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-3-08 and adopts the findings set forth below on grounds that the Implementation Plan Amendment as submitted 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-3-08 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-3-08 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan 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.

II. 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 as part of the subject LCP amendment is shown in underline or ~~strikethrough~~. 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~~**. 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

Delete the Land Use Plan Map change from “Community Commercial” land use designation to “Town Center Overlay” District (3700 La Paz Lane/APNs 4458-022-023 and 4458-022-024).

III. 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 as part of the subject LCP amendment is shown in underline or ~~strikethrough~~. 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. 2

Add Part D to LIP Section 3.4.3, as shown below:

Chapter 3.4.3 – TOWN CENTER OVERLAY - CUSTOM DEVELOPMENT CRITERIA (COMMERCIAL)

A. Purpose.

The Overlay meets the intent of LUP Policy 5.17 to provide specific development criteria for parcels within the Civic Center Area. These include land use designations and permitted uses; maximum density and intensity standards, including floor area ratios for commercial use not to exceed the maximum floor area ratio currently allowed pursuant to the LUP where public benefits and amenities are provided as part of the project; development standards, including heights, lot coverage, setbacks, and open space requirements; and provisions for shared or consolidated parking areas.

B. Description of Area Subject to LIP Section 3.4.3.

The provisions of this chapter shall apply to the 15.2 acre site currently identified as Los Angeles County Assessor Parcel Numbers 4458-022-023 and 4458-022-024. The site, currently addressed as 3700 La Paz Lane, is surrounded by a largely undeveloped hillside to the northwest, a single-family residence to the northeast, vacant land directly to the east, commercial uses the future Malibu Legacy Park site across Civic Center Way to the south and the Los Angeles County government building complex to the west as indicated on the Overlay Map.

C. Applicability.

These implementing measures establish the specific uses and development standards for the commercial development of the site. The Overlay will help guide development toward a “town center” that is geographically centrally located, that provides interdependent uses thereby minimizing trips and enhances the existing civic center uses and permanently establishes a City Hall in the Civic Center.

Where any policy or standard provided in this chapter conflicts with any other policy or standard contained in the City’s General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the Town Center Overlay and other plan, resolution or ordinance, the policies, standards or provisions contained herein shall govern.

D. Development Agreement

Pursuant to a Development Agreement between the property owner and the City of Malibu, the allowable Floor to Area Ratio (FAR) is increased from 0.15 to 0.20 for the following public benefits: 1) 2.3 acres to be conveyed to the City of Malibu for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use Infrastructure Construction Fund associated with development of the 2.3-acre parcel; 3) a pedestrian and bike path from City Hall throughout the project connecting to Civic Center Way; 4) Offer-to-Dedicate a public trail easement fronting along Civic Center Way (segment of the planned Malibu Pacific Trail/Coastal Slope Trail); and 5) conceptual architectural plans for the City Hall.

D E. Development Standards.

...

SUGGESTED MODIFICATION NO. 3

Add map showing the boundaries of the Town Center Overlay District (3700 La Paz Lane/APNs 4458-022-023 and 4458-022-024).

IV. FINDINGS FOR DENIAL OF THE CITY OF MALIBU LAND USE PLAN AMENDMENT AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF MALIBU LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

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

A. LAND USE PLAN AMENDMENT DESCRIPTION AND BACKGROUND

The City of Malibu's proposed amendment to the certified Local Coastal Program includes creating a new overlay district (Town Center Overlay District) and applying the use restrictions and development standards of this overlay district to two existing parcels in Malibu's Civic Center area (APN 4458-022-023 and 4458-022-024). Such overlay districts are implementation measures and, in fact, there are several existing overlay districts incorporated into the certified Malibu LIP. The proposed amendment to the certified LIP is discussed in detail below. Notwithstanding the City's characterization of the subject LCPA as creating an overlay district, part of the LCPA includes a change to the certified LUP to redesignate the parcels in question from Community Commercial (CC) to a new, proposed designation of Town Center Overlay (TCO). The proposed amendment text and location maps are attached as **Exhibits 1-5**.

The subject LCP Amendment (LCPA), related Development Agreement, and Final Environmental Impact Report (EIR) were approved/certified by the Malibu City Council on November 10, 2008. The resolution and ordinances approving City LCPA No. 06-003 and Development Agreement No. 07-001 is attached as **Exhibits 7-9**. The LCP amendment was submitted to the Commission on December 31, 2008. After the submittal was reviewed by Commission staff, the amendment was determined to be complete on January 12, 2009. At the April 9, 2009 Commission hearing, the Commission extended the deadline to act on LCPA 3-08 for a period of one year. Commissioner ex parte communications received to date are attached as **Exhibit 6**.

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...

Discussion

Malibu's Civic Center area is comprised of approximately 180 acres extending from PCH to the south, to the base of the Santa Monica Mountain hillsides to the north. In addition, the Civic Center area extends from Malibu Creek in the east, to the area of land enclosed by PCH, Malibu Canyon Road, and Civic Center Way in the west. The Civic Center is the commercial and social focal point in the City of Malibu. It is the principle commercial area in the City where the general public and residents visit, and includes retail shops, restaurants, coffee shops and other commercial uses. The City's existing Land Use Plan Map designates the Civic Center area for a mix of Community Commercial, General Commercial, and Visitor- Serving Commercial uses.

The subject site within the Civic Center area is currently designated Community Commercial (CC) on the City's Land Use Plan Map. The designation is intended to provide for the resident serving needs of the community similar to the types of uses allowed in neighborhood serving commercial developments, but on parcels of land more suitable for concentrated commercial activity. Uses that are allowed in the CC land use designation include, but are not limited to, small retail stores, salons and bookstores, restaurants, offices, financial institutions, medical clinics, service stations, health or day care facilities, and public open space and recreation. The subject vacant site is immediately surrounded by undeveloped hillside terrain to the north-northwest, two single-family residences to the northeast, Civic Center Way, existing commercial development, and Malibu Legacy Park to the south, Cross Creek Road and existing commercial and industrial development to the east, and a public library and County Superior Court offices to the west.

As part of LCPA 3-08, the City proposes to revise the certified Land Use Plan Map in order to remove the Community Commercial (CC) land use designation from the two parcels in question and to apply "Town Center Overlay (TCO)" as the new land use designation. However, such overlay districts are implementation measures that are more properly incorporated into the LIP portion of the LCP. In fact, there are several existing overlay districts incorporated into the certified Malibu LIP that provide more site-specific provisions with regard to certain development standards (e.g. height limits, side yard setbacks). The overlay districts and associated site-specific regulations are to be part of the Implementation Plan portion of the LCP. No change to the LUP land use maps is required when establishing a new overlay in the IP. The proposed TCO refines the permitted and/or conditionally permitted uses of the site's existing CC land use designation and contains increased specificity in order to accommodate a specific development proposal for the site. The proposed change in the underlying land use

designation to an overlay designation is not necessary and would create an inconsistency in the LCP's existing format for overlay districts. The Commission therefore finds that **Suggested Modification No. 1** is required, which deletes the proposed land use plan map change from CC to TCO. The Commission finds that if modified by the City as suggested, the proposed LUP portion of the LCP amendment remains consistent with Section 30250 of the Coastal Act.

V. 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:

A. LOCAL IMPLEMENTATION PLAN AMENDMENT DESCRIPTION AND BACKGROUND

The City of Malibu's proposed amendment to the LIP portion of the certified Local Coastal Program includes creating a new overlay district (Town Center Overlay District) and applying the use restrictions and development standards of this overlay district to two existing parcels (APN 4458-022-023 and 4458-022-024) in the Civic Center area. The proposed LCPA 3-08 also includes the approval of a Development Agreement, between the City and property owner, that sets forth the terms of the agreement regarding the eventual development of the subject site, including allowable uses, development standards, and maximum allowable floor area ratio (FAR). The development agreement also details the applicant's ability to develop to an increased allowable floor area ratio (FAR) (from 0.15 to 0.20) in conjunction with the applicant's provision of certain public benefits. The proposed amendment text and location maps are attached as **Exhibits 1-5**.

Pursuant to the certified LCP, increasing the FAR to a maximum of 0.20 triggers the need for a planned development or development agreement for the subject parcels to be approved through an LCP amendment certified by the Coastal Commission. Public benefits approved per the Development Agreement by the City of Malibu includes: 1) 2.3 acres to be conveyed to the City of Malibu for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use Infrastructure Construction Fund associated with development of the 2.3-acre parcel; 3) a pedestrian and bike path from City Hall throughout the project connecting to Civic Center Way; 4) Offer-to-Dedicate a public trail easement fronting along Civic Center Way (segment of the planned Malibu Pacific Trail/Coastal Slope Trail); and 5) conceptual architectural plans for the City Hall. However, the City of Malibu has recently indicated to

Commission staff that with the City's purchase of the building the City's government offices currently occupy, a City Hall is no longer being considered for the 2.3-acre area of land to be conveyed to the City pursuant to the development agreement. Rather, another municipal use, to be determined by the City at a later date, is anticipated for the site.

The City's certified LUP encourages and provides for the preparation of a specific plan or other comprehensive plan for the Civic Center area. The City's existing Land Use Plan Map designates the Civic Center area for Community Commercial, General Commercial, and Visitor- Serving Commercial uses. The LCP states that by preparing a Specific Plan for this area, a wider range and mix of uses, development standards, and design guidelines tailored to the unique characteristics of the Civic Center could be provided as a future amendment to the LCP. As such, the LCP specifies that no development shall be approved on any parcel located within the Civic Center Overlay Area, other than improvements to existing uses, for a period of two (2) years commencing September 15, 2002, or until a Specific Plan, or other comprehensive plan encompassing all parcels located within the Civic Center Overlay Area is adopted by the City and certified by the Coastal Commission as an LCP amendment. The Commission had found in its certification of the LCP that requiring a two year period during which no major new development (other than limited exceptions) can take place in the Civic Center to allow for the City and affected property owners to develop a specific plan or comprehensive plan was appropriate because the Civic Center area was identified as a critical commercial area. The Commission found that through an overall plan, a comprehensive set of standards for land use, development design, public improvements, open space and habitat protection/enhancement could be enacted that would provide greater public amenities and visitor services while minimizing adverse impacts on traffic, public access to the beach, and visual qualities of the area.

The LCP also specifies that subsequent to September 15, 2004 (the end of the 2-year period mentioned above), if no Specific Plan, Development Agreement or other Comprehensive Plan has been approved by the Coastal Commission as an LCP amendment, Visitor-Serving Commercial, General Commercial, and Community Commercial uses shall be allowed on individual parcels located in the Civic Center Overlay area, as designated by the Land Use Map, consistent with all policies of the LCP. A maximum floor area ratio (FAR) of 0.15 is permitted, except that the project FAR may be increased to no greater than a maximum of 0.20 FAR if public benefits and amenities, including public open space and habitat restoration or enhancement, are provided and the project site is included as part of a planned development or development agreement for multiple parcels, approved under a LCP amendment certified by the California Coastal Commission.

Since no Specific Plan, Development Agreement or other Comprehensive Plan was ever proposed by the City of Malibu for Commission consideration and the two-year period has long since passed, commercial development may be allowed on individual parcels in the Civic Center area, consistent with the policies of the LCP and the maximum FAR.

The physical development plan of the proposed project is not before the Commission and will be considered by the City in the future in a coastal development permit application. Nonetheless, the project is described here in relation to the floor area ratio increase. The owner of a 15.2-acre vacant property (consisting of two legal parcels) within the City's Civic Center area has requested approval from the City of Malibu for a proposed commercial development with a FAR of 0.20 in conjunction with public benefits and amenities. An FAR of 0.15 at the site would yield 99,117 sq. ft. of commercial floor area. Increasing the FAR to 0.20, as proposed, would yield 132,058 sq. ft. of commercial floor area. With the extra 32,941 sq. ft. of floor area that the increased FAR yields, the applicant proposes to allocate 20,000 sq. ft. to the City for a City Hall or municipal use, and allocate the remaining 12,941 sq. ft. to the proposed commercial development. As such, the net increase in commercial floor area directly benefiting the property owner is 12,941 sq. ft., or approximately ten percent. The development proposed by the property owner consists of re-dividing the site's two existing parcels into three parcels in order to accommodate conveying a 2.3-acre area of the site to the City of Malibu for a City Hall or municipal use. The remaining two parcels, or 12.9 acres of the site, are proposed to be developed with 112,058 sq. ft. of commercial retail and office space. The proposed structures would extend to a maximum of 32 feet in height. Access to the commercial portion of the site is proposed via a central ingress/egress driveway from Civic Center Way. Access to the City Hall portion of the site is proposed via a second access driveway along the project's western boundary. Both surface and subterranean parking is proposed throughout the site, along with pedestrian walkways, plazas, and courtyards to enhance the site's walkability. The development includes a proposed integrated wastewater treatment system with re-use and irrigation elements to serve the proposed commercial development and a future municipal building on the 15.2-acre site. A wastewater management system master plan (WMSMP) has been prepared for the project (Lombardo & Associates, April 1, 2008) that identifies a system of wastewater collection, tertiary treatment, and reuse of treated wastewater for toilet flushing and landscape irrigation. LUP Policy 5.18 and LIP Section 3.8(A)(5)(e) of the Malibu LCP requires that any LCP amendment to provide for a planned development or development agreement shall be subject to a wetland delineation determination prior to approval. The subject properties have been evaluated for presence of wetlands by TeraCor Resource Management in 2007. TeraCor's evaluation concluded that the subject site does not support wetlands.

Development Agreements

California Government Code Sections 65864-65869.5 authorizes any city, county, or city and county, to enter into a development agreement with any person having a legal or equitable interest in real property for the development of property owned by that entity. A development agreement specifies the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. According to Government Code Section 65865.2, the development agreement "...may include conditions, terms, restrictions, and requirements for subsequent discretionary actions,

provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time. The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.” Government Code Section 65866 states further that, ...[u]nless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.”

However, pursuant to Section 65869 “...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.” Since the City of Malibu has a certified local coastal program (LCP), the approval of a development agreement does not require the approval of a coastal development permit by the Commission. Rather, as required by LIP Section 13.28, development agreements are processed as amendments to the LCP. In this case, LCPA 3-08 includes the approval of the La Paz development agreement.

B. NEW DEVELOPMENT, PUBLIC ACCESS, AND SCENIC RESOURCES

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

Coastal Act Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30222

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Coastal Act Section 30250

(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...

Coastal Act Section 30251

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 reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Coastal Act Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

LUP Policies

- 5.4** ***Off-street parking shall be provided for all new development in accordance with the ordinances contained in the LCP to assure there is adequate public access to coastal resources. A modification in the required parking standards through the variance process shall not be approved unless the City makes findings that the provision of fewer parking spaces will not result in adverse impacts to public access.***

- 5.8** ***Pedestrian and bicycle circulation shall be required as part of all new commercial development.***

- 5.12** *Visitor serving retail uses shall be permitted in all commercial zones in the City. Visitor serving retail uses shall fit the character and scale of the surrounding community.*
- 5.15** *No development shall be approved on any parcel located within the Civic Center Overlay Area (LIP Zoning Map 5), other than improvements to existing uses, for a period of two (2) years commencing September 15, 2002, or until a Specific Plan, or other comprehensive plan encompassing all parcels located within the Civic Center Overlay Area is adopted by the City and certified by the Coastal Commission as an LCP amendment.*
- 5.16** *The provisions of Policy 5.15 shall not apply to coastal development permits for uses that are visitor-serving or part of a development agreement approved under a LCP amendment certified by the Coastal Commission. Any coastal development permit approved shall include a wetland delineation for the project site(s).*
- 5.18** *Other than as provided in 5.15 through 5.17 above, subsequent to September 15,2004, if no Specific Plan, Development Agreement or other comprehensive plan has been approved by the Coastal Commission as an LCP amendment, Visitor-Serving Commercial, General Commercial, and Community Commercial uses shall be allowed on individual parcels located in the Civic Center Overlay area, as designated by the Land Use Map, consistent with all policies of the LCP. A maximum FAR of 0.15 is permitted, except that the project FAR may be increased to no greater than a maximum of 0.20 FAR if public benefits and amenities, including public open space and habitat restoration or enhancement, are provided and the project site is included as part of a planned development or development agreement for multiple parcels, approved under a LCP amendment certified by the California Coastal Commission. Any LCP amendment to provide for a planned development or development agreement shall be subject to a wetland delineation determination in accordance with the requirements of Policy 3.81(a) prior to approval.*
- 2.2** *New development shall minimize impacts to public access to and along the shoreline and inland trails. The City shall assure that the recreational needs resulting from proposed development will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and/or development plans with the provision of onsite recreational facilities to serve new development.*
- 2.25** *New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation.*
- 2.29** *Parking facilities for new development of general office or commercial use, which may cumulatively impact public access and recreation, shall be designed to serve not only the development during ordinary working hours, but also public beach parking during weekends and holidays, in conjunction with public transit or shuttle buses serving beach recreational areas.*
- 6.21** *New commercial development within the Civic Center shall be sited and designed to minimize obstruction to the maximum feasible extent of public views of the ridgelines and natural features of the Santa Monica Mountains through measures such as clustering development, and restricting height and bulk of structures.*

Discussion

Land Use Types, Density, and Intensity

In order to ensure that new development is located in areas able to accommodate it and where it will not have significant cumulative impacts on coastal resources, as required by Section 30250 of the Coastal Act and the Malibu LUP, it is necessary for the LCP to designate the appropriate location, density, and intensity for different kinds of development. Such designations must also take into account the requirements of other applicable policies of Chapter 3 of the Coastal Act and the Malibu LUP, including public access, recreation, land and marine resources, and scenic and visual quality.

The LIP portion of the City's amendment request proposes to create a new overlay district (Town Center Overlay District) and to apply the use restrictions and development standards of this overlay district to two existing parcels (APN 4458-022-023 and 4458-022-024) in the Civic Center area. LCPA 3-08 also includes the approval of a Development Agreement, between the City and property owner, to allow an increase in allowable floor area ratio (FAR) from 0.15 to 0.20, if certain public benefits are provided. As discussed in greater detail above, a maximum floor area ratio (FAR) of 0.15 is permitted under the certified LCP, except that the project FAR may be increased to no greater than a maximum of 0.20 FAR if public benefits and amenities are provided and the project site is included as part of a planned development or development agreement for multiple parcels, approved under a LCP amendment certified by the California Coastal Commission.

Although the City has formalized a 0.20 FAR with specific public benefits through a Development Agreement with the property owner for the subject site, the City has chosen to effectuate this in the required LCP amendment by creating a new overlay district with specific, custom development standards and allowable uses. The Development Agreement approved by the City is not incorporated into the proposed LCP amendment language in full. Rather, the proposed new overlay district designation reflects the allowable uses, density, and development standards agreed upon in the Development Agreement.

The new TCO overlay district proposed for the subject parcels in the Malibu Civic Center area is similar to that of the existing underlying Community Commercial zone designation, but has been tailored to accommodate a specific commercial development proposal for the site. Permitted uses and development standards, including heights, lot coverage, setbacks, signage requirements, landscape/open space requirements, and provisions for shared/consolidated parking areas have been customized for the overlay area. The proposed designation refines the permitted and/or conditionally permitted uses of the site's existing CC designation and contains increased specificity in order to accommodate a specific development proposal for the site. The proposed TCO overlay district has been divided into three sub-sections (Parcels A, B, and C) in which each parcel created per a proposed subdivision on the site contains a unique set of permitted uses and development standards. Parcels A and B would be developed with

commercial uses, and Parcel C is the 2.3-acre lot that would be conveyed to the City of Malibu as a public benefit (for a City Hall or municipal use). The three sub-sections are substantially similar; however, there are a few distinctions to note. Parcel A allows for a building height of 32 feet above finished grade, which is 4 feet higher than the City maximum height of 28 feet for pitched or sloped roofs. Parks and playgrounds are a permitted use on Parcels A and C, and a conditionally permitted use on Parcel B. Community Centers, a use currently only allowed in the institutional zone designation, are indicated as an allowable use on Parcel C. Several uses that are permitted in the CC zone are prohibited in the new TCO district (all three sub-sections), including fast food restaurants with drive-thru facilities, liquor stores, adult book stores, and gas stations. Lastly, the new TCO overlay district indicates “onsite and offsite wastewater treatment facilities” as a permitted use for all three sub-sections (Parcels A, B, and C) of the overlay district designation in order to allow for the project’s integrated wastewater treatment system to cross parcel boundaries among Parcels A, B, and C of the overlay district.

The Civic Center is the principle area in the City where the general public and residents visit, and includes retail shops, restaurants, coffee shops and other commercial uses. The proposed overlay district compliments and is consistent with adjacent land uses, and is consistent with the LCP’s vision for the Civic Center area, which is to host commercial activity. However, although the City identified the two parcels (totaling 15.2 acres in area total) to which the proposed TCO District would apply by assessor’s parcel number, it did not adopt an overlay map to be incorporated as part of the LIP. Given the subdivision proposal (to divide the two existing lots into three parcels), it is probable that the assessor parcel numbers that currently apply to the property will change in the future. The other overlay districts applied in the certified LCP are generally associated with a map showing the boundaries of the area wherein the overlay district provisions apply. In order to ensure that the TCO overlay district boundaries are clearly delineated in the LIP, the Commission finds it necessary to require the City to prepare and adopt a TCO overlay map. This is detailed in **Suggested Modification No. 3**.

The Commission finds that only if modified as suggested, is the proposed amendment to the LIP consistent with and adequate to carry out Section 30250 of the Coastal Act, which is incorporated as a policy into the Malibu LUP.

Development Agreement and Public Benefits

The Development Agreement approved by the City is not incorporated into the proposed LCP amendment language in full. Rather, the proposed new land use/zoning designation reflects the allowable uses, density, and development standards agreed upon in the Development Agreement. The public benefits to justify the increased 0.20 FAR, which is the required impetus for the subject LCP amendment request, although detailed in the development agreement, are not specified in the proposed TCO overlay district.

Policy 5.18 of the certified LUP provides that the maximum FAR that can be allowed on individual parcels in the Civic Center area is 0.15, except that the FAR can be increased to a maximum of 0.20 if public benefits and amenities are provided and the site is included as part of a planned development or development agreement. As such, the proposed TCO district with an increased FAR of 0.20 could be considered consistent with Policy 5.18 so long as the overlay requires the provision of the associated public benefits. However, the public benefits are not specified or required as part of the proposed TCO district.

In order to ensure that the public benefits associated with the increased FAR for the subject site are incorporated into the LCP, as required by Policy 5.18 of the LUP, the Commission finds it necessary to require the City to incorporate **Suggested Modification No. 2**, which inserts a summary of the public benefits approved by the City into the new Town Center Overlay District section. The Commission finds that only as modified will the LCPA be in conformity with and adequate to carry out the policies of the certified Land Use Plan.

Public Access

The proposed amendment request to create a new overlay district (Town Center Overlay District) and to apply the use restrictions and development standards of this overlay district to two existing parcels (APN 4458-022-023 and 4458-022-024) in the Civic Center area. As described in detail above, the proposed overlay will allow for a mix of community commercial and municipal land uses, with specific development standards. While the underlying CC zone does not restrict development of the subject parcels to only visitor-serving commercial uses, land uses permitted within the CC zone include those that have consistently been considered by the Commission to be visitor-serving, such as restaurants, stores, etc, as required by Policy 5.4 of the LUP. The permitted uses proposed within the TCO overlay district will continue to include all uses permitted within the underlying CC zone, so the LCPA will result in no change to the potential provision of visitor serving commercial uses.

Section 30211 of the Coastal Act, which is incorporated into the Malibu LUP as a policy, states that development shall not interfere with the public's right of access to the sea. Section 2.2 of the Malibu LUP states that new development shall minimize impacts to public access to and along the shoreline and inland trails. Pacific Coast Highway (PCH) provides the primary regional access to the subject properties and to nearby public parks, including Malibu Lagoon State Park (seaward of the Cross Creek Road and PCH intersection), and Legacy Park (between PCH and Civic Center Way). Access to and around the subject properties from PCH is provided by several roadways, including Cross Creek Road, Civic Center Way, and Webb Way. The proposed Town Center Overlay (TCO) District will accommodate an FAR of 0.20 with the provision of public benefits, as allowed for under the LCP. Thus, the TCO district will not result in an increased commercial development density or intensity beyond what is currently allowed for under the existing LCP. As determined by the City in its environmental review, future commercial development of the subject properties will result in an incremental

increase in traffic in the Civic Center area that will be addressed by the City in their future processing of a Coastal Development Permit for the project. Increased traffic has the potential to impact the public's ability to access the beach and coastal access opportunities. However, in this case, given that the density or intensity of commercial development in the area will not increase beyond what is already allowed in the LCP, the proposed amendment request will not result in any significant adverse impacts to public access and recreation.

Coastal access is generally viewed as an issue of physical supply, and is dependent not only on the provision of lateral access (access along a beach) and vertical access (access from an upland street, bluff or public park to the beach), but also the availability of public parking. In past Commission actions, the Commission has found that the availability of public parking (including on-street parking) constitutes a significant public access and recreation resource and is as important to coastal access as shoreline accessways. Section 30252 of the Coastal Act, incorporated by reference into the Malibu LCP, states, in part, that the location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service and providing adequate parking facilities or providing substitute means of serving the development with public transportation. Policy 2.25 of the LUP requires that new development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation. LUP Policy 2.29 requires that parking facilities for new development of general office or commercial use, which may cumulatively impact public access and recreation, shall be designed to serve not only the development during ordinary working hours, but also public beach parking during weekends and holidays, in conjunction with public transit or shuttle buses serving beach recreational areas. In this case, the proposed TCO District does not change any parking requirements contained in the LCP. The project the TCO district is tailored to includes a total of 609 parking spaces within Parcels A, B, and C. Parking for each site is expected to adequately accommodate all parking needs for project employees and visitors and consistent with the parking requirements of the Malibu LCP. Provision of off-site parking adequate to serve the future development will ensure that the project will not impact on-street parking opportunities in the area that can be used by the public to access the beach or other recreational areas. Further, the incorporation of public pedestrian paths per the Development Agreement and TCO District requirements would enhance public access opportunities in the area and among the nearby public parks (Legacy Park and Malibu Lagoon State Park).

As such, the Commission finds that the proposed LCP amendment is consistent with and adequate to carry out the public access policies of the LUP, including Coastal Act Sections 30211, 30222, and 30252 that are incorporated as policies in the LCP, and LUP Policies 2.2, 2.25 and 2.29.

Visual Resources

Section 30251 of the Coastal Act, which is incorporated into the Malibu LUP as a policy, 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.” Policy 6.21 of the Malibu LUP states that new commercial development within the Civic Center shall be sited and designed to not obstruct public views of the ridgelines and natural features of the Santa Monica Mountains through measures such as clustering development, and restricting height and bulk of structures.

The proposed TCO overlay district would allow the maximum commercial building height of 28 feet for sloped roofs contained in the LCP be increased to 32 feet on Parcel B only of the TCO district. The subject site is visible from various portions of the following public roads: Civic Center Way, Cross Creek Road, and Malibu Canyon Road. However, visibility of the site from designated scenic routes in the vicinity, including Pacific Coast Highway (PCH) and Malibu Canyon Road, is highly limited and obscured by topography, vegetation, and existing commercial development in the Civic Center area. The site is visible from PCH across the Legacy Park site, but development on the site with a maximum of 32-ft. high commercial buildings would not result in the obstruction of any significant public scenic views of the ocean or the Santa Monica Mountains. Therefore, the Commission finds that the proposed height increase for a portion of the commercial development site of the TCO district will not result in the obstruction of public views and is therefore consistent with and adequate to carry out the visual resource policies of the LUP.

Conclusion

In conclusion, as discussed above, the proposed LCPA 3-08 will create a new overlay district that provides specific uses and development standards that will apply to two parcels in the Civic Center area and will approve a development agreement for the future development of a commercial project with an increased FAR that will provide certain public benefits. As discussed above, the Commission finds it necessary to require the City to incorporate two suggested modifications to the proposed LIP amendment, namely to include public benefit requirements of the development agreement as part of the Town Center Overlay District, and to prepare and adopt a Town Center Overlay District Map. If modified as suggested, the Commission finds that the LIP amendment is consistent with all applicable LUP policies, and is adequate to carry out all provisions of the LUP.

VI. 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. 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.

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

November 10, 2008

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
4458-022-023 & 4458-022-024	3700 La Paz Lane	Community Commercial (CC)	Town Center Overlay (TCO)

2. Local Implementation Plan

2.1 Chapter 3 (Zoning Designations and Permitted Uses) is hereby amended to include Subsection 3.4.3 (Town Center Overlay District) as follows:

Chapter 3.4.3 – CUSTOM DEVELOPMENT CRITERIA (COMMERCIAL)

A. Purpose.

The Overlay meets the intent of LUP Policy 5.17 to provide specific development criteria for parcels within the Civic Center Area. These include land use designations and permitted uses; maximum density and intensity standards, including floor area ratios for commercial use not to exceed the maximum floor area ratio currently allowed pursuant to the LUP where public benefits and amenities are provided as part of the project; development standards, including heights, lot coverage, setbacks, and open space requirements; and provisions for shared or consolidated parking areas.

B. Description of Area Subject to LIP Section 3.4.3.

The provisions of this chapter shall apply to the 15.2 acre site currently identified as Los Angeles County Assessor Parcel Numbers 4458-022-023 and 4458-022-024. The site, currently addressed as 3700 La Paz Lane, is surrounded by a largely undeveloped hillside to the northwest, a single-family residence to the northeast, vacant land directly to the east, commercial uses the future Malibu Legacy Park site across Civic Center Way to the south and the Los Angeles County government building complex to the west as indicated on the Overlay Map.

C. Applicability.

These implementing measures establish the specific uses and development standards for the commercial development of the site. The Overlay will help guide development toward a "town center" that is geographically centrally located, that provides interdependent uses thereby minimizing trips and enhances the existing civic center uses and permanently establishes a City Hall in the Civic Center.

Where any policy or standard provided in this chapter conflicts with any other policy or standard contained in the City's General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the Town Center Overlay and other plan, resolution or ordinance, the policies, standards or provisions contained herein shall govern.

D. Development Standards.

Town Center Overlay District

1. La Paz Site: Parcel A

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel A Post Lot Line Adjustment."

- a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel A:
 - i. All uses permitted within the Community Commercial zoning district
 - ii. Post offices operated by the Federal Government
 - iii. Offices
 - iv. Medical offices
 - v. Onsite or offsite wastewater treatment facilities
 - vi. Parks and playgrounds
 - vii. Special events for public congregation or entertainment, which are temporary in nature
 - viii. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.
- b. Prohibited Uses. The following uses are specifically prohibited:
 - i. Fast food restaurants with drive-thru facilities
 - ii. Liquor stores (stand alone)
 - iii. Adult book stores
 - iv. Hazardous waste facilities
 - v. Gas stations
- c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Code:
 - i. Restaurants
 - ii. Cocktail lounges, ancillary to restaurant use
 - iii. Cultural and artistic uses (museums, galleries, and performing arts studios)
 - iv. Live entertainment scheduled to occur after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
 - iv. Nursery schools and day care facilities
 - v. Veterinary hospitals
 - vi. Churches, temples, mosques and other places of worship

- vii. Hand car washing and detailing
- viii. Wireless telecommunications antennae and facilities
- ix. Emergency communication and service facilities

d. Development Standards

Maximum Floor Area Ratio (F.A.R)	.20 cumulative maximum F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	10% of average lot depth
Minimum Rear Yard Setback	15% of average lot depth
Minimum Side Yard Setback	10% of average lot width
Minimum Side Yard Setback (Cumulative)	25% of avg lot width
Maximum Building Height	32' from finished grade for Buildings 5 and 6; 28' from finished grade for all other buildings
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	2,000 cubic yards of grading per acre excluding all exempt and remedial grading
Parking Requirements	1 space/ 250 square feet of office 1 space/ 200 square feet of retail/ restaurant – shopping center
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with LIP Section 3.12.4.
Monument Sign and General Sign Requirements	<p>Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section:</p> <p>The provisions of LIP Section 3.13.6.A.7 shall not apply.</p> <p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>

2. La Paz Site: Parcel B

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel B Post Lot Line Adjustment."

a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel B:

- i. All uses permitted within the Community Commercial zoning district
- ii. Post offices operated by the Federal Government
- iii. Offices
- iv. Medical offices
- v. Onsite or offsite wastewater treatment facilities
- vi. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.

b. Prohibited Uses. The following uses are specifically prohibited:

- i. Fast food restaurants with drive-thru facilities
- ii. Liquor stores (stand alone)
- iii. Adult book stores
- vi. Hazardous waste facilities
- vii. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Code:

- i. Cultural and artistic uses, such as museums, galleries, and performing arts
- ii. Live entertainment that occurs after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iii. Nursery schools and day care facilities
- iv. Veterinary hospitals
- v. Churches, temples, mosques and other places of worship
- vi. Hand car washing and detailing
- vii. Wireless telecommunications antennae and facilities
- viii. Emergency communication and service facilities
- ix. Parks and playgrounds
- x. Special events for public congregation or entertainment, which are temporary in nature

d. Development Standards

Average Lot Width (minimum required)	238 feet
Average Lot Depth (minimum required)	500 feet
Maximum Floor Area Ratio (F.A.R)	.20 cumulative maximum F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	20% of average lot depth
Minimum Rear Yard Setback	15% of average lot depth
Minimum Side Yard Setback	10% of average lot width
Minimum Side Yard Setback (Cumulative)	25% of average lot width
Maximum Building Height	28 feet from finished grade
Maximum Perimeter Wall Height	10 feet from average grade
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B,

	and C
Maximum Grading	2,500 cubic yards per acre excluding all exempt and remedial grading
Parking Requirements	1 space/250 square feet. of office 1 space/200 square feet of retail/ restaurant – shopping center
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with LIP Section 3.12.4.
Monument Sign	<p>Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section:</p> <p>The provisions of LIP Section 3.13.6.A.7 shall not apply.</p> <p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>

3. La Paz Site: Parcel C

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel C Post Lot Line Adjustment":

- a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel C:
- i. All uses permitted within the Community Commercial zoning district
 - ii. Post offices operated by the Federal Government
 - iii. Offices
 - iv. Medical offices
 - v. Onsite or offsite wastewater treatment facilities
 - vi. Community centers
 - vii. Parks and playgrounds
 - viii. Special events for public congregation or entertainment, which are temporary in nature
 - ix. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.
- b. Prohibited Uses. The following uses are specifically prohibited:

- i. Fast food restaurants with drive-thru facilities
- ii. Liquor stores (stand alone)
- iii. Adult book Stores
- iv. Hazardous waste facilities
- v. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Ordinance:

- i. Restaurants
- ii. Cocktail lounges, ancillary to restaurant use
- iii. Cultural and artistic uses, such as museums, galleries, and performing arts studios
- iv. Live entertainment that occurs after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iv. Nursery schools and day care facilities
- v. Veterinary hospitals
- vi. Churches, temples, mosques and other places of worship
- vii. Hand car washing and detailing
- viii. Wireless telecommunications antennae and facilities
- ix. Emergency communication and service facilities

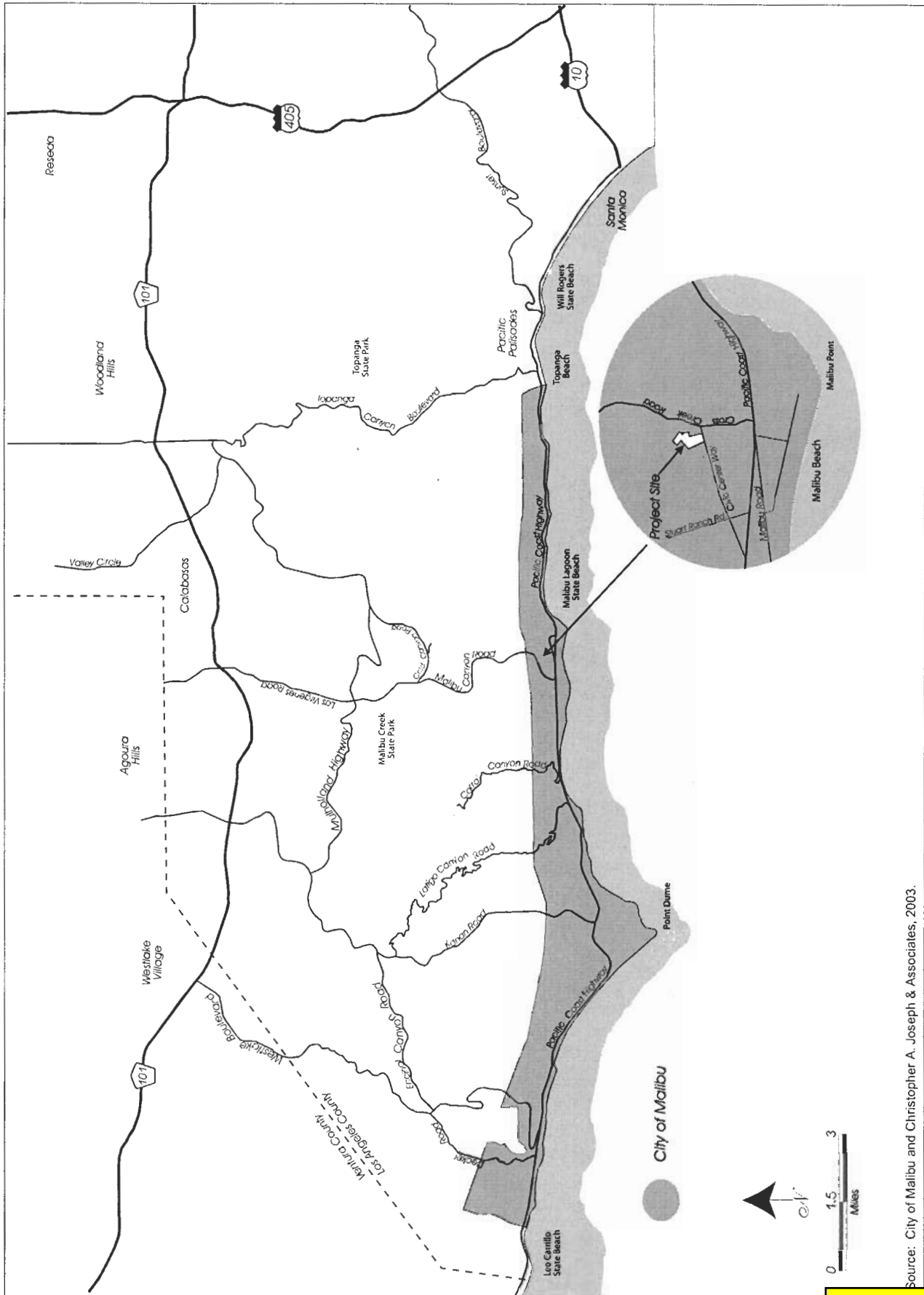
d. Development Standards

Minimum Lot Size	2.3 acres
Average Lot Width (minimum required)	350 feet
Average Lot Depth (minimum required)	141 feet
Maximum Floor Area Ratio (F.A.R)	.20 cumulative max F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	10% of average lot depth
Minimum Rear Yard Setback	9% of average lot depth.
Minimum Side Yard Setback	10% of average lot width.
Minimum Side Yard Setback (Cumulative)	25% of average lot width
Maximum Building Height	28 feet from finished grade
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	3,000 cubic yards per acre excluding all exempt and remedial grading.
Structures Sited on Slopes	Structures may be sited on slopes as great as, but no greater than, 1:1
Parking Requirements	Government facility/offices (1 space/250 square feet) Council Chamber is a reciprocal/conjunctive use, no additional parking required
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with the Zoning Code.
Monument Sign	Monument Signs shall be permitted in

	<p>accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section:</p> <p>The provisions of LIP Section 3.13.6.A.7 shall not apply.</p> <p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>
--	---

2.2 LIP Zoning Maps

APN	Address	Current Zoning	Proposed Zoning
4458-022-023 & 4458-022-024	3700 La Paz Lane	Community Commercial (CC)	Town Center Overlay (TCO)

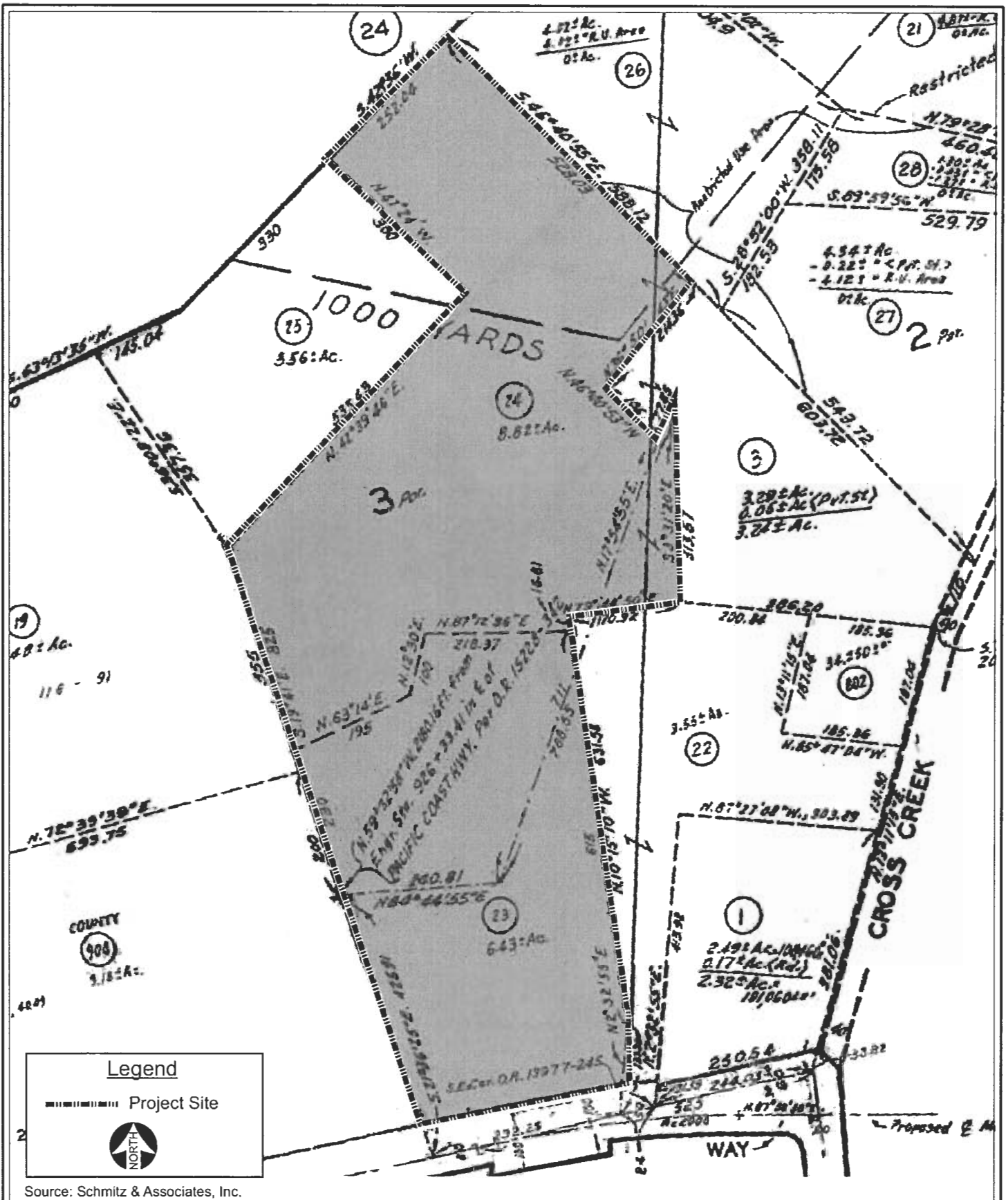


Source: City of Malibu and Christopher A. Joseph & Associates, 2003.

CHRISTOPHER A. JOSEPH & ASSOCIATES
 Environmental Planning and Research

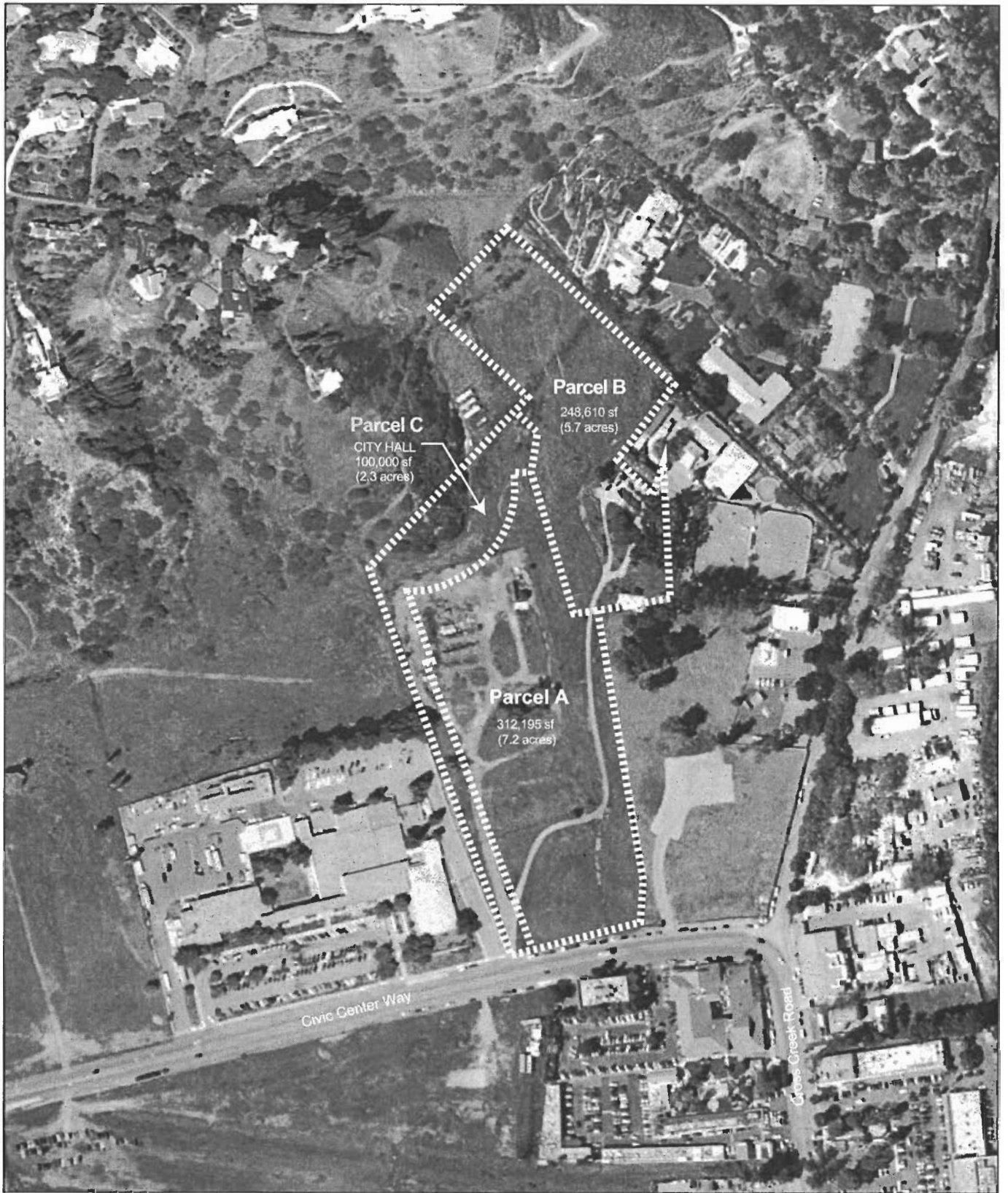
Figure III-1
Project Location Map

Exhibit 2
 Malibu LCPA MAJ- 3-08
 Vicinity Map



CHRISTOPHER A. JOSEPH & ASSOCIATES
 Environmental Planning and Research

Exhibit 3
 Malibu LCPA MAJ- 3-08
 Parcel Map



Source: Aerial Photograph by I.K. Curtis, Services Inc., 2003. Approx. boundary overlay by CAJA, per 10/04/04 Site Plan (1-CR) by Daniel Chudnovsky, A.J.A. Architects, Inc.



CHRISTOPHER A. JOSEPH & ASSOCIATES
Environmental Planning and Research



Approx. Scale
1" = 300'

Prop

Exhibit 4
Malibu LCPA MAJ- 3-08
Aerial View of Subject Parcels

PARCEL "A"

PROJECT DATA

TOTAL LOT AREA	312,185 SQ FT	LANDSCAPE AREA PROVIDED	129,879 SQ FT
1. LANDSCAPE AREA REQUIRED (10% x LOT)	31,219 SQ FT	LANDSCAPE AREA ACTUAL TOTAL	129,879 SQ FT
2. OPEN SPACE AREA REQUIRED (25% x LOT)	78,046 SQ FT	OPEN SPACE PROVIDED	129,879 SQ FT
3. MAX IMPERMEABLE AREA (35% x LOT AREA)	109,265 SQ FT	TOTAL IMPERMEABLE AREA	109,265 SQ FT

PARCEL "B"

PROJECT DATA

TOTAL LOT AREA	288,613 SQ FT	LANDSCAPE AREA PROVIDED	99,844 SQ FT
1. LANDSCAPE AREA REQUIRED (10% x LOT)	28,861 SQ FT	LANDSCAPE AREA ACTUAL TOTAL	129,879 SQ FT
2. OPEN SPACE AREA REQUIRED (25% x LOT)	72,153 SQ FT	OPEN SPACE PROVIDED	129,879 SQ FT
3. MAX IMPERMEABLE AREA (35% x LOT AREA)	101,015 SQ FT	TOTAL IMPERMEABLE AREA	101,015 SQ FT

PARCEL "C"

PROJECT DATA

TOTAL LOT AREA	100,000 SQ FT	LANDSCAPE AREA PROVIDED	40,000 SQ FT
1. LANDSCAPE AREA REQUIRED (10% x LOT)	10,000 SQ FT	LANDSCAPE AREA ACTUAL TOTAL	40,000 SQ FT
2. OPEN SPACE AREA REQUIRED (25% x LOT)	25,000 SQ FT	OPEN SPACE PROVIDED	40,000 SQ FT
3. MAX IMPERMEABLE AREA (35% x LOT AREA)	35,000 SQ FT	TOTAL IMPERMEABLE AREA	35,000 SQ FT

BUILDING AREAS PARCEL A

FLOOR	RETAIL (SQ FT)	OFFICE (SQ FT)	TOTAL
1	8,200 GSF		8,200 GSF
2	4,000 GSF		4,000 GSF
3	12,248 GSF		12,248 GSF
4	10,240 GSF		10,240 GSF
5	10,378 GSF	7,540 GSF	17,918 GSF
6	10,378 GSF	7,540 GSF	17,918 GSF
7	402 GSF		402 GSF

SUB TOTAL (PARCEL A) 89,986 GSF

BUILDING AREAS PARCEL B

8	2,784 GSF		2,784 GSF
9	2,883 GSF		2,883 GSF
10	5,177 GSF (OFFICE)	3,881 SF	9,058 GSF
11	2,156 GSF (OFFICE)	1,738 SF	3,894 GSF

SUB TOTAL (PARCEL B) 43,061 GSF

CITY HALL (PARCEL C)

FLOOR	BLDG.	PLANNING / PUBLIC WORKS DEPARTMENTS	PARMS & REG. / CLERK / ADMIN / CITY MANAGER / CITY COUNCIL	COUNCIL ROOM	TOTAL
1		7,588 GSF			7,588 GSF
2		2,900 GSF			2,900 GSF
3			3,701 GSF		3,701 GSF

SUB TOTAL (PARCEL C) 14,189 GSF

MAX GROUND FLOOR AREA 246,000 SF (TOTAL SITE AREA) 11.1

F.A.R. = 25% LOT AREA

TOTAL FLOOR AREA PROVIDED (PARCELS A, B & C) 61 SF

54 SF

PARKING

PARKING REQUIRED (BASED ON MAX G.S.F.)

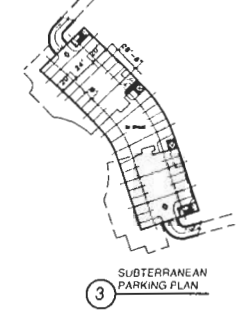
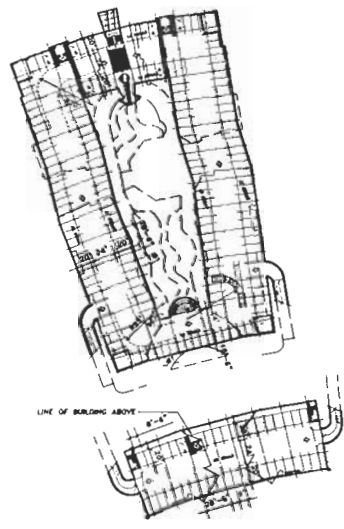
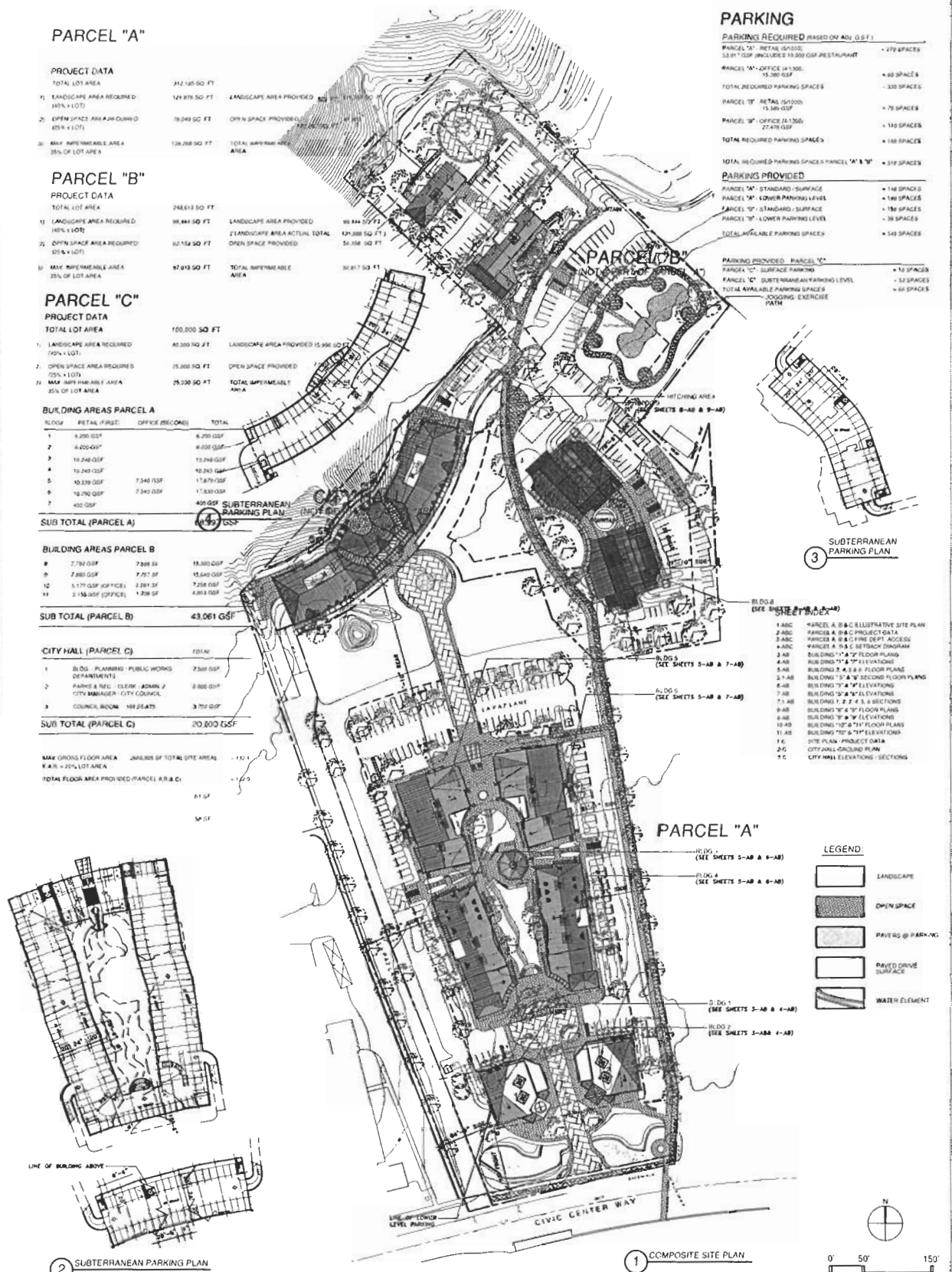
PARCEL "A" RETAIL (8,200 GSF)	270 SPACES
53 SF GSF INCLUDES 19,000 GSF RESTAURANT	
PARCEL "A" OFFICE (41,300 GSF)	45 SPACES
15,300 GSF	
TOTAL REQUIRED PARKING SPACES	325 SPACES
PARCEL "B" RETAIL (51,000 GSF)	75 SPACES
15,300 GSF	
PARCEL "C" OFFICE (14,189 GSF)	169 SPACES
27,478 GSF	
TOTAL REQUIRED PARKING SPACES	148 SPACES
TOTAL REQUIRED PARKING SPACES PARCELS "A" & "B"	319 SPACES

PARKING PROVIDED

PARCEL "A" STANDARD SURFACE	148 SPACES
PARCEL "B" LOWER PARKING LEVEL	180 SPACES
PARCEL "C" STANDARD SURFACE	180 SPACES
PARCEL "C" LOWER PARKING LEVEL	38 SPACES
TOTAL AVAILABLE PARKING SPACES	546 SPACES

PARKING PROVIDED - PARCEL "C"

PARCEL "C" SURFACE PARKING	10 SPACES
PARCEL "C" SUBTERRANEAN PARKING LEVEL	52 SPACES
TOTAL AVAILABLE PARKING SPACES	62 SPACES
- WALKING EXERCISE PATH	



LEGEND

- LANDSCAPE
- OPEN SPACE
- PAVING @ PARKING
- PAVED DRIVE SURFACE
- WATER ELEMENT

LEGEND

- 1. ABC PARCELS A, B & C ILLUSTRATIVE SITE PLAN
- 2. ABC PARCELS A, B & C PROJECT DATA
- 3. ABC PARCELS A, B & C FIRE DEPT. ACCESS
- 4. ABC PARCELS A, B & C SETBACK DIAGRAM
- 5. ABC BUILDING "1" A-D FLOOR PLANS
- 6. ABC BUILDING "1" E & "2" ELEVATIONS
- 7. ABC BUILDING "2" A, B & C FLOOR PLANS
- 8. ABC BUILDING "2" E & "3" ELEVATIONS
- 9. ABC BUILDING "3" A, B & C FLOOR PLANS
- 10. ABC BUILDING "3" E & "4" ELEVATIONS
- 11. ABC BUILDING "4" A, B & C FLOOR PLANS
- 12. ABC BUILDING "4" E & "5" ELEVATIONS
- 13. ABC BUILDING "5" A, B & C FLOOR PLANS
- 14. ABC BUILDING "5" E & "6" ELEVATIONS
- 15. ABC BUILDING "6" A, B & C FLOOR PLANS
- 16. ABC BUILDING "6" E & "7" ELEVATIONS
- 17. ABC BUILDING "7" A, B & C FLOOR PLANS
- 18. ABC BUILDING "7" E & "8" ELEVATIONS
- 19. ABC BUILDING "8" A, B & C FLOOR PLANS
- 20. ABC BUILDING "8" E & "9" ELEVATIONS
- 21. ABC BUILDING "9" A, B & C FLOOR PLANS
- 22. ABC BUILDING "9" E & "10" ELEVATIONS
- 23. ABC BUILDING "10" A, B & C FLOOR PLANS
- 24. ABC BUILDING "10" E & "11" ELEVATIONS
- 25. ABC SITE PLAN - PROJECT DATA
- 26. ABC CITY HALL - GROUND FLOOR PLAN
- 27. ABC CITY HALL - ELEVATIONS / SECTIONS

Note: The Proposed Wastewater Collection, Treatment, and Reuse System is not shown on this Site Plan. Please refer to Figures IV-2 and IV-3 for illustrations of this proposed System.

Source: Daniel Chudnovsky & Associates, Inc., October 22, 2007

**California Coastal Commission
Ex Parte Declaration**

Subject: City of Malibu LCP Amendment No. MAJ-3-08 (Malibu La Paz Ranch)

Project Description: On December 31, 2008, the City of Malibu submitted an amendment to the Land Use Plan and Implementation Plan portions of its certified Local Coastal Program (LCP). The amendment proposes to create a Town Center Overlay zone with specific development standards and a Development Agreement for development of two Community Commercial-zoned parcels located in Malibu's Civic Center area.

Agent: Donald W. Schmitz, II of Schmitz & Associates, Inc.

Project Site/Property Address: 3700 La Paz Lane, Malibu, CA

On Thursday, February 11, 2010, I, Commissioner Bonnie Neely, had ex parte communication with Donald W. Schmitz, II, agent of Malibu La Paz Ranch of the above-referenced project. We discussed:

- the proposed La Paz project scope (including how the 0.20 FAR project was substantially similar to the 0.15 FAR project already approved by the City of Malibu);
- the green aspects of the project;
- the architectural design modeled after Malibu's historical Adamson House;
- the proposed Title 22 no net discharge wastewater treatment system;
- the outcome of the recent decision on the related Santa Monica Baykeeper v. City of Malibu case wherein the Court dismissed the Baykeeper's lawsuit challenging the City's approval of the La Paz EIR.


Commissioner Bonnie Neely

2-16-10
February 16, 2010

RECEIVED
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Exhibit 6
Malibu LCPA MAJ- 3-08
Commissioner Ex Parte
Communications

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ORDINANCE NO. 329

AN ORDINANCE OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 TO INCLUDE LAND USE AND DEVELOPMENT STANDARDS FOR A TOWN CENTER OVERLAY DISTRICT, AMENDING THE LAND USE MAP AND MAKE COROLLARY AMENDMENTS TO THE ZONING MAP AND ZONING CODE

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

Section 1. Recitals.

A. The history of this Local Coastal Program (LCP) amendment is set forth in the recitals of Resolution No. 08-52, in which the City Council approved the Development Agreement and Coastal Development Permit and associated entitlements, subject to certification by the Coastal Commission.

B. At the November 10, 2008, public hearing, the Council heard and considered the evidence and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendations of the Planning Commission and the Environmental Review Board.

Section 2. Environmental Review.

Pursuant to Public Resources Code Sections 21080.5 and 21080.9, the City is not required to undertake a complete California Environmental Quality Act (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 an Environmental Impact Report (EIR) in connection with the project which includes an analysis of Local Coastal Program Amendment (LCPA) No. 06-003.

Section 3. Local Coastal Program Amendment No. 06-003.

LCP Amendment No. 06-003 includes an amendment to the certified Local Coastal Program Local Implementation Plan, Land Use Map, and corollary amendments to the General Plan and the Zoning Code and Zoning Map. Amendments to the LIP are identified in Section 4 of this ordinance and changes to the LUP are identified in City Council Resolution No. 08-52.

Section 4. Local Coastal Program Local Implementation Plan Amendments.

A. Chapter 3 (Zoning Designations and Permitted Uses) is hereby amended to include Subsection 3.4.3 (Town Center Overlay District) as follows:

Chapter 3.4.3 – CUSTOM DEVELOPMENT CRITERIA (COMMERCIAL)

A. Purpose.

The Overlay meets the intent of LUP Policy 5.17 to provide specific development criteria for parcels within the Civic Center Area. These include land use designations and permitted uses; maximum density and intensity standards, including floor area ratios for commercial use not to exceed the maximum floor area ratio currently allowed pursuant to the LUP where public benefits and amenities are provided as part of the project; development standards, including heights, lot coverage, setbacks, and open space requirements; and provisions for shared or consolidated parking areas.

B. Description of Area Subject to LIP Section 3.4.3.

The provisions of this chapter shall apply to the 15.2 acre site currently identified as Los Angeles County Assessor Parcel Numbers 4458-022-023 and 4458-022-024. The site, currently addressed as 3700 La Paz Lane, is surrounded by a largely undeveloped hillside to the northwest, a single-family residence to the northeast, vacant land directly to the east, commercial uses the future Malibu Legacy Park site across Civic Center Way to the south and the Los Angeles County government building complex to the west as indicated on the Overlay Map.

C. Applicability.

These implementing measures establish the specific uses and development standards for the commercial development of the site. The Overlay will help guide development toward a “town center” that is geographically centrally located, that provides interdependent uses thereby minimizing trips and enhances the existing civic center uses and permanently establishes a City Hall in the Civic Center.

Where any policy or standard provided in this chapter conflicts with any other policy or standard contained in the City’s General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the Town Center Overlay and other plan, resolution or ordinance, the policies, standards or provisions contained herein shall govern.

D. Development Standards.**Town Center Overlay District****1. La Paz Site: Parcel A**

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel A Post Lot Line Adjustment."

a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel A:

- i. All uses permitted within the Community Commercial zoning district
- ii. Post offices operated by the Federal Government
- iii. Offices
- iv. Medical offices
- v. Onsite or offsite wastewater treatment facilities
- vi. Parks and playgrounds
- vii. Special events for public congregation or entertainment, which are temporary in nature
- viii. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.

b. Prohibited Uses. The following uses are specifically prohibited:

- i. Fast food restaurants with drive-thru facilities
- ii. Liquor stores (stand alone)
- iii. Adult book stores
- iv. Hazardous waste facilities
- v. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Code:

- i. Restaurants
- ii. Cocktail lounges, ancillary to restaurant use
- iii. Cultural and artistic uses (museums, galleries, and performing arts studios)
- iv. Live entertainment scheduled to occur after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iv. Nursery schools and day care facilities
- v. Veterinary hospitals
- vi. Churches, temples, mosques and other places of worship
- vii. Hand car washing and detailing

- viii. Wireless telecommunications antennae and facilities
 ix. Emergency communication and service facilities

d. Development Standards

Maximum Floor Area Ratio (F.A.R)	.20 cumulative maximum F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	10% of average lot depth
Minimum Rear Yard Setback	15% of average lot depth
Minimum Side Yard Setback	10% of average lot width
Minimum Side Yard Setback (Cumulative)	25% of avg lot width
Maximum Building Height	32' from finished grade for Buildings 5 and 6; 28' from finished grade for all other buildings
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	2,000 cubic yards of grading per acre excluding all exempt and remedial grading
Parking Requirements	1 space/ 250 square feet of office 1 space/ 200 square feet of retail/ restaurant – shopping center
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with LIP Section 3.12.4.
Monument Sign and General Sign Requirements	<p>Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section:</p> <p>The provisions of LIP Section 3.13.6.A.7 shall not apply.</p> <p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements</p>

	<p>from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>
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2. La Paz Site: Parcel B

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel B Post Lot Line Adjustment."

a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel B:

- i. All uses permitted within the Community Commercial zoning district
- ii. Post offices operated by the Federal Government
- iii. Offices
- iv. Medical offices
- v. Onsite or offsite wastewater treatment facilities
- vi. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.

b. Prohibited Uses. The following uses are specifically prohibited:

- i. Fast food restaurants with drive-thru facilities
- ii. Liquor stores (stand alone)
- iii. Adult book stores
- vi. Hazardous waste facilities
- vii. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Code:

- i. Cultural and artistic uses, such as museums, galleries, and performing arts
- ii. Live entertainment that occurs after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iii. Nursery schools and day care facilities
- iv. Veterinary hospitals

- v. Churches, temples, mosques and other places of worship
- vi. Hand car washing and detailing
- vii. Wireless telecommunications antennae and facilities
- viii. Emergency communication and service facilities
- ix. Parks and playgrounds
- x. Special events for public congregation or entertainment, which are temporary in nature

d. Development Standards

Average Lot Width (minimum required)	238 feet
Average Lot Depth (minimum required)	500 feet
Maximum Floor Area Ratio (F.A.R)	.20 cumulative maximum F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	20% of average lot depth
Minimum Rear Yard Setback	15% of average lot depth
Minimum Side Yard Setback	10% of average lot width
Minimum Side Yard Setback (Cumulative)	25% of average lot width
Maximum Building Height	28 feet from finished grade
Maximum Perimeter Wall Height	10 feet from average grade
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	2,500 cubic yards per acre excluding all exempt and remedial grading
Parking Requirements	1 space/250 square feet. of office 1 space/200 square feet of retail/ restaurant – shopping center
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with LIP Section 3.12.4.
Monument Sign	Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section: The provisions of LIP Section 3.13.6.A.7 shall not apply.

	<p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>
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3. La Paz Site: Parcel C

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel C Post Lot Line Adjustment":

a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel C:

- i. All uses permitted within the Community Commercial zoning district
- ii. Post offices operated by the Federal Government
- iii. Offices
- iv. Medical offices
- v. Onsite or offsite wastewater treatment facilities
- vi. Community centers
- vii. Parks and playgrounds
- viii. Special events for public congregation or entertainment, which are temporary in nature
- ix. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.

b. Prohibited Uses. The following uses are specifically prohibited:

- i. Fast food restaurants with drive-thru facilities
- ii. Liquor stores (stand alone)
- iii. Adult book Stores
- iv. Hazardous waste facilities

v. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Ordinance:

- i. Restaurants
- ii. Cocktail lounges, ancillary to restaurant use
- iii. Cultural and artistic uses, such as museums, galleries, and performing arts studios
- iv. Live entertainment that occurs after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iv. Nursery schools and day care facilities
- v. Veterinary hospitals
- vi. Churches, temples, mosques and other places of worship
- vii. Hand car washing and detailing
- viii. Wireless telecommunications antennae and facilities
- ix. Emergency communication and service facilities

d. Development Standards

Minimum Lot Size	2.3 acres
Average Lot Width (minimum required)	350 feet
Average Lot Depth (minimum required)	141 feet
Maximum Floor Area Ratio (F.A.R)	.20 cumulative max F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	10% of average lot depth
Minimum Rear Yard Setback	9% of average lot depth.
Minimum Side Yard Setback	10% of average lot width.
Minimum Side Yard Setback (Cumulative)	25% of average lot width
Maximum Building Height	28 feet from finished grade
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	3,000 cubic yards per acre excluding all exempt and remedial grading.
Structures Sited on Slopes	Structures may be sited on slopes as great as, but no greater than, 1:1
Parking Requirements	Government facility/offices (1 space/250 square feet)

	Council Chamber is a reciprocal/conjunctive use, no additional parking required
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with the Zoning Code.
Monument Sign	<p>Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section:</p> <p>The provisions of LIP Section 3.13.6.A.7 shall not apply.</p> <p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>

Section 5. Local Coastal Program Amendment Findings.

In order to amend the LCP, the City Council must make the finding listed below.

Finding A. The text amendment to the Land Use Plan and Land Use Implementation Plan is consistent with Chapter 3 of the Coastal Act.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas.

The City Council hereby finds that the proposed LCP text amendment (which includes a DA and associated development standards for the DA .20 Project described above as required by LIP Section 3.8.5), does not impede public access to the beach or coastal resources in any way or disrupt environmentally sensitive habitat areas as the related proposed development is located inland in the commercially zoned Civic Center Area on a site that is not designated as Environmentally Sensitive Habitat Area. Therefore, the overall text amendment is consistent with Chapter 3 of the Coastal Act.

Section 6. Zoning Text Amendment No. 07-002.

Subject to the contingency of Section 11, Malibu Municipal Code (M.M.C.) Title 17 (Zoning), Section 42.020 (Overlay Districts), is hereby amended to include Subsection 17.42.020.J (Town Center Overlay) and associated development standards as prescribed in Section 4 with the corollary numerical changes in M.M.C.

Section 7. Finding for Zoning Text Amendment.

The City Council hereby finds that the Zoning Text amendment is necessary for the proposed LCP amendment and recommends that the City Council approve zoning text amendment only if it approves the LCP amendment and on the condition that the zoning text amendment only take effect if the LCP amendment is certified by the California Coastal Commission. Pursuant to M.M.C. Section 17.74.040, the City Council further finds that the subject zoning text amendments are consistent with the objectives, policies, and general land uses in the General Plan, as amended by the LCP amendment. The zoning text amendments will allow the text of the M.M.C. to be amended consistent with the amended LCP and is only corollary of that action.

Section 8. Zoning Map Amendment No. 07-002.

Subject to the contingency of Section 11, the City of Malibu Zoning Map is hereby amended to include the Town Center Overlay over the parcels currently zoned Community Commercial and identified as Assessor Parcel Numbers 4458-022-023 and 4458-022-024.

Section 9. Finding for Zoning Text and Zoning Map Amendment.

The City Council hereby finds that the zoning map amendment is necessary for the proposed LCP amendment and recommends that the City Council approve the zoning map amendment only if it approves the LCP amendment and on the condition that the zoning map amendment only take effect if the LCP amendment is certified by the California Coastal Commission. Pursuant to M.M.C. Section 17.74.050(E), the City Council further finds that the zoning map amendment is consistent with the objectives, policies and general land uses in the General Plan,

as amended by the LCP amendment. The zoning map amendments will allow the M.M.C. to be amended and be consistent with the amended LCP zoning map and is only a corollary of that action.

Section 10. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit DA No. 07-001 and LCPA No. 07-001 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 11. Effectiveness.

The LCP amendments, zoning code amendments and zoning map amendments approved in this ordinance shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 12. Certification.

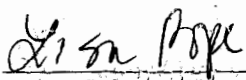
The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 24th day of November 2008.

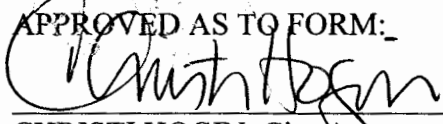


PAMELA CONLEY ULICH, Mayor

ATTEST:



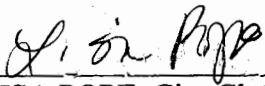
LISA FOPE, City clerk
(seal)

APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 329 was passed and adopted at the regular City Council meeting of November 24, 2008, by the following vote:

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



LISA POPE, City Clerk
(seal)

PL

ORDINANCE NO. 330

AN ORDINANCE OF THE CITY OF MALIBU APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MALIBU AND MALIBU LA PAZ RANCH, LLC

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

Section 1. The City of Malibu and Malibu La Paz Ranch, LLC (“La Paz”) desire to enter into a development agreement pursuant to Government Code Sections 65864 through 65869.5 and Chapter 17.64 of the Malibu Municipal Code with respect to a parcel of real property located in the City of Malibu and more particularly described in the Development Agreement attached hereto as Exhibit A and incorporated herein by reference (“Development Agreement”).

Section 2. La Paz applied for approval of a development agreement and associated entitlements on February 17, 2000 and amended the application on June 21, 2005. The history of the project applications is set forth in City Council Resolution No. 08-51, certifying the Environmental Impact Report (EIR) for this project.

Section 3. At the November 10, 2008, public hearing, the Council heard and considered all testimony and arguments of all persons desiring to be heard and the Council considered all factors relating to the development agreement and associated entitlements, including, but not limited to, the recommendation from the Planning Commission.

Section 4. In accordance with the California Environmental Quality Act, an EIR was prepared by the City and circulated for public comment. The EIR provided information regarding potential adverse environmental impacts of the project, mitigation measures, and alternatives. The City Council has certified the EIR and adopted the Statements of Findings and Facts in support of findings and Statement of Overriding Considerations, and approved the Mitigation Monitoring and Reporting Program. The Final EIR for La Paz development and associated entitlements is complete and adequate for the consideration of the Development Agreement.

Section 5. Based upon substantial evidence in the record of the proceedings, including, without limitation, the written and oral staff reports, the Final EIR, the General Plan, the Local Coastal Program, and the documentary record and testimony before the Planning Commission and the City Council, the City Council finds that the proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the City’s General Plan and Local Coastal Program (LCP), the proposed Development Agreement complies with the City’s zoning, subdivision, and other applicable ordinances and regulations, and the proposed Development Agreement is in conformity with the public necessity, public convenience, general welfare, and good land use practices.

Exhibit 8
Malibu LCPA MAJ- 3-08
City of Malibu Ordinance
No. 330 Approving
Development Agreement

Section 6. The proposed Development Agreement is consistent with the public convenience, general welfare and good land use practice, making it in the public interest to enter into the Development Agreement with the applicant. The Development Agreement provides for the orderly development of two parcels of property within the City's Civic Center, in a comprehensive planned development. The Development Agreement ensures that the project can be developed over time in its approved form, and in exchange for the rights conferred in the Development Agreement, that the applicant will provide substantial public benefits to the City as a part of the development.

Section 7. Taking into account all of the conditions of approval that have been applied to the project, the City Council further finds that the Development Agreement:

- A. will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding areas, since the various elements of the projects are in keeping with the character and general development patterns of the surrounding areas;
- B. will not be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, since the proposed improvements are consistent with and will enhance their surroundings with high quality development, and will provide additional public infrastructure and public benefits; and
- C. will not jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare, as the projects are adequately conditioned to mitigate impacts, will comply with all applicable codes and will provide public safety and health improvements.

Section 8. The proposed Development Agreement complies with and contains the elements prescribed in the terms, conditions, restrictions, and requirements of Section 17.64.050 of the Malibu Municipal Code. Pursuant to Section 17.64.050, the Development Agreement and the project entitlements provide for a duration of the Agreement, uses permitted on the affected parcels of property, permitted density, maximum height, size and location of buildings, reservation of land for public purposes and special benefits that would not otherwise be provided by the applicant in the absence of an agreement.

Section 9. Based upon the foregoing, the City Council hereby approves the Development Agreement attached hereto as Exhibit A and authorizes the Mayor to execute said Development Agreement on behalf of the City.

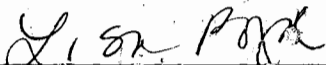
Section 10. EFFECTIVE DATE. This Ordinance shall take effect 30 days after its adoption and upon certification by the Coastal Commission of an LCP amendment consistent with the requirements of the LCP.

PASSED AND ADOPTED this 24th day of November, 2008.



PAMELA CONLEY ULICH, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

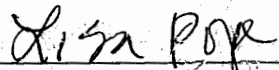
APPROVED AS TO FORM:



CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 330 was passed and adopted at the regular City Council meeting of November 24, 2008, by the following vote:

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



LISA POPE, City Clerk
(seal)

RECORDED AT REQUEST OF AND
WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF MALIBU
23815 Stuart Ranch Road
Malibu, CA 90265

DEVELOPMENT AGREEMENT BY AND BETWEEN

THE CITY OF MALIBU

and

MALIBU LA PAZ RANCH, LLC

THIS AGREEMENT SHALL BE RECORDED
WITHIN TEN DAYS OF EXECUTION BY
ALL PARTIES HERETO PURSUANT TO
GOVERNMENT CODE § 65868.5

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into on this ___ day of _____, 2008, by and between the CITY OF MALIBU ("CITY"), a general law city duly organized and existing under the laws of the State of California, and MALIBU LA PAZ RANCH, LLC ("LA PAZ"), a limited liability company authorized to do business in the State of California. CITY and LA PAZ may be referred to individually as "Party" and collectively as "Parties."

1. RECITALS

This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

1.1 LA PAZ has submitted two applications to CITY for the development of LA PAZ's 15.29 acre property (the "Property"). The applications are for two projects defined hereafter as the Preferred and Alternative Projects (collectively "the Projects"). The Property is described more specifically in the legal description attached as Exhibit 1. A map depicting the Property and its location is attached as Exhibit 2;

1.2 The CITY has asked that LA PAZ include in the Preferred Project a parcel of land for a proposed 20,000 square foot City Hall, or for certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.3 LA PAZ has agreed to convey 2.3 acres of the Property to the CITY for a new City Hall, or certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement, and undertake the other obligations set forth herein, if it receives all of the assurances set forth in this Agreement;

1.4 Government Code § 65864, *et seq.* authorizes CITY to enter into binding development agreements such as this Agreement with persons having legal or equitable interests in real property in order to, among other things, provide certainty in the approval of development projects so as to strengthen the public planning process, encourage private participation in comprehensive planning, provide needed public facilities, make maximum efficient utilization of resources at the least economic cost to the public and avoid waste of resources escalating the cost of development to the consumer. This Agreement provides assurances to LA PAZ that, if the Preferred Project is approved, during the term of this Agreement it may be implemented in accordance with the CITY's official policies, ordinances, rules and regulations in force as of the date the ordinance approving this Agreement was approved by the City Council;

1.5 Pursuant to Government Code § 65865, CITY has adopted rules and regulations for consideration of development agreements, and proceedings have been taken in accordance with CITY's rules and regulations;

1.6 By entering into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement and permitted by law;

1.7 The terms and conditions of this Agreement have undergone extensive review by the CITY and City Council. CITY and LA PAZ acknowledge and agree that the consideration to be exchanged pursuant to this Agreement is fair, just and reasonable;

1.8 This Agreement and the Project which is the subject of this Agreement are consistent with the CITY's General Plan, and its Local Coastal Program (LCP);

1.9 CITY has certified a Final Environmental Impact Report, SCH No. 2003011131 for the Project ("the EIR");

1.10 All actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, including hearings by the planning commission and legislative body, findings, votes, and other procedural matters;

1.11 Development of the Preferred Project will further the comprehensive planning objectives contained within the General Plan, and will result in public benefits, including, among others, the following:

1.11.1 Dedication of 2.3 acres of land for a new City Hall, or for certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.11.2 Provision of \$500,000 for a new City Hall, or for development of certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.11.3 Contributing via planned Project improvements to the creation of a linear wetland park;

1.11.4 Providing landscaped and irrigated open space areas, as well as subterranean parking structures, which, under appropriate conditions, may be used as emergency evacuation zones.

1.11.5 Dedication of an internal segment of the Malibu-Pacific trail connecting Serra Retreat to Legacy Park;

1.11.6 Creating significant offsite public improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, promises and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

2. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

2.1 "Agreement" means this Development Agreement.

2.2 "Vesting Date" means the date on which the ordinance enacting this Agreement was approved by the CITY's City Council.

2.3 "CITY" means the City of Malibu, a general law city, duly organized and existing under the laws of the State of California.

2.4 "LA PAZ" means Malibu La Paz Ranch, LLC.

2.5 The "Preferred Project" means the project described in Sections 2.14.3 and 5.1.

2.6 "Development" means the entitlement, and improvement of the Property for the purposes of completing the structures, improvements and facilities described herein including, but not limited to: grading; the construction of infrastructure and public facilities related to the Preferred Project (as such Project may be approved), whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping, septic system, retaining walls, drainage devices, retention ponds, drive aisles with at grade parking, subterranean parking structures, fire department turn arounds, water features, public congregation and recreation areas, and hardscaping.

2.7 "Development Agreement Statute" means Government Code § 65864 *et seq.* as it exists on the Effective Date.

2.8 "Project Approvals" means all plans, permits, and other entitlements for use of every kind and nature, whether discretionary or ministerial, necessary in connection with development of the Preferred Project in accordance with this Agreement, which may include but are not limited to:

2.8.1 Compliance with the California Environmental Quality Act, Public Resources Code § 21000 *et seq.* ("CEQA");

2.8.2 Plot Plans;

2.8.3 Site Plan Review;

2.8.4 Coastal Development Permits ;

2.8.5 General Plan Amendments;

2.8.6 Local Coastal Program amendments;

2.8.7 Zone text amendments;

2.8.8 Conditional Use Permits;

2.8.9 Minor modifications;

2.8.10 Lot line adjustments;

2.8.11 Grading and building permits;

2.9 The "Applicable Rules" shall consist of the following:

2.9.1 The CITY's General Plan and Local Coastal Program (LCP) as they exist on the Vesting Date;

2.9.2 The CITY's Municipal Code, including those sections of the Zoning Code which are applicable to the development of the Property, as the Municipal Code exists on the Vesting Date;

2.9.3 Such other laws, ordinances, rules, regulations, and official policies governing permitted uses of the Property, density, design, improvement, and construction standards and specifications applicable to the development of the Property in force at the time of the Vesting Date.

2.10 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Applicable Rule or project approval, for the dedication of land, the construction of improvements or public infrastructure and facilities, or the payment of any type of fees, taxes, and assessments in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

2.11 "Subsequent Rules" means any change in the Applicable Rules, except as provided in Section 2.13, including, without limitation, any change in any applicable general plan or specific plan, local coastal program, zoning, or subdivision regulation, adopted or becoming effective after the Vesting Date, excluding any such change processed concurrently with this Agreement, but including, without limitation, any change effected by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, the Planning Commission or any other board, agency, commission or department of the CITY, or any officer or employee thereof, or by the electorate, as the case may be (collectively the "Subsequent Rules"), which would, absent this Agreement, otherwise be applicable to the Property, shall not be applied by the CITY to any part of the Project, except as LA PAZ may consent to the application thereof pursuant to Section 3.1 of this Agreement.

2.12 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to LA PAZ and reserved to CITY under this Agreement. Notwithstanding any other provision of this Agreement, the following Subsequent Rules shall apply to the development of the Property.

2.12.1 Processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for development approvals and permits or for monitoring compliance with any development approvals or permits granted or issued. Provided, however, that LA PAZ shall have no obligation for payment of permit or plan check fees with respect to the CITY's development of Parcel C.

2.12.2 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

2.12.3 Regulations governing construction standards and specifications including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

2.12.4 Regulations that otherwise would not apply to the development of the Property or Project for which LA PAZ has given its written consent to the application of such regulations pursuant to Section 3.1 of this Agreement.

2.13 "Projects" shall mean the Preferred Project and the Alternative Project, collectively.

2.13.1 "Preferred Project," or singular "Project," means the Project more particularly described in Section 5.1.

2.13.2 Preferred Project Parcel Descriptions

2.13.2.1 "Parcel A", identified as Assessor's Parcel Number 4458-022-023, and legally described in Exhibit 3, represents Parcel A as it exists prior to development.

2.13.2.2 "Parcel A, post-lot line adjustment" means the parcel legally described in Exhibit 4.

2.13.2.3 "Parcel B", identified as Assessor's Parcel Number 4458-022-024 and legally described in Exhibit 5, represents Parcel B as it exists prior to development.

2.13.2.4 "Parcel B, post-lot line adjustment" means the parcel legally described in Exhibit 6.

2.13.2.5 "Parcel C" means the real property legally described in Exhibit 7. Parcel C consists of the 2.3 acres to be conveyed by LA PAZ to the CITY for a new City Hall, or for certain municipal uses that may in the future be considered by the City, as set forth in this Agreement;

2.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property.

3. VESTED DEVELOPMENT RIGHTS

3.1 LA PAZ is hereby granted the vested right to develop the Preferred Project on the Property, subject to the Applicable Rules, the Project Approvals, and any future approvals applied for by LA PAZ, or its successors, and granted by the CITY for the Preferred Project (the "Future Approvals").

3.1.1 Vested Development Rights. Notwithstanding any future action of the CITY, whether by ordinance, resolution, initiative, or otherwise, the Applicable Rules shall govern the development of the Preferred Project during the term of this Agreement, except and subject to the Reservations of Authority and the terms of this Agreement. In developing the Property, LA PAZ is provided, and assured, the vested right to require that the rules governing the development of the Preferred Project during the term of this Agreement shall be as provided in this Agreement. LA PAZ in its sole discretion may elect to be subject to any Subsequent Rules that may be enacted. Any such election by LA PAZ shall be made in its sole discretion and shall be in writing.

3.1.2 This Agreement does not (1) grant density or intensity in excess of that otherwise established in the Project Approvals, (2) supersede, nullify or amend any condition imposed in the Project Approvals, (3) guarantee to Owner any profits from the Project, or (4) prohibit or, if legally required, indicate Owner's consent to, the Property's inclusion in any public financing district or assessment district, except as specified herein, or (5) confer any vested rights with respect to the Alternative Project.

3.1.3 The Project conditions are attached hereto as Exhibit 8 and constitute the entirety of the conditions imposed upon the Project.

3.2 Purposes of Agreement. This Agreement is entered into in order to provide a mechanism for planning and carrying out the Preferred Project in a manner that will ensure certain anticipated benefits to both CITY, including without limitation the existing and future residents of CITY, and LA PAZ, and to provide to LA PAZ assurances regarding the land use regulations that will be applicable to the development of the Property, including but not limited to, those land use regulations relating to timing, density and intensity of development, that will justify the undertakings and commitments of LA PAZ described in this Agreement and the investment in planning and development of the major on-site and off-site infrastructure and improvements needed for the Projects, and each of them.

3.3 Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may reasonably be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations unless compliance with such state or federal laws or regulations causes a material breach or failure of consideration. Upon repeal of any such law or regulation, or the occurrence of any other event removing the effect thereof, the provisions of this Agreement shall be restored to their original effect.

3.4 Ownership of Property. LA PAZ represents and covenants that it is the owner of the fee simple title to the Property.

3.5 Binding Effect of Agreement. All of the Property shall be subject to this Agreement. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, the CITY and LA PAZ. Any and all rights and obligations that are attributed to

LA PAZ under this Agreement shall run with the land, subject to the assignment provisions of Section 4 of this Agreement.

3.6 Term. The term of this Agreement shall commence on the Vesting Date and shall continue for a period of ten years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

3.6.1 Term of Map(s) and Other Project Approvals. Pursuant to Government Code §§ 66452.6(a) and 65863.9, the term of any subdivision or parcel map that has been, or in the future may be, processed on all or any portion of the Property, and the term of each of the Project Approvals, shall be extended through the termination date of this Agreement.

3.6.2 Tolling of Term of Agreement. The term of this Agreement shall be tolled during the time the Project is pending before the California Coastal Commission. The term of this Agreement shall be tolled during any period of time during which a development moratorium is in effect. For purposes of this Agreement a development moratorium shall be deemed to exist (i) during the period that any action or inaction by CITY or other public agency that regulates land use, development or the provision of services to the land prevents, prohibits or delays the use of the approval or the construction of the Project or (ii) during the period any lawsuit is pending brought by any third party concerning this Agreement, any of the Project Approvals, including pursuant to CEQA, or any Subsequent Approval. Any tolling pursuant to this Agreement of the commencement, or running, of LA PAZ's ten year vesting period will likewise, for an equal period of time, toll the performance of CITY's obligations pursuant to Section 6.4 of this Agreement.

3.7 Bargained For Reliance by Parties. The assurances of the CITY to LA PAZ, and of LA PAZ to the CITY, in this Agreement are provided pursuant to, and as contemplated by, the Development Agreement Statute, and are bargained for, and in consideration of, the undertakings of LA PAZ and the CITY set forth in this Agreement.

4. ASSIGNMENT

4.1 LA PAZ may assign or transfer its rights and obligations under this Agreement with respect to the Property, or any portion thereof, pursuant to the following provisions.

4.2 Right to Assign. Subject to Section 4.4, LA PAZ shall have the right to sell, transfer or assign the Property, in whole or in part (provided that no such partial transfer shall be made in violation of the Subdivision Map Act, Government Code §66410 *et seq.*), to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the property transferred.

4.3 Partial Transfers. Subject to Section 4.4, the Property currently consists of two parcels, and it may be further subdivided. Pursuant to Section 4.2, LA PAZ's right to sell, transfer or assign the Property includes the right to sell, transfer or assign any portion of the Property and, in such event, the assumption of the obligations of this Agreement shall apply only to the portion or portions of the Property sold, transferred, or assigned. Upon such a partial

transfer, the rights and responsibilities of LA PAZ under this Agreement, and those of its successors and assigns, shall be severable, and a default by the owner of one portion shall not affect the owner, transferee or assignee of the other portion(s).

4.4 Approval By CITY. If LA PAZ transfers its right title or interest in the Property, as defined and limited in Section 4.8 of this Agreement, prior to the completion of construction of the Project, and issuance by CITY of certificates of occupancy for all structures, such transfer shall be made only in accordance with Sections 4.4, 4.5, 4.6 and 4.7 of this Agreement.

4.4.1 At least forty-five days prior to any proposed sale, transfer or assignment of LA PAZ's right, title or interest in the Property, as defined and limited in Section 4.8 hereof, LA PAZ shall submit to the CITY a request for approval of such proposed sale, transfer or assignment, which approval shall not unreasonably be withheld by the CITY. The CITY may not withhold its approval if a reasonable person would find that:

4.4.1.1 The proposed purchaser, transferee or assignee demonstrates the financial ability to perform the obligations of this Agreement; and

4.4.1.2 The proposed purchaser, transferee or assignee has the necessary qualifications, competence, experience or capability to implement the development plan contemplated by the Project Approvals with the skill, expertise and quality equivalent to that of LA PAZ.

4.5 Provision of Information. LA PAZ shall provide promptly to the CITY such information that the CITY reasonably requests so that CITY can make the determinations called for in Sec. 4.4, hereinabove.

4.6 Provision of Security. The proposed purchaser, transferee or assignee shall provide the CITY with security equivalent to any security previously provided by LA PAZ to secure performance of its obligations under this Agreement. Upon provision of such security the CITY shall promptly release any security previously provided by LA PAZ.

4.7 Provision of Executed Agreement. Concurrently with the closing of any approved sale, transfer or assignment, LA PAZ shall provide the CITY with an agreement executed by the purchaser, transferee or assignee, demonstrating compliance with the applicable provisions of this Section 4.

4.8 Applicability. The provisions of Sections 4.4, 4.5, 4.6, 4.7 shall not be applicable to (i) a transfer or assignment of a mortgage or deed of trust, or (ii) a transfer made in connection with the enforcement of the security interest of a mortgage or deed of trust or by deed in lieu thereof, or (iii) a transfer as a result of which LA PAZ remains the Managing Member with respect to the Project.

4.9 Termination of CITY's Right of Approval. The provisions of Sections 4.4, 4.5, 4.6, 4.7, and 4.8, hereinabove, shall terminate and be of no further force or effect when LA PAZ has completed construction of the Project and CITY has issued certificates of occupancy for all structures located on Parcel A post-lot line adjustment and Parcel B post-lot line adjustment.

4.10 Release of Transferring Owner. A transferring owner shall be released from all obligations under this Agreement with respect to the portions of the Property transferred, provided the transferor has complied with all of the applicable provisions of Section 4 of this Agreement. Upon transfer of any portion of the Property and the express assumption of LA PAZ's obligations under this Agreement by the transferee, the CITY agrees to look solely to the transferee for compliance with the provisions of this Agreement that relate to the portion of the Property acquired by such transferee. Any such transferee shall be entitled to the benefits of this Agreement and shall be subject to the obligations of this Agreement applicable to the parcel(s) transferred. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way LA PAZ's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for satisfying the good faith compliance requirements relating to the portion of the Property owned by such transferee, and any amendment to this Agreement between the CITY and a transferee shall affect only the portion of the Property owned by such transferee.

4.11 Subsequent Assignment. Any subsequent sale, transfer or assignment of the Property, or a portion thereof, after an initial sale, transfer or assignment must be made in accordance with, and subject to, the terms and conditions of this Section 4.

5. DESCRIPTION AND PROCESSING OF THE PROJECTS

5.1 Preferred Project.

5.1.1 General Project Description. The Preferred Project consists of the development of 15.29 acres into a commercial, retail, restaurant and business park center adjacent to the CITY's development on Parcel C. The Preferred Project includes over eight acres of landscaped and open space area, as well as 112,058 square feet of commercial office, restaurants, including two restaurants of up to 10,000 square feet, in Buildings 4, 5 and 6, and retail uses.

5.1.2 General Parcel By Parcel Breakdown of Preferred Project. The following generally summarizes the Preferred Project.

5.1.2.1 Parcel A, post-lot line adjustment, consists of approximately 312,195 square feet of land area (7.16 acres) and will be developed with commercial office, restaurant and retail uses. The development includes five single-story and two two-story buildings with a total developed floor area of 68,997 square feet. The remaining areas include 118,867 square feet of landscaping and 41,923 square feet of open space, with 346 parking spaces, including surface and below grade parking.

5.1.2.2 Parcel B, post-lot line adjustment, includes approximately 248,610 square feet of land area (5.7 acres) and will be developed with commercial office and retail uses. The development includes four buildings with a total floor area of 43,061 square feet. The development includes approximately 99,444 square feet of landscaping and approximately 56,358 square feet of open space, as well as a total of 197 parking spaces, including a below grade parking structure.

5.1.2.3 Parcel C includes approximately 100,000 square feet of land area (2.3 acres) and is contemplated to house the CITY's new City Hall, which will include a maximum of 20,000 square feet of office uses and, in addition thereto, parking as required by CITY's Municipal Code. If CITY in the future determines not to construct the new City Hall it must do so in accordance with the terms and conditions of Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4 of this Agreement.

5.1.2.4 The Preferred Project is Summarized as Follows:

Building No.	Occupancy	Floor Area (Gross Square Feet)
PARCEL A		
1	Retail	6,200
2	Retail	6,200
3	Retail	10,248
4	Retail	10,240
5	Retail / Office / Restaurant	17,879
6	Retail / Office / Restaurant	17,830
7	Retail	400
Subtotal Parcel A		68,997
PARCEL B		
8	Office / Retail	15,300
9	Office / Retail	15,640
10	Office	7,258
11	Office	4,863
Subtotal Parcel B		43,061
PARCEL C		
	CITY Office Uses/Council Room	20,000
Subtotal Parcel C		20,000
TOTAL OVERALL FLOOR AREA		132,058 (FAR = 0.20)

5.1.3 Subject to the requirements of Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4, the CITY may in the future determine Parcel C should be used for another municipal purpose not to exceed the maximum development allowed pursuant to Sec. 5.1.2.3 of this Agreement.

5.1.4 Summary of Entitlements for the Preferred Project (.20 FAR):

5.1.4.1 Coastal Development Permit. In accordance with § 13.3 of the LCP, the Preferred Project will require a Coastal Development Permit. In addition to the development of buildings, landscaping, drainage devices, septic system, roadways, etc., a Coastal Development Permit shall be required for the subdivision/lot line adjustment between Parcel A and Parcel B in order to modify the existing parcel boundaries as depicted on the project survey to those boundaries depicted on the project plans. Additionally, LA PAZ will dedicate in fee as part of the consideration for this Agreement the remaining 2.3 acres to the CITY for the purposes of constructing a new City Hall thereon, or such other development as may in the future be

approved in accordance with Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4 of this Agreement, and furthering the public benefits required under section 3.8(5)(f) of the LCP.

5.1.4.2 Local Coastal Program Amendment. Pursuant to Sections 3.8(5) and 13.28.1 of the LCP, an LCP Amendment is required for the Preferred Project.

5.1.4.3 Development Agreement. This Agreement between the CITY and LA PAZ is entered into pursuant to Section 5.18 of the LUP and Sections 3.8(5)(e) and 13.28 of the LIP, which require that projects proposing FAR of greater than .15 are processed in accordance with either a development agreement (DA) or as a planned development (PD). In either case, the DA or the PD must also be subsequently certified by the California Coastal Commission as an LCP Amendment. LA PAZ has elected to utilize this Development Agreement.

5.1.4.4 Subdivision Map Act. The dedication of Parcel C to the CITY constitutes a subdivision of land for purposes of the Subdivision Map Act because a third parcel is being created where only two existed previously; however, the subdivision is exempt from parcel map requirements pursuant to Govt. Code § 66428(a)(2) as a conveyance of land to a public agency. A conveyance will still be required; however, a parcel map will not. The California Coastal Act, however, is an independent substantive state law and the subdivision is a "development" in accordance with § 30106 of the Public Resources Code. Therefore, the Coastal Development Permit for the Project shall include the processing of a subdivision of land in its description of approved development.

5.1.4.5 Zone Text Amendment. A Zone Text Amendment shall be required to establish new development standards for the Project in accordance with section 3.8(A)(5)(e) of the CITY's LCP.

5.1.4.6 Lot Line Adjustment/Parcel Configuration. The 15.29 acre property is currently composed of two lots, zoned Community Commercial. Parcel A (4458-022-023) is 6.22 acres and is to be increased in size (via LLA) to 7.16 acres. Parcel B (4458-022-024) is 9.07 acres and is to be decreased in size (via LLA) to 5.7 acres. The remaining 2.3 acres will be conveyed to the CITY in accordance with Sec. 6.1.1, thus creating Parcel C.

5.1.4.7 Conditional Use Permit. A Conditional Use Permit is required for restaurants, in accordance with Section 3.3(I) of the LIP, Table B of the LIP and Sections 17.24 and 17.66 of the CITY's Municipal Code.

5.2 LA PAZ May Construct Alternative Project. Nothing in this Agreement shall preclude LA PAZ from proceeding independently with the Alternative Project.

5.3 Fees, Exactions, Mitigation Measures, Conditions, Reservations and Dedications. All development Exactions that are applicable to the Preferred Project or the Property are established by the Applicable Rules, the Project Approvals and this Agreement. Other than as set forth herein, this section shall not be construed to limit the authority of CITY to charge LA PAZ the then current normal and customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse

CITY's actual expenses attributable to such application, processing and permitting and are in force and effect on a CITY-wide basis at the time approvals and permits are granted by CITY. LA PAZ waives any and all rights it may have to challenge development fees that are in force as of the Vesting Date. LA PAZ retains the right to challenge amended or increased development fees enacted after the Vesting Date that do not comply with Government Code § 66000 *et seq.*, or any other applicable statute or rule of law, including its right to receive credits against any amended or increased fees.

5.3.1 LA PAZ shall not be responsible for development fees, permit fees, plan check fees, school fees, mitigation fees, or any other fees or exactions related to the development of Parcel C.

5.4 Plan Review. Plans for each building of the Preferred Project, including plans for signage, trash enclosures and screening and landscaping, shall be reviewed and approved by the CITY's Planning and Building Safety Director prior to issuance of a building permit; provided, however, that the sole purpose of such review shall be to verify consistency with the Development Standards, the Applicable Rules and Project Approvals.

5.5 CITY Processing of Permit Applications On An Expedited Basis. The CITY shall expedite the processing of all permits needed for the Preferred Project at LA PAZ's expense, including, but not limited to, all plan checking, excavation, grading, building, encroachment and street improvement permits, certificates of occupancy, utility connection authorizations, and other permits or approvals necessary, convenient or appropriate for the grading, excavation, construction, development, improvement, use and occupancy of the Projects in accordance with the CITY's accelerated plan check process under the Applicable Rules. Without limiting the foregoing, if requested by LA PAZ, the CITY agrees to utilize contract planners and plan checkers (at LA PAZ's sole cost), and any other reasonably available means, to expedite the processing of Project applications and approvals, including concurrent processing applications by various CITY departments.

5.6 Issuance of Building Permits. The CITY shall not unreasonably withhold or condition any ministerial permit provided LA PAZ has satisfied all requirements for such permits.

5.7 Satisfaction of Mitigation Measures and Conditions. In the event that any of the mitigation measures or conditions required of LA PAZ hereunder have been implemented by others to the satisfaction of the CITY, LA PAZ shall be conclusively deemed to have satisfied such mitigation measures or conditions, consistent with CEQA and the LCP, or other applicable state or local statute or ordinance. If any such mitigation measures or conditions are rejected by a governmental agency with jurisdiction, LA PAZ may implement reasonably equivalent substitute mitigation measures or conditions, consistent with CEQA, to the CITY's satisfaction, in lieu of the rejected mitigation measures or conditions. Such substitution shall be deemed a clarification pursuant to Section 11.3 of this Agreement.

5.8 Timing of Development. The Parties acknowledge that LA PAZ cannot at this time predict when or the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of LA PAZ, such as market orientation

and demand, interest rates, absorption, completion and other similar factors. In *Pardee Construction Co. v. City of Camarillo (Pardee)*, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development prevailing as against the parties' agreement. CITY and LA PAZ intend to avoid the result in *Pardee* by acknowledging and providing that LA PAZ shall have the right to develop the Property in such order and at such rate and times as LA PAZ deems appropriate solely within the exercise of its subjective business judgment, but LA PAZ shall have no obligation to develop the Project or the Property.

5.8.1 In furtherance of the Parties' intent, as set forth in this Section 5.8, no future amendment of any existing CITY ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property or the Project.

5.8.2 Moratorium. The CITY shall not impose a moratorium on the Property or Project unless the CITY has made legislative findings that there is a current and immediate threat to the public health, safety or welfare and that the approval of the entitlement sought by LA PAZ would result in that threat to public health, safety or welfare, and provided that the CITY has otherwise complied with all applicable law.

5.9 Pedestrian and Bike Path Plan. LA PAZ will coordinate and cooperate with the CITY in the development of a pedestrian and bike path plan that will serve the Preferred Project. LA PAZ agrees that these paths may be utilized by golf carts, as well as pedestrians and cyclists.

5.10 Wastewater System. At the City's request, LA PAZ shall grant to the CITY an easement to build, maintain and dispose on LA PAZ's property unless the CITY finds an alternative means of disposing without the LA PAZ property.

The CITY may in the future approve and implement a municipal centralized wastewater treatment facility for the Civic Center area. If the CITY builds such a centralized wastewater treatment facility and it is fully permitted and operational before LA PAZ receives its final grading permit for construction of its wastewater treatment facility for either the Alternative or Preferred Project, whichever occurs first, LA PAZ will hook up to the CITY's centralized municipal facility and pay an amount equivalent to that paid by other property owners that have hooked up to the system. If the CITY's centralized wastewater treatment facility is not fully permitted and operational when LA PAZ receives its grading permit, LA PAZ shall have the right to go forward with its wastewater treatment facility and shall not be required to hook up to the CITY's facility nor to contribute thereto, unless LA PAZ elects to hook-up to the CITY's facility, in which case LA PAZ may be required to pay an amount equivalent to that paid by other property owners that have hooked up to the system.

5.10.1 Separate City Wastewater Treatment Plant & Corresponding Easement: CITY wishes to reserve its right to construct and maintain its own centralized or on-site wastewater treatment facility on Parcel C. In the event CITY opts to construct such a

separate wastewater plant on Parcel C, LA PAZ agrees to grant CITY an easement for the dispersal of effluent only, onto LA PAZ's property not to exceed 600 gallons per day. How and where the effluent is dispersed onto LA PAZ's property shall remain within the exclusive control and discretion of LA PAZ in accordance with and subject to all applicable laws. The Easement shall only permit the dispersal of excess municipal wastewater treated in compliance with Division 4 of TITLE 22 of the California Code of Regulations. All excess municipal wastewater to be disposed of on the La Paz property shall have been processed in a Title 22 wastewater treatment plant approved by, if such approval is otherwise required by law, the City of Malibu, the California Department of Public Health, the Los Angeles County Regional Water Quality Control Board and any other responsible public agency, as well as performing the required daily monitoring of effluent quality. Only Title 22 compliant waters shall be delivered to La Paz.

5.10.2. Overburdening: The easement is intended to permit excess wastewater disposal onto the La Paz property only in amounts commensurate with that generated by the development of a 20,000 sq. ft. City Hall Office Building housing a maximum of 200 employees (approximately 4000 Gallons per day gross code flow wastewater generation prior to reduction from reuse); any development that exceeds these flow parameters will be deemed to be an overburdening of the easement unless CITY and LA PAZ agree in writing and amend this Agreement to so provide. The City, prior to utilizing its easement for disposal on La Paz's property, shall make all reasonable efforts to recycle and reuse its wastewater for in-building toilet reuse and landscaping on its property (85% anticipated reuse potential from in-building toilet reuse alone). CITY shall install dual plumbing (Purple pipe) in whatever municipal structure(s) that may be constructed in order to provide for the intended recycling and reuse potential in compliance with TITLE 22 and applicable law.

6. DEVELOPMENT OF PARCEL C

6.1 LA PAZ's obligations with respect to Parcel C are limited to the following:

6.1.1 Land Conveyance. After the Preferred Project has received all discretionary approvals from all agencies, including without limitation, the CITY and the California Coastal Commission, and the time has passed for a referendum, and all statutes of limitations have expired as to legal challenge to all of the discretionary approvals from all agencies, or all litigation shall have terminated in final judgment favorable to LA PAZ and the CITY, including all appeals, or litigation has ended in a settlement acceptable to LA PAZ in its sole discretion, LA PAZ shall convey Parcel C to the CITY. Such conveyance is exempt from the Subdivision Map Act, Government Code § 66410 *et seq.*, pursuant to § 66428(a)(2), as a conveyance to a public agency.

6.1.2 Cash Contribution. After the Preferred Project has received all discretionary approvals from all agencies, including without limitation, the CITY and the California Coastal Commission, and the time has passed for a referendum and all statutes of limitations have expired as to legal challenge to all of the discretionary approvals from all agencies, or all litigation shall have proceeded to final judgment favorable to LA PAZ and the

CITY, including all appeals, or settlement acceptable to LA PAZ in its sole discretion, LA PAZ shall, within 30 days of such date, contribute \$500,000 to the CITY to be used for the development of Parcel C. This contribution is LA PAZ's sole monetary obligation with respect to Parcel C.

6.1.3 Reimbursement of CITY's Fees and Costs. Within 10 working days after the Vesting Date, LA PAZ shall pay \$25,000 to the CITY to reimburse CITY for a portion of its attorneys fees and other costs in negotiating this Agreement.

6.2 LA PAZ May Proceed With Preferred Project. When LA PAZ has satisfied its obligations set forth in Sections 6.1.1 and 6.1.2, it may proceed immediately with construction of its Preferred Project, without regard for the status of the CITY's development of Parcel C.

6.3 CITY's Obligations With Respect to Parcel C.

6.3.1 Cost of Construction. Other than the contribution set forth in Section 6.1.2, all costs associated with development of Parcel C shall be borne solely by the CITY. The CITY acknowledges that changes in the economy and construction trades over the anticipated permitting and construction timeline for new City Hall render it impossible to firmly estimate or to judge actual construction costs of a new City Hall as of the Vesting Date of this Agreement. There are no plans for any other potential use of Parcel C that have been prepared; and the nature of any use which may potentially be approved pursuant to Secs. 6.3.2, 6.3.3 and 6.3.4 is unspecified and uncertain, so any analysis or estimation of permitting and construction costs would be wholly speculative. The CITY has not committed any resources which would foreclose meaningful options for any potential future project, mitigation measure or alternative on Parcel C.

6.3.2 Limitations on Use of Parcel C. This Agreement allows the CITY to use Parcel C for its new City Hall, which must be constructed in substantial conformance with Sections 5.1.2.3 and 5.1.2.4 of this Agreement. The CITY, however, wishes to retain flexibility with respect to its future needs and the use of Parcel C. The Parties therefore agree that the CITY may use Parcel C for a new City Hall, or for a library, community center, senior center, centralized wastewater treatment facility, improved park or for similar uses, with structures, of like kind and nature to those structures and uses heretofore listed in this Sec. 6.3.2. The CITY shall not use Parcel C, or cause Parcel C to be used, primarily for any commercial or retail purpose, although may sell city related merchandise or hold special events which have a commercial component.

6.3.2.1 The CITY agrees that any development of, and construction on, Parcel C shall be consistent with that of LA PAZ's Project.

6.3.2.2 The CITY acknowledges its agreement to use Parcel C as provided herein is a material consideration without which LA PAZ would not have entered into this Agreement because, among other things, the City Hall or the other potential uses would provide a substantial public benefit to the CITY and its residents but would not compete with LA PAZ's Project.

6.3.3 Required CEQA and Public Hearing Process. Before implementing any use of Parcel C other than a new City Hall, the CITY, at its sole cost and expense, must conduct adequate review of its proposed project under CEQA, and at a duly noticed public hearing, the City Council must find that the proposed use is consistent with adjacent uses, the General Plan and the LCP, and any other applicable law, policy, rule, regulation or ordinance.

6.3.4 LA PAZ Reservation of Rights. LA PAZ retains all of its rights to oppose, or seek modification of, any project proposed pursuant to sec. 6.3.3 on any ground whatsoever, including without limitation if the project is not consistent with adjacent uses, the General Plan and/or LCP, has not received adequate review under CEQA or other applicable statute or rule of law requiring environmental review, or does not comply with any other applicable standard, policy, law, rule or regulation.

6.4 Reconveyance of Parcel C to LA PAZ.

6.4.1 If CITY does not build either City Hall or another use approved pursuant to the provisions of this Agreement within ten years of the date of conveyance by LA PAZ, CITY shall reconvey Parcel C to LA PAZ on the terms and conditions hereinafter set forth in Sections 6.4.2 through and including 6.4.4. Provided, however, that if CITY has determined to use Parcel C for a park but has not installed any park improvements, the provisions of this Section shall apply. If CITY determines to sell Parcel C within ten years of the Vesting Date, CITY shall first offer to sell Parcel C to LA PAZ on the terms and conditions hereinafter set forth in Section 6.4.11 through and including 6.4.4. The word "sell" shall include any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of Parcel C, except for an easement for utility purposes. The purchase price for Parcel C to be paid by LA PAZ ("Purchase Price") shall be determined pursuant to Section 6.5.2 hereof.

6.4.1.1 CITY shall deliver notice of any sale of Parcel C it proposes to make prior to the expiration of the ten year period to LA PAZ by registered mail. LA PAZ shall have ten business days from the receipt of such notice to accept or reject purchase of Parcel C ("Acceptance Period") by delivering its written notice of its intent to purchase Parcel C ("Notice of Intent") to CITY on or before 5:00 p.m. on the last day of the Acceptance Period. If LA PAZ fails to notify the CITY of its intent to purchase Parcel C on or before the last day of the Acceptance Period, the CITY may proceed with its proposed sale.

6.4.2 The Purchase Price shall be determined based upon the value of Parcel C as entitled for 20,000 square feet of office use, regardless of which use the CITY may have intended for Parcel C. The CITY and LA PAZ shall each select an appraiser holding an MAI certification, who shall each appraise Parcel C. If the two appraisers reach values that are not within 5% of each other, the two appraisers shall select a third appraiser who will appraise Parcel C. The third appraiser shall be limited in his or her appraisal to a valuation no lower nor higher than the values arrived at by the first two appraisers. The third appraiser's valuation will establish the Purchase Price. If the two appraisers reach values within 5% of each other, the Purchase Price will be determined by splitting the difference.

6.4.2.1 The Purchase Price shall be reduced by a sum equal to \$500,000, less reasonable costs incurred by the CITY for the design, engineering and other costs

reasonably related to the development by CITY of a new City Hall or other use approved pursuant to Sections 6.3.2, 6.3.3 and 6.3.4 of this Agreement.

6.4.2.1.1 LA PAZ may demand in writing substantiation of the costs claimed by CITY to have been incurred toward the development of Parcel C and CITY shall provide such written substantiation within five business days of LA PAZ's demand.

6.4.2.1.2 The costs and fees charged by a third appraiser shall be split evenly between the CITY and LA PAZ.

6.4.3 If the CITY is required to reconvey Parcel C, an escrow shall immediately be opened by LA PAZ at an escrow company of LA PAZ's choosing, reasonably acceptable to CITY. The escrow instructions shall provide for a closing date 90 days following the end of the ten year vesting period or the delivery of LA PAZ's Notice of Intent to Purchase Parcel C ("Closing Period"), as appropriate pursuant to Section 6.4.1. The escrow instructions shall reflect the terms and conditions set forth in this Section 6.4, including, but not limited to, the deposit by LA PAZ of the Purchase Price and the deposit by CITY of a warranty grant deed reconveying Parcel C to LA PAZ.

6.4.4 Upon reconveyance to it of Parcel C, to the extent allowed by law, LA PAZ shall be entitled to develop Parcel C with 20,000 square feet of commercial office development within a footprint of development generally consistent with that set forth in Section 5.1.2.3 of this Agreement, regardless of which use the CITY may have intended for Parcel C. The EIR shall be relied upon for CEQA compliance for such development, to the maximum extent allowed by the law. In reviewing LA PAZ's commercial development, the CITY may conduct a site plan review pursuant to Malibu Municipal Code Section 17.62.070, as it exists on the Vesting Date. Any such site plan review shall be limited to review of any substantial changes in the footprint and configuration of development on Parcel C as the CITY, in approving the Preferred Project, has already found that the location and configuration of the proposed City Hall building are consistent with the CITY's General Plan and LCP, does not impact any views and thus comports with Section 17.62.060 of the CITY's Municipal Code, and any other rules or regulations that are or may be applicable. No other or further discretionary review shall be required, except as may be required by the Applicable Rules.

7. PROJECT HEARINGS

7.1 Hearing Schedule. The requirements for notice and hearing are governed by the applicable sections of the CITY's LCP and Municipal Code.

7.2 Separate Approvals. The actions of the CITY on each Project shall be separate. Nothing in this Agreement precludes LA PAZ in its sole discretion from proceeding with the Alternative Project.

7.3 Coastal Commission. If the Preferred Project is considered by the California Coastal Commission, and during that consideration modified, then the matter shall be placed on the Planning Commission agenda and, if required, on the City Council agenda, consistent with legal noticing requirements, at the earliest reasonable opportunity, subject to Section 7.3.1.

7.3.1 If the Preferred Project is modified by the California Coastal Commission, LA PAZ in its sole discretion may elect not to proceed with the hearing process. The CITY retains its legal discretion to disapprove a modified project after it conducts the required public hearing process.

8. DEMONSTRATION OF GOOD FAITH COMPLIANCE

8.1 Review of Compliance. In accordance with Government Code § 65865.1, and Malibu Municipal Code § 17.64.130 *et seq.*, this Section 8 and the Applicable Rules, once every 12 months, on or shortly before each anniversary of the Effective Date, the CITY's Manager or his/her designee shall review LA PAZ's compliance with the terms of this Agreement, and shall prepare a report setting forth his or her determination, which must be based on substantial evidence, in accordance with Government Code § 65865.1 and Malibu Municipal Code § 17.64.130 B ("Periodic Review").

8.2 Information to be Provided to LA PAZ. Not later than five business days prior to the Periodic Review, the CITY shall make available to LA PAZ copies of all staff reports which have been prepared in connection with the Periodic Review, written comments from the public and all related exhibits concerning the Periodic Review. If any staff reports, written comments from the public, and related exhibits are completed or received at a later date, they shall be provided to LA PAZ upon completion or receipt.

8.3 Scope of Review. As part of the Periodic Review, LA PAZ shall be given a full and adequate opportunity to be heard, orally and in writing, regarding its performance. It is the duty of LA PAZ to provide evidence of good faith compliance with this Agreement to the City Manager's satisfaction at the time of the review.

8.4 Good Faith Compliance. For purposes of this Agreement, the phrase "good faith compliance" shall mean that LA PAZ has demonstrated that it has acted in a commercially reasonable manner (taking into account the circumstances which then exist) and has substantially complied with LA PAZ's material obligations under this Agreement.

8.5 Notice Of Non-Compliance; Cure Rights. The City Manager or his/her delegee shall determine on the basis of substantial evidence that has or has not complied with this Agreement. If, as a result of this review the City Manager determines that the Agreement is not being fulfilled, he or she shall notify LA PAZ of his or her findings as required by law for the service of summons or by registered or certified mail, postage prepaid, return receipt requested, also indicating that failure to comply within a period specified, but in no event less than thirty calendar days, may result in legal action to enforce compliance, termination or modification of this Agreement ("Notice of Violation").

8.5.1 Contents of Notice of Violation. Every Notice of Violation shall state with specificity that it is given pursuant to Section 8.5 of this Agreement, the nature of the alleged breach, including references to the pertinent provisions of this Agreement, the portion of the Property and/or Project involved, and the manner in which the breach may satisfactorily be cured.

8.6 Failure of Periodic Review. The CITY's failure to conduct any Periodic Review shall not constitute a breach, nor be asserted by any Party to be, a breach of this Agreement nor does it constitute a waiver of any Party's obligations hereunder.

8.7 Proceedings Upon Modification or Termination. If, at the end of the time period established by the City Manager, LA PAZ has failed to comply with the terms of this Agreement or, alternatively, submitted additional evidence satisfactorily substantiating such compliance, the Director shall notify the Planning Commission of his or her findings recommending such action as he or she deems appropriate, including legal action to enforce compliance or terminate or modify this Agreement.

8.8 Hearing on Modification or Termination. Where the Director notifies the commission that his or her findings indicate that this Agreement is being violated, a public hearing shall be scheduled before the Planning Commission to consider LA PAZ's reported failure to comply and the action recommended by the Director. Procedures for conduct of such hearing shall be the same as provided in the Municipal Code for initiation and consideration of a development agreement.

8.8.1 If as a result of such hearing, the Planning Commission finds that LA PAZ is in violation of this Agreement, it shall notify the City Council of its findings, recommending such action as it deems appropriate.

8.8.2 If the Planning Commission reports a violation of this Agreement, the City Council may take one of the following actions:

8.8.2.1 Approve the recommendation of the Planning Commission instructing that action be taken as indicated therein, in cases other than a recommendation to terminate or modify this Agreement; or

8.8.2.2 Refer the matter back to the Planning Commission for further proceedings with or without instructions; or

8.8.2.3 Schedule the matter for a public hearing before itself where termination or modification of this Agreement is recommended. Procedures for such hearing shall be as provided in Municipal Code Sections 17.04.160 through 17.04.230.

8.9 This Section 8 is subject to the cure provisions of Section 9.1.

8.10 Certificate of Agreement Compliance. If at the conclusion of a Periodic Review LA PAZ is found to be in good faith compliance with this Agreement, CITY shall, upon request of LA PAZ, issue a Certificate of Compliance with Development Agreement ("Certificate") to LA PAZ stating that after the most recent Periodic Review, and based upon the information known or made known to the CITY, that (1) this Agreement remains in effect, and (2) LA PAZ is not in default. The Certificate shall be in a recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state the anticipated date of the next Periodic Review. LA PAZ may at its sole option record the Certificate with the County Recorder.

9. DEFAULT AND REMEDIES

9.1 Default. Either Party to this Agreement shall be deemed to have breached this Agreement if it materially breaches any of the provisions of this Agreement and the same is not cured within the time set forth in a written Notice of Violation from the non-breaching Party to the breaching Party. The contents of the Notice of Violation shall be as set forth in Section 8.5.1. The period of time to cure shall be not less than thirty days from the date that the Notice of Violation is deemed received; provided, however, that if the breaching Party cannot reasonably cure a default within the time set forth in the Notice of Violation, then the breaching Party shall not be in default if it commences to cure the default within the time limit and diligently effects the cure thereafter.

9.2 Specific Performance. The Parties acknowledge that money damages are inadequate, and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement, and are available to the Parties for the following reasons:

9.2.1 This Agreement involves the planning and development of real property;

9.2.2 Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of the Project has begun. After such implementation has begun, LA PAZ may be foreclosed from other choices it may have had to utilize the Property or portions thereof. LA PAZ has invested significant time and resources and performed extensive planning and processing of the Project, and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate LA PAZ for such efforts.

9.3 Remedies in General. LA PAZ's sole remedy against the CITY shall be specific performance. The CITY shall not be liable to LA PAZ in damages for any breach of this Agreement.

10. MORTGAGEE PROTECTION

10.1 Mortgagee Protection. This Agreement shall not prevent or limit LA PAZ, in any manner, in LA PAZ's sole discretion, from encumbering the Property or any portion thereof, or any improvements thereon, by any mortgage, deed of trust or other security device. Any Mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property, shall be entitled to the following rights and privileges:

10.1.1 Mortgage Not Rendered Invalid. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the priority of the lien of any mortgage or deed of trust on the Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform

LA PAZ's obligations, or to guarantee such performance, prior to taking title to all or a portion of the Property.

10.1.2 Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, who has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive a copy of any Notice of Violation delivered to LA PAZ.

10.1.3 Mortgagee's Time to Cure. The CITY shall provide a copy of any Notice of Violation to the Mortgagee within ten days of delivery of the Notice of Violation to LA PAZ. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty days after receipt of such Notice of Violation. Notwithstanding the foregoing, if the default is a default which can only be remedied by the Mortgagee obtaining possession of the Property, or any portion thereof, and the Mortgagee seeks to obtain possession, the Mortgagee shall have until thirty days after the date of possession to cure or, if such default cannot reasonably be cured within that period, to commence to cure the default, provided that the default is cured no later than one year after Mortgagee obtains possession.

10.1.4 Cure Rights. Any Mortgagee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of LA PAZ under this Agreement as to the Property or portion thereof so acquired; provided, however, that in no event shall the Mortgagee be liable for any defaults or monetary obligations of LA PAZ arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees, and other monetary or non-monetary obligations, due under this Agreement for the Property, or portion thereof acquired by the Mortgagee, have been satisfied.

10.1.5 Bankruptcy. If any Mortgagee is prohibited from commencing or prosecuting foreclosure, or other appropriate proceedings in the nature of foreclosure, by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving LA PAZ, the time periods specified in Section 10.1.3 above shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

10.2 Estoppel Certificate. At any time and from time to time, LA PAZ may deliver written notice to CITY and CITY may deliver written notice to LA PAZ, requesting that such Party certify in writing that, to the knowledge of the certifying Party (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended, or if amended, the identity of each amendment, and (c) the requesting Party is not in breach of this Agreement, or if in breach, a description of each breach. The Party receiving such a notice shall execute and return the certificate within thirty days following receipt of the notice. The CITY's Director shall be authorized to execute, on behalf of the CITY, any Estoppel Certificate requested by LA PAZ. CITY acknowledges that an estoppel certificate may be relied upon by successors in interest to LA PAZ and by holders of record of deeds of trust on the portion of the Property in which LA PAZ has a legal interest. The City Council may designate other persons who shall be authorized to execute any Estoppel Certificate requested by LA PAZ.

11. ADMINISTRATION OF AGREEMENT

11.1 Appeal. Any decision by CITY staff concerning the interpretation or administration of this Agreement or development of the Project or Property in accordance herewith, may be appealed by LA PAZ to the Planning Commission, and thereafter, if necessary, to the City Council, following the procedures set forth in the CITY's Municipal Code. All determinations of the CITY's Planning Commission with respect to the Property or Project may be appealed to the City Council pursuant to such Municipal Code procedures. Final determinations by the City Council are subject to judicial review in accordance with California law.

11.2 Certificate of Performance. Upon the completion of the Preferred Project, or the completion of development of any parcel within the Project, or upon completion of performance of this Agreement, or its earlier revocation and termination, the CITY shall provide LA PAZ, upon LA PAZ's request, with a statement ("Certificate of Performance") evidencing the completion or revocation and the release of LA PAZ from further obligations hereunder, excepting any ongoing obligations. The Certificate of Performance shall be signed by the appropriate agents of LA PAZ and the CITY and shall be recorded in the official records of Los Angeles County, California. Such Certificate of Performance is not a Notice of Completion as referred to in California Civil Code § 3093.

11.3 Clarifications Through Operating Memoranda. During the term of this Agreement, clarifications to this Agreement, and the Applicable Rules may be appropriate with respect to the details of the performances of CITY and LA PAZ. If and when, from time to time, during the term of this Agreement, CITY and LA PAZ agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by CITY and LA PAZ which, after execution, shall be attached hereto and become part of this Agreement, and the same may be further clarified from time to time, as necessary, with future written approval by CITY and LA PAZ. Operating memoranda are not intended to, and shall not, constitute modifications or amendments to this Agreement but are mere ministerial clarifications. Therefore, public notices and hearings shall not be required. The City Attorney shall be authorized to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification constitutes an amendment which requires compliance with the provisions of Section 11.5. The authority to enter into operating memoranda is delegated to the CITY's Manager, and the CITY's Manager is hereby authorized to execute any operating memoranda hereunder without further City Council action.

11.4 Modifications Requiring Amendment of this Agreement. Any proposed modification of the performances of CITY or LA PAZ which results in any of the following shall not constitute a clarification but rather shall require an amendment to this Agreement:

11.4.1 Any decrease in the required building setbacks;

11.4.2 Any increase in the total developable square footage of the entire Property in excess of the maximum FAR allowed under this Agreement;

11.4.3 Any increase in the maximum allowable height of buildings or structures on the Property, as set forth in this Agreement;

11.4.4 Any decrease in the minimum required lot area, as set forth in this Agreement;

11.4.5 Any implementation of a use which is not permitted under this Agreement;

11.4.6 Any material modification to LA PAZ's obligation to convey Parcel C to the CITY and pay the \$500,000 to the CITY, as provided in Section 6.1.1 of this Agreement.

11.4.7 When the City Attorney determines pursuant to Section 11.3 that an amendment is required.

11.5 Amendment or Cancellation of Agreement. Except as otherwise set forth herein, this Agreement may only be amended or cancelled, in whole or in part, by mutual consent of CITY and LA PAZ, and upon compliance with the provisions of Government Code § 65868. This provision shall not limit any remedy of CITY or LA PAZ as provided by this Agreement.

12. TERMINATION

12.1 This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

12.1.1 Expiration of the stated term of this Agreement except for its provisions that are stated to survive its termination.

12.1.2 Entry of a final judgment after all appeals are concluded setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

12.1.3 The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement and the conclusion of any litigation, including appeal, upholding the measure overriding or repealing the ordinance that approved this Agreement.

13. INDEMNIFICATION/DEFENSE

13.1 LA PAZ's Indemnification. LA PAZ shall indemnify, defend, and hold harmless the CITY and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, LA PAZ's performance pursuant to this Agreement, except to the extent such is a result of the CITY'S sole negligence, gross negligence or intentional misconduct. LA PAZ shall indemnify, defend and hold harmless the CITY and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement or the Project Approvals, including without limitation, the CEQA determination. LA PAZ is in no event required to indemnify, defend or hold harmless the CITY with respect to any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or

judgments arising out of, or resulting in any way, from CITY's planning or development of Parcel C, including, without limitation, against any action or proceeding to attack, review, set aside, void or annul CITY's approval of any use on Parcel C.

13.2 Defense of Agreement. The CITY agrees at LA PAZ's expense to, and shall timely take, all actions which are necessary or required to uphold the validity and enforceability of this Agreement and the Applicable Rules. The CITY may choose its own counsel or, at its sole discretion, demand that LA PAZ provide counsel to provide such defense in which event the CITY shall co-operate with such counsel.

13.2.1 The rate per hour billed to LA PAZ for the services of the City Attorney shall be capped at the City Attorney's regular hourly rate billed to the CITY at the time the lawsuit is filed, with persons billing at a lesser rate billed to LA PAZ at their actual rate billed to the CITY at the time the lawsuit is filed.

13.2.2 In defending such joint litigation, the CITY agrees that LA PAZ's counsel may take the laboring oar to avoid duplicative work.

13.2.3 The CITY shall not settle any lawsuit attacking the Project Approvals, or other litigation implicating LA PAZ, without LA PAZ's written consent, obtained in advance.

13.3 This Section 13 shall survive the termination of this Agreement.

14. **TIME OF ESSENCE.** Time is of the essence for each provision of this Agreement of which time is an element.

15. **NOTICES.** As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

15.1 All notices shall be in writing and shall be given by personal delivery, by deposit in the U.S. mail first class with postage prepaid, or by sending the same by overnight delivery service, or, registered or certified mail with return receipt requested, with postage and postal charges prepaid, or by facsimile, as follows:

If to CITY:

City Clerk
City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265
Fax: (310) 456-3356

with copies to:

The City Attorney:
Christi Hogin, Esq.

Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, California 90266
Fax: (310) 643-8841

If to LA PAZ:

Malibu La Paz Ranch, LLC
c/o Sterling Partners
1033 Skokie Blvd., Suite 600
Northbrook, Illinois 60062
Attn: Jeff Perelman
Fax: (847) 480-0199

and

Donald W. Schmitz, II
Christopher Deleau, Esq.
Schmitz & Associates
29350 West Pacific Coast Highway, Unit 12
Malibu, California 90265
Fax: (310) 589-0353

with copies to:

Tamar C. Stein, Esq.
Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067
Fax: (310) 277-7889

15.2 Either Party may change its designated recipient, mailing address and/or facsimile number, by giving written notice of such change in the manner provided herein. All notices under this Agreement shall be deemed received on the earlier of the date personal delivery is effected or on the date deposited in the mail or the delivery date shown on the return receipt, air bill or facsimile confirmation sheet.

16. MISCELLANEOUS PROVISIONS

16.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the Clerk of the City Council within ten days of execution, as required by Government Code § 65868.5.

16.2 Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are merged herein. This Agreement shall not be amended, except as expressly provided herein.

16.3 Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

16.4 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, each Party, in its sole discretion, shall have 60 days to determine whether to elect to terminate this Agreement or to deem that the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

16.5 Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint venturers or any other association of any kind or nature between CITY and LA PAZ, jointly or severally.

16.6 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person or party shall have any right of action based upon any provision of this Agreement.

16.7 Cooperation Between CITY and LA PAZ. CITY and LA PAZ shall execute and deliver to the other all such other and further instruments and documents as may be reasonably necessary to carry out the purposes of this Agreement.

16.8 Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to conflict with any provision of the Applicable Rules or the Project Approvals or the Future Approvals, the provisions of this Agreement shall control.

16.9 Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.

16.10 Governing Law and Venue. This Agreement is made and entered into in the County of Los Angeles, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the County of Los Angeles.

16.11 Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the

judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

16.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

16.13 Weekend/Holiday Dates. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or federal or state holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.

16.14 Not a Public Dedication. Except as otherwise expressly provided herein, nothing herein contained, or shown or graphically depicted on the approved plans for the Project, including without limitation all site plans and surveys, shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to the development of the Project for the purposes herein expressed. LA PAZ shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose which is not consistent with the development of the Project. Any portion of the Property conveyed to the CITY by LA PAZ as provided herein shall be held and used by the CITY only for the purposes contemplated herein or otherwise provided in such conveyance, and the CITY shall not take or permit to be taken (if within the power or authority of the CITY) any action or activity with respect to such portion of the Property that would deprive LA PAZ of the material benefits of this Agreement, or would in any manner interfere with the development of the Project as contemplated by this Agreement.

16.15 Singular and Plural. As used herein, the singular of any word includes the plural.

16.16 Excusable Delays. Performance by any Party of its obligations hereunder shall be excused during any period of "Excusable Delay," as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Party as soon as reasonably possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (f) damage to work in progress by reason of fire, flood, earthquake or other casualty; (g) reasonably unforeseeable delay caused by a reasonably unforeseeable restriction imposed or mandated by a governmental entity other than CITY; (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Future Approval or any other action necessary for development of the Property, (a) delays caused by any default by CITY or LA PAZ hereunder, or (b) delays due to presence or remediation of hazardous materials. The term of this Agreement shall be extended by any period of Excusable Delay.

16.17 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

16.18 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, and assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its Property hereunder, and each other person succeeding to an interest in such properties.

16.19 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record any reasonably required instruments and writings, and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement and to evidence or consummate the transactions contemplated by this Agreement.

16.20 Authority to Execute.

16.20.1 The persons signing below on behalf of LA PAZ warrant and represent that they have the authority to bind LA PAZ and that all necessary partners, managing members, board of directors, shareholders, or other approvals have been obtained.

16.20.2 The persons signing below on behalf of the CITY warrant and represent that they have the authority to bind the CITY and that all necessary approvals from the City Council have been obtained.

16.21 Exhibits. All Exhibits attached to this Agreement are hereby incorporated by reference as if set forth in full.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year set forth below.

CITY OF MALIBU

Dated: _____

By: _____

Mayor of Malibu

ATTEST: _____

By: _____

(SEAL)

APPROVED AS TO FORM:

By: _____

Counsel for the CITY

MALIBU LA PAZ RANCH, LLC

Dated: _____

By: _____

Title: _____

Dated: _____

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Counsel for LA PAZ

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ACQUISITION
DEED



99 1040536

RECORDING REQUESTED BY
EMERY TITLE
WHEN RECORDED RETURN TO

Name: *Debuti, Steve Zhi Zhang*
Address: *10180 Santa Monica Blvd*
City: *Los Angeles, CA 90024*
Att: *Richard J. Crubel, Esq*

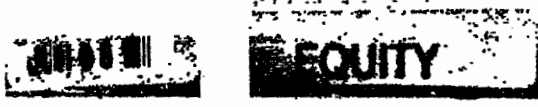
SPACE ABOVE FOR RECORDERS USE

Order No. *995044-20*

TITLE(s) OF DOCUMENT

Grant Deed

Assessor's Identification Number (AIN) *4458-002 012*



RECORDING REQUESTED BY
 A WHEN RECORDING THIS DEED AND VALUE COMPUTED
 BELOW, MAIL TAX STATEMENT TO
 Name RICHARD J. CRUBER, ESQ.
 Shop PACHULSKI, STANG, ZIEM & YOUNG
 Address 10100 SANTA MONICA BLVD., #1100
 City LOS ANGELES, CA. 90067
 State
 Zip
 Telephone No. Fax No.

7355 (Legal 4/94) SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

THE UNDERSIGNED GRANTOR(S) IN CLARIFICATION
 DOCUMENTARY TRANSFER TAX IS \$ PER PUBLIC RECORD
 to City of State of
 Parcel No. 4438-027-018
 computed on full value of interest or property conveyed, or
 computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
 Joan B. Knapp, an unmarried woman,
 hereby GRANT(S) to Malibu La Paz Ranch, LLC, a Delaware limited liability
 company,
 the following described real property in the City of Malibu,
 County of Los Angeles, State of California:
 SEE LEGAL DESCRIPTION OF PROPERTY SET FORTH ON EXHIBIT "A" ATTACHED
 HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.
 THIS CONVEYANCE IS MADE SUBJECT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS,
 RESTRICTIONS & EASEMENTS DATED DECEMBER 2, 1998, EXECUTED BY GRANOR, WHICH WAS
 RECORDED ON DECEMBER 24, 1998, AS INSTRUMENT NO. 98-231444 IN THE OFFICE RECORDS OF
 LOS ANGELES COUNTY, CALIFORNIA.

Dated May 5, 1999 *Joan B. Knapp*
 Joan B. Knapp

STATE OF CALIFORNIA } ss.
 COUNTY OF Los Angeles }
 On May 5, 1999 before me,
WUSA Chi
 a Notary Public in and for said County and State, personally appeared
JOAN B. KNAPP,
 personally known to me (or proved to me on the basis of satisfactory
 evidence) to be the person(s) whose name(s) were subscribed to the
 within instrument and acknowledged to me that he/she/they executed
 the same in his/her/their authorized capacity(ies), and that by his/her/their
 signature(s) on the instrument (the "instrument"), or the entry upon behalf
 of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
 Signature *[Signature]*

99 1040536 (This area for use of notary seal)

LSUSA CH
 COMM #1148778
 NOTARY PUBLIC - CALIFORNIA
 LOS ANGELES COUNTY
 My Comm. Expires Aug. 2, 2001

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE
 MALIBU LA PAZ RANCH LLC, 650 DORRIS ROAD, #370, NORTHBROOKS, ILLINOIS 60062
 Meter Street Address City & State

819

JUN 08 1999

EQUITY

EXHIBIT "A"

PARCEL 1:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 184 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LAND OF DEKKER; SOUTH 36° 09' 22" EAST 357.36 FEET AND SOUTH 19° 41' 00" EAST 325.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 63° 14' 00" EAST 195 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 67° 12' 36" EAST 218.37 FEET TO THE WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO GENERAL TELEPHONE COMPANY OF CALIFORNIA RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID WESTERLY LINE; SOUTH 10° 15' 10" EAST 615.00 FEET TO AN ANGLE POINT; THENCE SOUTH 2° 32' 55" WEST 131.25 FEET; THENCE LEAVING SAID WESTERLY LINE, SOUTH 75° 41' 35" WEST 292.25 FEET; THENCE NORTH 21° 36' 25" WEST 425.91 FEET TO THE NORTHEASTERLY LINE OF SAID LAND OF JACOB DEKKER; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 19° 41' 00" WEST 230.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19985 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATER, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 98-01 RECORDED MAY 19, 1998 AS INSTRUMENT NO. 98-838333.

LEGAL, CONTINUED

-1-

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JUN 08 1999

EQUITY

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF PARCEL 2 DESCRIBED HEREIN OR THE LAND DESCRIBED IN CERTIFICATE OF COMPLIANCE NO. 99-04 RECORDED CONCURRENTLY HEREWITH (THE LAND DESCRIBED IN SUCH CERTIFICATE IS REFERRED TO AS THE "OTHER BENEFITED LAND") AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO PARCEL 2 OR THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING PARCEL 2 OR THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH THAT PORTION OF SAID LAND DESCRIBED AS FOLLOWS:

A STRIP OF LAND 40.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE NO. 99-04, RECORDED CONCURRENTLY HEREWITH AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SAID NORTHEASTERLY LINE, SOUTH 19° 41' 00" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF THAT PORTION OF SAID LAND CONDEMNED FOR ROAD PURPOSES AS DESCRIBED ABOVE.

LEGAL, CONTINUED

-2-

99 1040536

JUN 08 1999

EQUITY

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 DESCRIBED HEREIN AND THE OTHER BENEFITTED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER(S) OF THE PARCEL(S) FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCELS AFFECTED BY SUCH EASEMENT IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 497 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THE LAND DESCRIBED IN DEED TO ROBERT WILLIAMS, RECORDED AS INSTRUMENT NO. 242, ON DECEMBER 3, 1945 IN BOOK 22499 PAGE 181, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND, NORTH 36° 50' 43" EAST 214.36 FEET TO THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN DEED TO ALGERNON K. BARRE, RECORDED IN BOOK 21317 PAGE 119, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 528.03 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JOSEPH A. SHALHOUB, RECORDED IN BOOK 19985 PAGE 226 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE, SOUTH 42° 36' 00" WEST 252.04 FEET; THENCE SOUTH 47° 24' 00" EAST 300.00 FEET; THENCE SOUTH 42° 39' 46" WEST 535.43 FEET TO THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY DISTANT SOUTH 36° 09' 22" EAST 357.36 FEET FROM THE MOST NORTHERLY CORNER OF SAID LAND; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID LAND SOUTH 19° 41' 00" EAST 325.00 FEET; THENCE NORTH 63° 14' 00" EAST 195.00 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 87° 12' 36" EAST 218.37 FEET TO THE MOST WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO THE GENERAL TELEPHONE COMPANY OF CALIFORNIA, RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID MOST WESTERLY LINE NORTH 10° 15' 10" WEST 16.61 FEET; THENCE ALONG THE NORTHERLY LINE OF SAID GENERAL TELEPHONE COMPANY OF CALIFORNIA PARCEL NORTH 79° 44' 50" EAST 170.92 FEET; THENCE NORTH 3° 31' 20" WEST 313.57 FEET; THENCE ALONG THE LAND OF SAID SHALHOUB SOUTH 17° 54' 55" WEST 77.85 FEET, TO THE SOUTHWESTERLY LINE OF SAID LAND OF ROBERT WILLIAMS; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 106 FEET TO THE POINT OF BEGINNING.

LEGAL, CONTINUED

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EQUITY

EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19985 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATERS, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 99-03 RECORDED CONCURRENTLY HERewith.

RESERVING THEREFROM NON-EXCLUSIVE EASEMENTS AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF THE OTHER BENEFITED LAND AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH TWO STRIPS OF SAID LAND DESCRIBED AS FOLLOWS:

EASEMENT STRIP A:

A STRIP OF LAND 40.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE SAID LAND OF DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE N.J. 99-04, RECORDED CONCURRENTLY HERewith AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 19° 41' 06" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

LEGAL, CONTINUED

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EQUITY

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF THAT PORTION OF SAID LAND CONDEMNED FOR ROAD PURPOSES AS DESCRIBED ABOVE.

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINAFOVE DESCRIBED AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

EASEMENT STRIP B:

A STRIP OF LAND 40 FEET IN WIDTH, THE CENTERLINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY TERMINUS OF THE WESTERLY LINE OF STRIP A WITH THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE 99-04, THENCE ALONG SAID SOUTHERLY LINE, NORTH 42° 39' 46" EAST 45.16 FEET TO THE NORTHERLY TERMINUS OF THE EASTERLY LINE OF SAID STRIP A; THENCE ALONG SAID EASTERLY LINE OF SAID STRIP A, SOUTH 19° 41' 00" EAST 146.11 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 11° 50' 54" EAST 44.20 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 80.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 54° 31' 01" AND AN ARC DISTANCE OF 76.12 FEET; THENCE TANGENT TO SAID CURVE, NORTH 66° 21' 43" EAST 81.21 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 80.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 68° 44' 52" AND AN ARC DISTANCE OF 95.99 FEET; THENCE TANGENT TO SAID CURVE, NORTH 02° 23' 13" WEST 139.25 FEET TO THE INTERSECTION WITH THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04.

THE NORTHERLY AND SOUTHERLY LINES OF SAID STRIP SHALL BE PROLONGED AND OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE EASTERLY LINE SAID STRIP A.

LEGAL, CONTINUED

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11/10/99

EQUITY

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINAbove DESCRIBED AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2A:

A NON-EXCLUSIVE EASEMENT FOR RIGHT OF WAY, RIGHT OF ACCESS FOR ALL GOVERNMENT VEHICLES, AND UTILITY EASEMENT OVER, UNDER AND ACROSS THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A STRIP OF LAND 40.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY ; THENCE ALONG THE NORTHEASTERLY LINE SAID LAND OF DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE NO. 99-04, RECORDED CONCURRENTLY HERewith AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 19° 41' 00" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF SAID LAND CONDEMNED FOR ROAD PURPOSES.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN PARCEL 2 HEREINAbove DESCRIBED.

LEGAL, CONTINUED

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EQUITY

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINAbove DESCRIBED AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL AFFECTED BY SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2B:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES, OVER THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, INCLUDING WITHIN THE NORTHEASTERLY 10 FEET OF THE LAND FIRST DESCRIBED IN DEED TO ROBERT WILLIAMS, RECORDED AS INSTRUMENT NO. 343 ON DECEMBER 3, 1945, IN BOOK 22499 PAGE 181, OFFICIAL RECORDS OF SAID COUNTY, THE SOUTHWESTERLY LINE OF SAID 10 FOOT STRIP BEING PROLONGED TO INTERSECT THE SOUTHEASTERLY BOUNDARY OF SAID LAND TO ROBERT WILLIAMS.

SAID EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINAbove DESCRIBED PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL AFFECTED BY SAID NON-EXCLUSIVE EASEMENT (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL(S) AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 3:

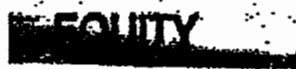
NON EXCLUSIVE EASEMENTS FOR THE PURPOSES AND IN THE LOCATIONS STATED IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS" RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444; WITHIN THE FOLLOWING DESCRIBED PARCEL.

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU, SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

LEGAL, CONTINUED

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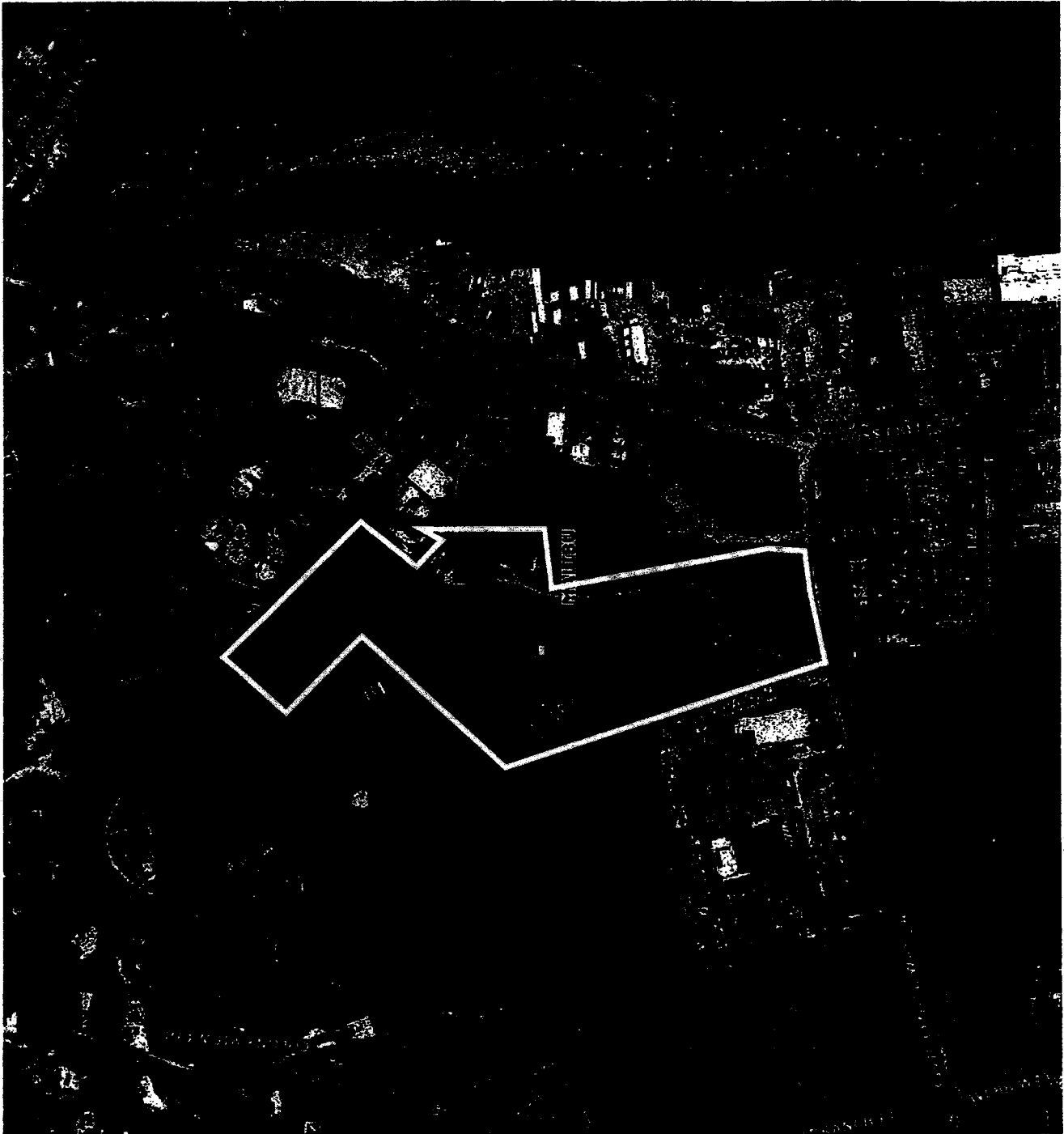
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BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JOSEPH A. SHALMOOR, RECORDED IN BOOK 19985 PAGE 226, OF OFFICIAL RECORDS OF SAID COUNTY, DISTANT SOUTH 42° 36' 00" WEST 252.04 FEET FROM THE INTERSECTION OF SAID NORTHWESTERLY LINE WITH THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO ALGERNON K. BARKER, RECORDED IN BOOK 21317 PAGE 119 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 42° 36' 00" WEST 330.00 FEET AND SOUTH 63° 13' 35" WEST 145.04 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DECKER, RECORDED IN BOOK 22063 PAGE 104, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LAND OF JACOB DECKER SOUTH 36° 09' 22" EAST 357.36 FEET; THENCE NORTH 42° 19' 46" EAST 535.43 FEET; THENCE NORTH 47° 24' 00" WEST 300.00 FEET TO THE POINT OF BEGINNING.

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PARCEL 1:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 487 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22053 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LAND OF DEKKER; SOUTH 36° 09' 22" EAST 357.36 FEET AND SOUTH 19° 41' 00" EAST 325.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 63° 14' 00" EAST 195 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 07° 12' 36" EAST 210.37 FEET TO THE WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO GENERAL TELEPHONE COMPANY OF CALIFORNIA RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID WESTERLY LINE; SOUTH 10° 15' 10" EAST 615.00 FEET TO AN ANGLE POINT; THENCE SOUTH 2° 32' 55" WEST 131.25 FEET; THENCE LEAVING SAID WESTERLY LINE, SOUTH 75° 41' 35" WEST 292.25 FEET; THENCE NORTH 21° 36' 25" WEST 425.91 FEET TO THE NORTHEASTERLY LINE OF SAID LAND OF JACOB DEKKER; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 19° 41' 00" WEST 230.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1501 PAGE 166, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19983 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATER, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 98-01 RECORDED MAY 19, 1998 AS INSTRUMENT NO. 98-836333.

LEGAL, CONTINUED

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RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF PARCEL 2 DESCRIBED HEREIN OR THE LAND DESCRIBED IN CERTIFICATE OF COMPLIANCE NO. 99-04 RECORDED CONCURRENTLY HEREWITH (THE LAND DESCRIBED IN SUCH CERTIFICATE IS REFERRED TO AS THE "OTHER BENEFITED LAND") AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO PARCEL 2 OR THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING PARCEL 2 OR THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH THAT PORTION OF SAID LAND DESCRIBED AS FOLLOWS:

A STRIP OF LAND 40.00 FEET IN WIDTH. THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE NO. 99-04, RECORDED CONCURRENTLY HEREWITH AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SAID NORTHEASTERLY LINE, SOUTH 19° 41' 00" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF THAT PORTION OF SAID LAND CONDEMNED FOR ROAD PURPOSES AS DESCRIBED ABOVE.

LEGAL, CONTINUED

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SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 DESCRIBED HEREIN AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER(S) OF THE PARCEL(S) FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCELS AFFECTED BY SUCH EASEMENT IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 487 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THE LAND DESCRIBED IN DEED TO ROBERT WILLIAMS, RECORDED AS INSTRUMENT NO. 243, ON DECEMBER 3, 1945 IN BOOK 22499 PAGE 181, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND, NORTH 36° 50' 43" EAST 214.26 FEET TO THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN DEED TO ALGERNON K. BARBER, RECORDED IN BOOK 21317 PAGE 119, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 528.03 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JOSEPH A. SHALHOUB, RECORDED IN BOOK 19985 PAGE 226 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE, SOUTH 42° 36' 00" WEST 252.04 FEET; THENCE SOUTH 47° 24' 00" EAST 300.00 FEET; THENCE SOUTH 42° 39' 46" WEST 535.43 FEET TO THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY DISTANT SOUTH 36° 09' 22" EAST 357.36 FEET FROM THE MOST NORTHERLY CORNER OF SAID LAND; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID LAND SOUTH 19° 41' 00" EAST 325.00 FEET; THENCE NORTH 63° 14' 00" EAST 195.00 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 87° 12' 36" EAST 218.37 FEET TO THE MOST WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO THE GENERAL TELEPHONE COMPANY OF CALIFORNIA, RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID MOST WESTERLY LINE NORTH 10° 15' 10" WEST 16.61 FEET; THENCE ALONG THE NORTHERLY LINE OF SAID GENERAL TELEPHONE COMPANY OF CALIFORNIA PARCEL NORTH 79° 44' 50" EAST 170.92 FEET; THENCE NORTH 3° 31' 20" WEST 313.57 FEET; THENCE ALONG THE LAND OF SAID SHALHOUB SOUTH 17° 54' 55" WEST 77.85 FEET, TO THE SOUTHWESTERLY LINE OF SAID LAND OF ROBERT WILLIAMS; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 106 FEET TO THE POINT OF BEGINNING.

LEGAL, CONTINUED

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Exhibit 5

EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19985 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATERS, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 99-03 RECORDED CONCURRENTLY HEREWITH.

RESERVING THEREFROM NON-EXCLUSIVE EASEMENTS AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF THE OTHER BENEFITED LAND AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH TWO STRIPS OF SAID LAND DESCRIBED AS FOLLOWS:

Malibu La Paz Ranch, LLC Development Agreement

PARCEL "A"

PROJECT DATA

TOTAL LOT AREA:	212,165 SQ. FT.		
1) LANDSCAPE AREA REQUIRED: (4% OF LOT)	14,488 SQ. FT.	LANDSCAPE AREA PROVIDED:	107,254 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (20% OF LOT)	76,449 SQ. FT.	OPEN SPACE PROVIDED:	84,079 SQ. FT.
3) MAX. IMPERMEABLE AREA: (8% OF LOT AREA)	16,973 SQ. FT.	TOTAL IMPERMEABLE AREA:	16,973 SQ. FT.

PARCEL "B"

PROJECT DATA

TOTAL LOT AREA:	248,870 SQ. FT.		
1) LANDSCAPE AREA REQUIRED: (4% OF LOT)	9,955 SQ. FT.	LANDSCAPE AREA PROVIDED:	86,444 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (20% OF LOT)	49,774 SQ. FT.	LANDSCAPE AREA ACTUAL TOTAL:	116,789 SQ. FT.
3) MAX. IMPERMEABLE AREA: (8% OF LOT AREA)	19,910 SQ. FT.	OPEN SPACE PROVIDED:	42,748 SQ. FT.
		TOTAL IMPERMEABLE AREA:	106,118 SQ. FT.

PARCEL "C"

PROJECT DATA

TOTAL LOT AREA:	160,000 SQ. FT.		
1) LANDSCAPE AREA REQUIRED: (4% OF LOT)	6,400 SQ. FT.	LANDSCAPE AREA PROVIDED:	15,640 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (20% OF LOT)	32,000 SQ. FT.	OPEN SPACE PROVIDED:	8,382 SQ. FT.
3) MAX. IMPERMEABLE AREA: (8% OF LOT AREA)	12,800 SQ. FT.	TOTAL IMPERMEABLE AREA:	15,640 SQ. FT.

BUILDING AREAS PARCEL A

BUILDING	RETAIL (SQ. FT.)	OFFICE (SQ. FT.)	TOTAL
1	6,289 GSF	6,289 GSF	12,578 GSF
2	6,289 GSF	6,289 GSF	12,578 GSF
3	10,248 GSF	10,248 GSF	20,496 GSF
4	10,248 GSF	10,248 GSF	20,496 GSF
5	10,248 GSF	7,548 GSF	17,796 GSF
6	10,248 GSF	7,548 GSF	17,796 GSF
7	400 GSF	400 GSF	800 GSF

SUB TOTAL (PARCEL A) 88,997 GSF

BUILDING AREAS PARCEL B

8	7,200 GSF	7,200 GSF	14,400 GSF
9	7,200 GSF	7,200 GSF	14,400 GSF
10	3,177 GSF (OFFICE)	2,861 GSF	6,038 GSF
11	3,177 GSF (OFFICE)	2,861 GSF	6,038 GSF

SUB TOTAL (PARCEL B) 43,061 GSF

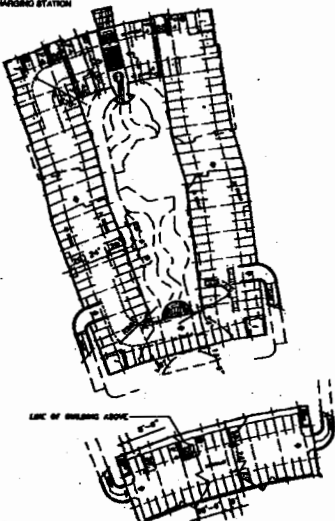
CITY HALL (PARCEL C)

BUILDING	DESCRIPTION	TOTAL
1	BLDG. / PLANNING / PUBLIC WORKS DEPARTMENTS	7,300 GSF
2	PARKING & REC. / CLERK / ADMIN. / CITY MANAGER / CITY COUNCIL	8,600 GSF
3	COUNCIL ROOM - 168 SEATS	3,700 GSF

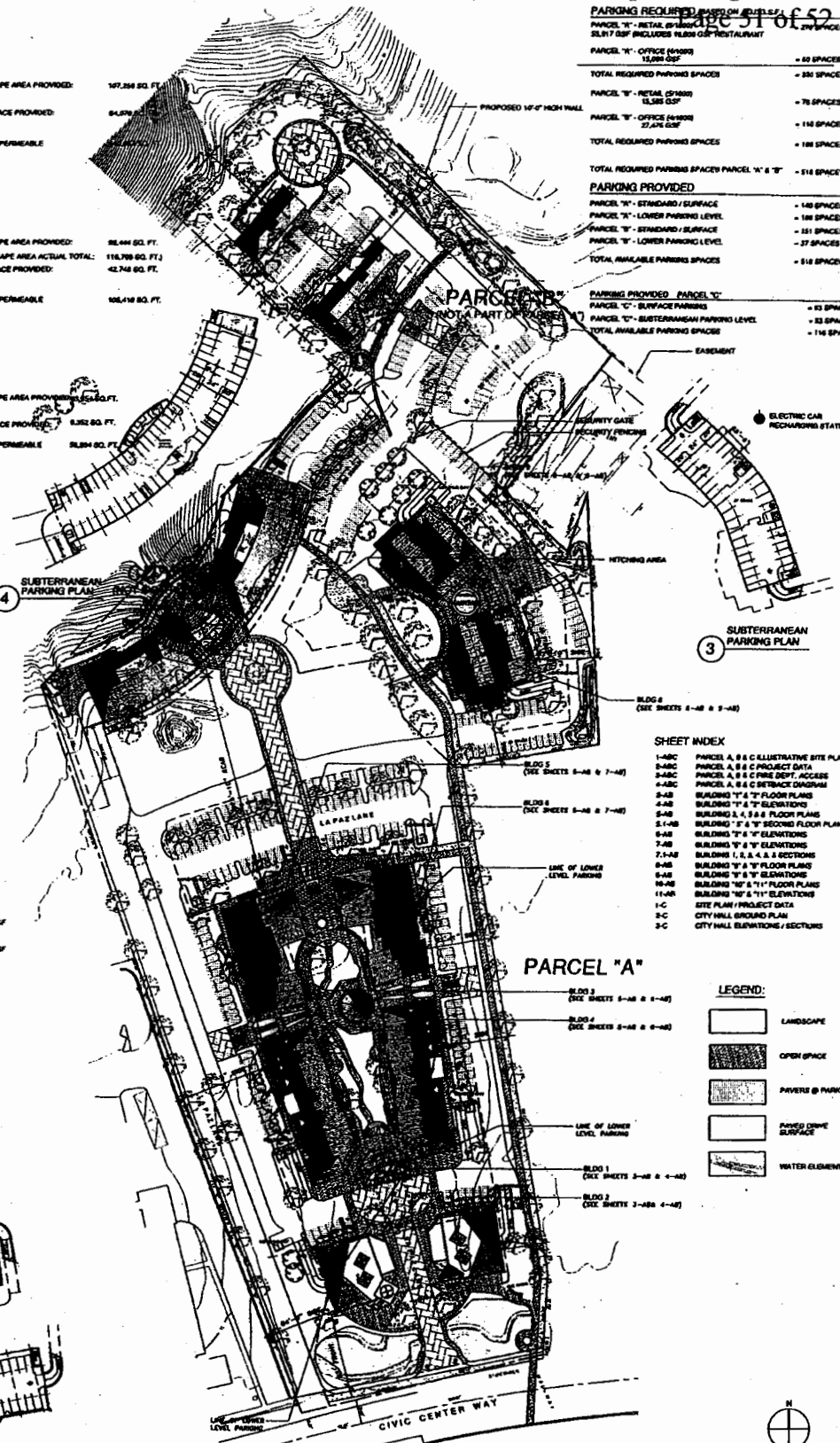
SUB TOTAL (PARCEL C) 20,000 GSF

MAX. GROSS FLOOR AREA: (80% OF TOTAL SITE AREA) = 132,161 SF
 F.A.R. = 8% LOT AREA
 TOTAL FLOOR AREA PROVIDED (PARCELS A, B & C) = 132,058 SF

ELECTRIC CAR RECHARGING STATION



2 SUBTERRANEAN PARKING PLAN



PARCEL "A"

- BUILD 1 (SEE SHEETS 3-AB & 4-AB)
- BUILD 2 (SEE SHEETS 3-AB & 4-AB)
- BUILD 3 (SEE SHEETS 5-AB & 6-AB)
- BUILD 4 (SEE SHEETS 5-AB & 6-AB)
- BUILD 5 (SEE SHEETS 6-AB & 7-AB)
- BUILD 6 (SEE SHEETS 6-AB & 7-AB)
- BUILD 7 (SEE SHEETS 6-AB & 7-AB)
- BUILD 8 (SEE SHEETS 8-AB & 9-AB)
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- BUILD 100 (SEE SHEETS 8-AB & 9-AB)

LEGEND:

- LANDSCAPE
- OPEN SPACE
- PAVERS @ PARKING
- PAVED DRIVE SURFACE
- WATER ELEMENT

SHEET INDEX

1-ABC	PARCEL A & B ILLUSTRATIVE SITE PLAN
2-ABC	PARCEL A & B PROJECT DATA
3-ABC	PARCEL A & B FIRE DEPT. ACCESS
4-ABC	PARCEL A & B CONTRACT DIAGRAM
5-AB	BUILDING "1" & "2" FLOOR PLANS
6-AB	BUILDING "3" & "4" FLOOR PLANS
7-AB	BUILDING "5" & "6" SECOND FLOOR PLANS
8-AB	BUILDING "7" & "8" ELEVATIONS
9-AB	BUILDING "9" & "10" ELEVATIONS
10-AB	BUILDING "11" & "12" ELEVATIONS
11-AB	BUILDING "13" & "14" ELEVATIONS
12-AB	BUILDING "15" & "16" FLOOR PLANS
13-AB	BUILDING "17" & "18" ELEVATIONS
14-AB	BUILDING "19" & "20" ELEVATIONS
15-AB	BUILDING "21" & "22" ELEVATIONS
16-AB	BUILDING "23" & "24" ELEVATIONS
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50-AB	BUILDING "91" & "92" ELEVATIONS
51-AB	BUILDING "93" & "94" ELEVATIONS
52-AB	BUILDING "95" & "96" ELEVATIONS
53-AB	BUILDING "97" & "98" ELEVATIONS
54-AB	BUILDING "99" & "100" ELEVATIONS



1 COMPOSITE SITE PLAN

DCA
 DANIEL CHUDNOVSKY, A.I.A. ARCHITECTS, INC.
 100 WOODBURY BOULEVARD, SUITE 400, MALIBU, CALIFORNIA 90263
 PHONE: 310 474-8800 FAX: 310 474-8801

DEVELOPER:
MALIBU LA PAZ RANCH, LLC

PROJECT:
**PROJECT: MALIBU CIVIC CENTER MASTERPLAN
 ILLUSTRATIVE SITE PLAN / PROJECT DATA**

ISSUED:
1-50'-0"
1-ABC
 (20 F.A.R.)

Malibu La Paz Ranch, LLC Development Agreement

PARKING
 PARKING REQUIRED BASED ON (A) G.S.F.
 PARCEL "A" - RETAIL (5,100 SF) - 120 SPACES
 PARCEL "B" - OFFICE (10,000 SF) - 200 SPACES
 PARCEL "C" - OFFICE (10,000 SF) - 200 SPACES
 TOTAL REQUIRED PARKING SPACES - 520 SPACES

PARCEL "A"

PROJECT DATA

TOTAL LOT AREA:	372,166 SQ. FT.	LANDSCAPE AREA PROVIDED:	167,258 SQ. FT.
1) LANDSCAPE AREA REQUIRED: (80% x LOT)	297,733 SQ. FT.	LANDSCAPE AREA PROVIDED:	167,258 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (20% x LOT)	74,433 SQ. FT.	OPEN SPACE PROVIDED:	84,822 SQ. FT.
3) MAX. IMPERMEABLE AREA: 20% OF LOT AREA	74,433 SQ. FT.	TOTAL IMPERMEABLE AREA:	167,258 SQ. FT.

PARCEL "B"

PROJECT DATA

TOTAL LOT AREA:	594,810 SQ. FT.	LANDSCAPE AREA PROVIDED:	293,444 SQ. FT.
1) LANDSCAPE AREA REQUIRED: (80% x LOT)	475,848 SQ. FT.	LANDSCAPE AREA ACTUAL TOTAL:	116,798 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (20% x LOT)	118,962 SQ. FT.	OPEN SPACE PROVIDED:	42,746 SQ. FT.
3) MAX. IMPERMEABLE AREA: 20% OF LOT AREA	118,962 SQ. FT.	TOTAL IMPERMEABLE AREA:	164,149 SQ. FT.

PARCEL "C"

PROJECT DATA

TOTAL LOT AREA:	100,000 SQ. FT.	LANDSCAPE AREA PROVIDED:	46,849 SQ. FT.
1) LANDSCAPE AREA REQUIRED: (80% x LOT)	80,000 SQ. FT.	LANDSCAPE AREA PROVIDED:	46,849 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (20% x LOT)	20,000 SQ. FT.	OPEN SPACE PROVIDED:	5,352 SQ. FT.
3) MAX. IMPERMEABLE AREA: 20% OF LOT AREA	20,000 SQ. FT.	TOTAL IMPERMEABLE AREA:	16,849 SQ. FT.

BUILDING AREAS PARCEL A

BUILDING	RETAIL (SQFT)	OFFICE (SQFT)	TOTAL
1	4,200 GSF		4,200 GSF
2	4,200 GSF		4,200 GSF
3	15,000 GSF		15,000 GSF
4	15,000 GSF		15,000 GSF
5	15,000 GSF	7,500 GSF	22,500 GSF
6	15,000 GSF	7,500 GSF	22,500 GSF
7	400 GSF		400 GSF
SUB TOTAL (PARCEL A)			66,800 GSF

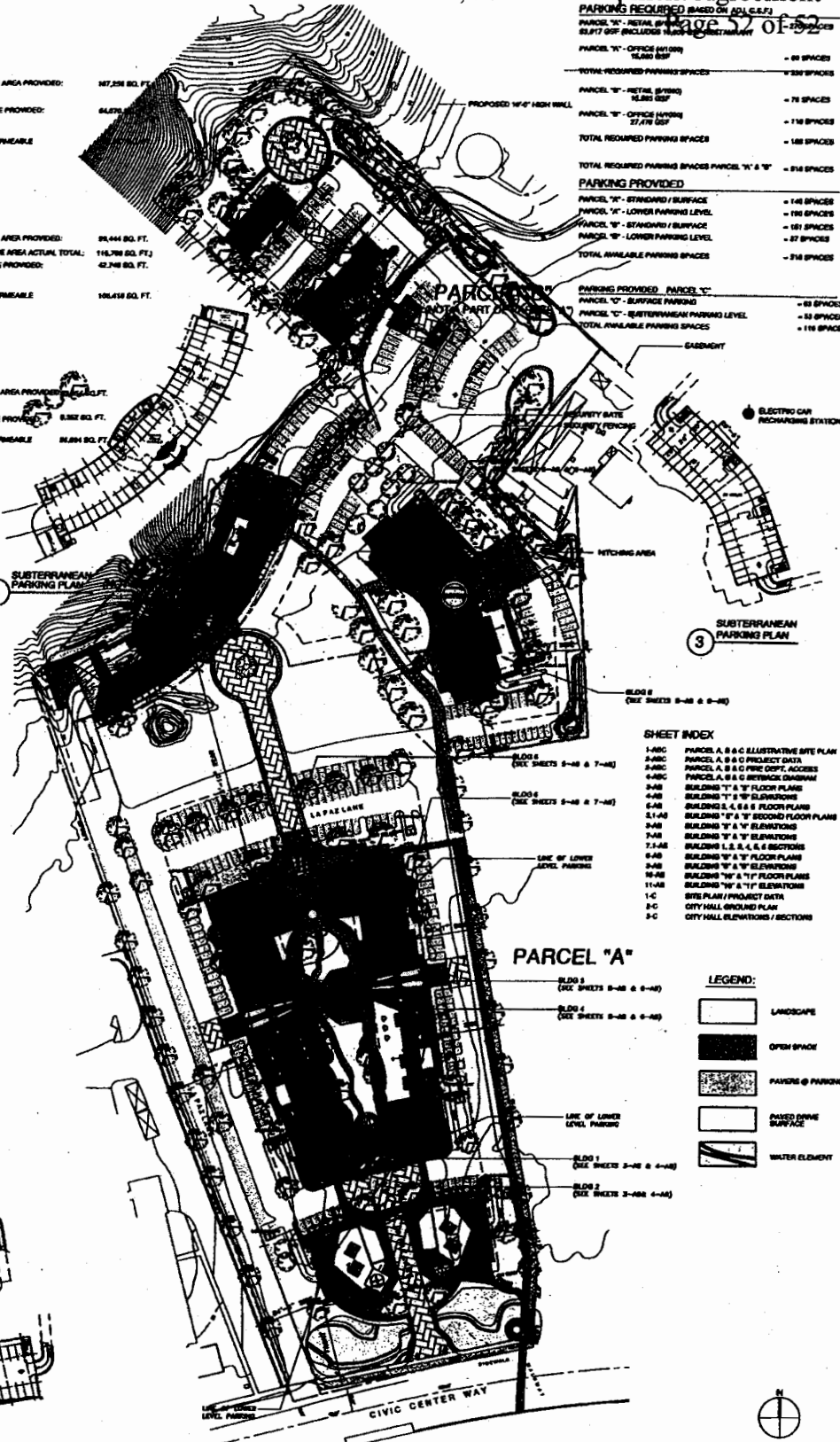
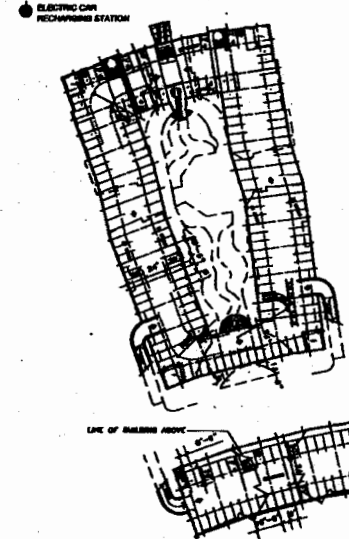
BUILDING AREAS PARCEL B

4	7,200 GSF	7,200 GSF	14,400 GSF
5	7,200 GSF	7,200 GSF	14,400 GSF
10	4,777 GSF (OFFICE)	3,600 GSF	8,377 GSF
11	2,165 GSF (OFFICE)	1,770 GSF	3,935 GSF
SUB TOTAL (PARCEL B)			43,061 GSF

CITY HALL (PARCEL C)

	TOTAL
1 BLDG. / PLANNING / PUBLIC WORKS DEPARTMENTS	7,200 GSF
2 PARKS & RECL. / CLEAN / ADMIN. / CITY MANAGER / CITY COUNCIL	6,800 GSF
3 COUNCIL ROOM - 140 SEATS	3,700 GSF
SUB TOTAL (PARCEL C)	20,000 GSF

MAX. GROSS FLOOR AREA: (80% OF TOTAL SITE AREA) = 132,161 SF
 P.A.R. = 80% LOT AREA
 TOTAL FLOOR AREA PROVIDED (PARCELS A & B): = 132,058 SF



PARCEL "B" - RETAIL (5,100 SF) - 120 SPACES
 PARCEL "C" - OFFICE (10,000 SF) - 200 SPACES
 TOTAL REQUIRED PARKING SPACES - 520 SPACES

PARCEL "B" - STANDARD / SURFACE
 PARCEL "B" - LOWER PARKING LEVEL
 PARCEL "C" - STANDARD / SURFACE
 PARCEL "C" - LOWER PARKING LEVEL
 TOTAL AVAILABLE PARKING SPACES - 518 SPACES

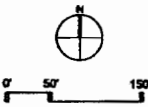
PARKING PROVIDED PARCEL "C"
 PARCEL "C" - SURFACE PARKING - 60 SPACES
 PARCEL "C" - SUBTERRANEAN PARKING LEVEL - 53 SPACES
 TOTAL AVAILABLE PARKING SPACES - 113 SPACES

SHEET INDEX

- 1-ABC PARCELS A, B & C ILLUSTRATIVE SITE PLAN
- 2-ABC PARCELS A, B & C PROJECT DATA
- 3-ABC PARCELS A, B & C FIRE DEPT., ACCESS
- 4-ABC PARCELS A, B & C SERVICE DIAGRAM
- 3-A-B BUILDING "A" & "B" FLOOR PLANS
- 3-A-B BUILDING "C" & "D" FLOOR PLANS
- 3-A-B BUILDING "E" & "F" FLOOR PLANS
- 3-A-B BUILDING "G" & "H" FLOOR PLANS
- 3-A-B BUILDING "I" & "J" FLOOR PLANS
- 3-A-B BUILDING "K" & "L" FLOOR PLANS
- 3-A-B BUILDING "M" & "N" FLOOR PLANS
- 3-A-B BUILDING "O" & "P" FLOOR PLANS
- 3-A-B BUILDING "Q" & "R" FLOOR PLANS
- 3-A-B BUILDING "S" & "T" FLOOR PLANS
- 1-C SITE PLAN / PROJECT DATA
- 2-C CITY HALL BUILDING PLAN
- 3-C CITY HALL ELEVATIONS / SECTIONS

LEGEND:

- [Symbol] LANDSCAPE
- [Symbol] OPEN SPACE
- [Symbol] PAVING @ PARKING
- [Symbol] PAVED DRIVE SURFACE
- [Symbol] WATER ELEMENT



DCA
 DANIEL CRUDENY, AIA, ARCHITECTS, INC.
 200 WESTWOOD BOULEVARD, SUITE 400, LOS ANGELES, CA 90024
 PHONE: 213-462-0000 FAX: 213-462-0000

DEVELOPER:
MALIBU LA PAZ RANCH, LLC



PROJECT:
**PROJECT: MALIBU CIVIC CENTER MASTERPLAN
 ILLUSTRATIVE SITE PLAN / PROJECT DATA**

080408
 1'-00" = 1"
1-ABC
 (1/24 CAD)

In Lieu of Exhibits 4, 6 & 7

PL

RESOLUTION NO. 08-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING DEVELOPMENT AGREEMENT NO. 07-001 "DA .20 PROJECT", LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 (AND COROLLARY AMENDMENTS), COASTAL DEVELOPMENT PERMIT NO. 05-107, LOT LINE ADJUSTMENT NO. 05-004, AND CONDITIONAL USE PERMIT NO. 05-004 TO ALLOW THE CONSTRUCTION OF 112,058 SQUARE FEET OF COMMERCIAL OFFICE AND RETAIL USES AND A 20,000 SQUARE FOOT CITY HALL COMPLEX ADDRESSED AS 3700 LA PAZ LANE (MALIBU LA PAZ RANCH, LLC)

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

Section 1. Recitals.

A. On February 17, 2000, Schmitz and Associates, on behalf of La Paz Ranch, LLC, submitted applications for Plot Plan Commercial (PPC) No. 00-005 (Parcel A) and PPC No. 00-006 (Parcel B). Parcel A is identified as Assessor Parcel Number 4458-022-023 and Parcel B is identified as Assessor Parcel Number 4458-022-024. The application requests construction of 99,117 square feet of shopping center¹ and office park development. Subsequently, the property owner revised its proposal, applying for the construction of 112,058 square feet of shopping center and office park development and a 20,000 square foot City Hall complex. However, if the .20 project was not approved, the property owner wanted to pursue the .15 project. To accommodate this alternative, the City bundled two sets of entitlement applications and studied the .15 project as an alternative, although the .20 project was the property owner's preferred alternative.

B. On January 24, 2003, a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) was issued for a 30-day public review period.

C. On January 29, 2003, the Governor's Office of Planning and Research distributed the NOP to responsible agencies for comments for a 30-day public review period ending on February 27, 2003 (SCH #200311131).

D. On February 12, 2003, the City of Malibu held a public scoping meeting regarding the preparation of the EIR.

E. During the following years, the Applicant worked with all City Departments in order to obtain an "in-concept" approval for the proposed project.

F. On June 21, 2005, the application was changed to a coastal development permit, conditional use permit, site plan review, minor modification and lot line adjustment application. The entitlements associated with the .15 Project (.15 floor area ratio (FAR)) include: 1) a coastal development

¹ Staff uses the term shopping center throughout as a descriptive term for the retail component of the proposed development in the context and scale of Malibu. This term typically denotes much larger scale development in other communities such as regional shopping malls w

Exhibit 9
Malibu LCPA MAJ- 3-08
City of Malibu Resolution No.
08-52 Approving Development
Agreement and LCPA 06-003

permit (CDP No. 05-106) for construction of 99,117 square feet of commercial development; 2) a lot line adjustment (LLA No. 05-003) to adjust property boundaries between the two parcels (A and B); 3) site plan reviews (SPR Nos. 07-126 and 127) for construction in excess of 18 feet in height for the development on both parcels; 4) site plan reviews (SPR Nos. 07-148 and 149) for remedial grading on both parcels; 5) minor modifications (MM Nos. 07-044 and 045) for front yard setbacks on both parcels; 6) a conditional use permit (CUP No. 05-003) for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A; and 7) conditional use permits (CUP Nos. 07-018 and 019) for wastewater systems across property lines. The entitlements associated with the DA .20 Project include: 1) Local Coastal Program (LCP) Local Implementation Plan (LIP) Text Amendment (LCPA No. 06-003) amending Section 3.4 (Zoning Designations and Permitted Uses – Overlay Zones) to include Subsection 3.4.3 (Town Center Overlay) and associated development standards in conjunction with the associated Development Agreement between the City and the project Applicant; 2) CDP No. 05-107 for construction of 112,058 square feet of commercial floor area, including retail, restaurant and office uses and a 20,000 square foot City Hall complex; 3) LLA No. 05-004 between two adjacent parcels and the subsequent conveyance of a portion of one parcel (2.3 acres) to the City; and 4) CUP No. 05-004 for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A.

G. On September 28, 2006, the Draft EIR (DEIR) was circulated by the City of Malibu for a 45-day public review period ending on November 13, 2006.

H. On September 29, 2006, the Governor's Office of Planning and Research distributed the DEIR to responsible agencies for a 45-day public review period ending on November 13, 2006 (SCH #200311131).

I. On October 25, 2006, the project was reviewed by the Environmental Review Board (ERB). Since there were only four of the seven ERB members in attendance, at the meeting, staff requested that the project be brought back to the November 15, 2006 meeting. On November 15, 2006, the ERB, with additional members in attendance reviewed the project and made recommendations. These recommendations have been incorporated into the final project.

J. On October 18, 2007, a Notice of Public Hearing and Notice of Availability of Local Coastal Program (LCP) Amendment documents was published in a newspaper of general circulation within the City of Malibu. In addition, on October 18, 2007, pursuant to LIP Section 19.3.2.A, a Notice of Public Hearing and Notice of Availability of LCP Amendment documents was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission (CCC).

K. On November 6, 2007, the Planning Commission opened the public hearing, considered the staff report and presentation, took public testimony and continued the item to December 18, 2007.

L. On December 18, 2007, the Planning Commission meeting was cancelled due to a lack of quorum.

M. On January 2, 2008, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on January 2, 2008, pursuant to LIP Section 19.3.2.A, a Notice of Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

N. On January 22, 2008, the Planning Commission held a duly noticed public hearing, reviewed and considered written reports, public testimony, and related information, and recommended that the City Council certify the EIR, disapprove the .20 Project, and approve the .15 Project with the following comments:

1. Recommend the Applicant work with the neighbors to address their concerns and incorporate measures which alleviate conflict with the adjacent land use
2. Address concerns with groundwater and the Water Resources Board
3. Address concerns with traffic
4. Review Traffic Study submitted at hearing
5. Include 24-hour security for the entire commercial development
6. Fence for Malibu Knolls neighborhood
7. Revise Fuel Modification Plan to reflect information learned during recent fires
8. Include gate/fence/key system for "after hours" at Buildings 10 and 11
9. Include very low lighting throughout development
10. Include conditions regulating hours of operation, including, trash pick-up etc.

O. The Planning Commission acts exclusively as an advisory body to the City Council with respect to development agreements. Pursuant to LIP Section 13.28 and the corollary provisions of the Municipal Code, the Planning Commission makes its recommendation to the City Council and the City Council subsequently renders a decision whether to approve or disapprove the development agreement.

P. On February 19, 2008, the Planning Commission adopted Resolution No. 08-07 memorializing the Commission's action on January 22, 2008.

Q. On February 27, 2008, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on February 27, 2008, pursuant to LIP Section 19.3.2.A, a Notice of City Council Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

R. On March 24, 2008, the City Council continued the hearing to the May 12, 2008, Regular City Council meeting.

S. On April 3, 2008, the applicant submitted a Wastewater Management System Master Plan (WMSMP) prepared by Lombardo Associates, Inc (LAI). The new onsite wastewater treatment system (OWTS) is materially different than the previously reviewed onsite waster treatment system as described in the DEIR.

T. On May 12, 2008, the City Council did not hear the report but continued the item to a date uncertain to allow analysis of the new onsite wastewater treatment system. The agenda report indicated that "Once the analysis of the new system has been completed and incorporated into the environmental document, the project will be noticed for a public hearing." Since the City Council bases its decision in part based on the recommendation of the Planning Commission and the Commission did not have the opportunity to provide a recommendation on the projects with the revised wastewater systems or the updated EIR, it was determined that the project should return to the Planning Commission so that the recommendation would be based on the most accurate information available. The project was subsequently scheduled for Planning Commission on August 5, 2008.

U. On July 10, 2008, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on July 10, 2008, pursuant to LIP Section 19.3.2.A, a Notice of Planning Commission Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

V. On August 5, 2008, the Planning Commission declined to hear the item indicating by majority vote that it had reviewed the project extensively and that the changes did not warrant further review by the Planning Commission. Subsequently, the project was scheduled for the City Council.

W. On August 28, 2008, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on August 28, 2008, pursuant to LIP Section 19.3.2.A, a Notice of City Council Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

V. On September 22, 2008, the City Council conducted a duly noticed public hearing. heard and reviewed the proposed projects and associated environmental document, and directed staff to negotiate a revision to the development agreement provisions relating to the use of the 2.3 acre parcel for other municipal uses, including but not limited to a wastewater treatment facility for the Civic Center Area, and to change the five year deadline to develop the property to 10 years. The item was continued to the November 10, 2008 City Council hearing but was to report any revisions to the development agreement to the Planning Commission for recommendation pursuant to Local Coastal Program Local Implementation Plan 13.28.5. Subsequently, when the revisions were negotiated, the item was scheduled for the next Planning Commission meeting.

X. On October 21, 2008, the Planning Commission received the report on the proposed revisions to the development agreement and made a recommendation to the City Council to approve the proposed changes as improvements to the development agreement.

Y. On November 10, 2008, the City Council conducted a public hearing, heard and considered all testimony and arguments of all persons desiring to be heard and the Council considered all factors relating to the coastal development permit and associated entitlements, including, but not limited to, the recommendation from the Planning Commission.

Section 2. Environmental Review.

An EIR was prepared in accordance with California Environmental Quality Act (CEQA) and the CEQA Guidelines. On September 28, 2006, the DEIR was circulated for a 45-day public review period, September 28, 2006 through November 13, 2006. On September 29, 2006, the Governor's Office of Planning and Research distributed the DEIR to responsible agencies for a 45-day public review period, September 29, 2006 through November 13, 2006 (SCH #200311131).

The City's EIR consultant worked with City staff and environmental regulatory agencies to work through issues raised during the DEIR comment period, Environmental Review Board (ERB) meeting, and public comment period. A summary of the significance of the environmental impacts is listed below and explained further in the Executive Summary in the EIR.

Significance for each area required for EIR review:

Less Than Significant Impacts

- Air Quality – post-construction
- Agriculture

Less Than Significant With the Implementation of Mitigation Measures

- Aesthetics
- Air Quality – during construction
- Cultural Resources
- Geotechnical
- Hydrology/Water Quality
- Land Use
- Public Utilities
- Public Services
- Environmental Hazards/Risk of Upset

Mitigation Measures which lessen the impact to a level of less than significant are listed at the end of each impact discussion as well as in the Mitigation Monitoring Report (EIR Table X-1).

Potentially Significant and Unavoidable

- Construction Noise - Construction activities would result in significant and unavoidable temporary noise impact during construction at areas identified in the EIR as sensitive receptors 1, 2 and 3 (single-family residences along Cross Creek Road, Malibu Public Library at 23519 Civic Center Way and Colin McEwen High School at 23410 Civic Center Way).
- Biological Resources - The project's contribution to the regional loss or degradation of undeveloped open space is limited and incremental. However, the cumulative degradation to regional biological resources, with respect to undeveloped open space in the Malibu area, from development of existing residential lots, intensification and improvement of existing land use and development of existing commercial lots such as that proposed, may be regionally significant on a cumulative basis.
- Transportation/Circulation - The impact to transportation and circulation will be unavoidable as additional traffic in the Civic Center Area impacts the existing traffic flow.

Although EIR mitigation measures and conditions of approval imposed on the project will provide substantial mitigation of the identified significant environmental effects, these environmental effects cannot be feasibly mitigated to a level of insignificance. Consequently, in accordance with Section 15093 of the CEQA Guidelines, a Statement of Overriding Considerations (Resolution No. 08-51) will need to be adopted by the City Council to substantiate the City's decision to accept these unavoidable significant effects when balanced against the significant benefits afforded by the project.

Section 3. Development Agreement Findings.

Pursuant to M.M.C. Section 17.64.010, the City Council may enter into a DA for the development of real property with any person having a legal or equitable interest in such property, or having written permission from a person having such interest. The applicant represents the owners of the property and has requested the development agreement.

The applicant has agreed to provide the following public benefits: 1) 2.3 acres in the Civic Center Area conveyed to the City for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use infrastructure construction fund; 3) a pedestrian and bike path from City Hall throughout the project connecting to Civic Center Way; 4) dedication of trail segment fronting along Civic Center Way; and 5) conceptual architectural plans for the proposed City Hall.

The Council may approve an application for a DA where it finds that the information presented by the applicant and/or obtained at a public hearing substantiates all of the required findings.

Finding 1. That the proposed development agreement is consistent with the general plan.

The proposed DA .20 Project is consistent with the General Plan in that the FAR is within the allowable

range for the Community Commercial (CC) land use designation. Chapter 1.4, Land Use Designations of the General Plan states:

“The CC designation is intended to provide for the resident serving needs of the community similar to the Commercial Neighborhood (CN) designation, but on parcels of land more suitable for concentrated commercial activity. Floor-to-Area Ratio (FAR) shall range from a maximum of .15 to .20. Uses that are permitted and conditionally permitted are defined in the Zoning Code but would typically include the following: all permitted uses within the CN designation, financial institutions, medical clinics, restaurants, service stations and health care facilities.”

The proposed LCPA associated with the DA requests uses consistent with those in the General Plan CC land use designation. The locations of the proposed buildings have been sited with concern for adjacent residential development and have been analyzed in the EIR. The application submittal provided site design, proposed location, height, scale, architectural design and circulation of the proposed development. A landscaping plan has been submitted and signage standards have been requested as part of the LCPA. Thus, the application has met the requirements defined above in the CC land use designation text. Therefore, the finding can be made that the proposed DA .20 Project is consistent with the General Plan.

Finding 2. That the proposed development agreement complies with zoning subdivision and other applicable ordinances and regulations.

As a part of the DA .20 Project, a LCPA for the Town Center Overlay (TCO), with site specific development is proposed. The proposed project has been designed to be in compliance with these standards. Once the LCPA is certified by the CCC, the proposed project will be in compliance with the applicable ordinances and regulations.

Finding 3. That the proposed development agreement is consistent with the public convenience, general welfare and good land use practice, making it in the public interest to enter into the development agreement with the applicant.

The development agreement stipulates that 2.3 acres in the Civic Center Area shall be conveyed to the City. In addition, a \$500,000 donation shall be made to the City Hall or municipal infrastructure construction fund associated with development of the 2.3 acre parcel. The proposed 2.3 acre site is a convenient location within the Civic Center area to serve the citizens of Malibu as a City Hall or other municipal use. There have been three City Hall locations since the City's inception in 1991. The first City Hall location was at 23805 Stuart Ranch Road. The next City Hall location was on Civic Center Way at the County government building. The existing City Hall is currently leased space in a commercial building at 23815 Stuart Ranch Road and while the location seems to adequately serve the citizens of Malibu, it is not easily accessible by pedestrians or served by bus lines.

In addition, since the City is a tenant, the costs associated with leasing the space (**approximately \$750,000 per year with projected annual increases**) are not directly controllable. Given the cost and limited availability of land within the Civic Center Area, the DA provides an opportunity to secure a

convenient location for a City Hall on land zoned for such use and in close proximity to the previous and existing City Hall locations.

Finally, the DA provides a bike and pedestrian pathway from the City Hall complex (Parcel C area) to Civic Center and a trail dedication along Civic Center Way. The bike and pedestrian pathway meets the goal of General Plan Policy LU 2.1.6 which states that the City shall encourage pedestrian friendly design in concentrated commercial areas. The trail dedication includes a segment of the planned Malibu Pacific Trail (formerly the Coastal Slope Trail), a trail mapped on the Trails Master Plan adopted by the City as well as identified in the LCP, which appears to run along the frontage of Civic Center Way. This is supported by General Plan Open Space Implementation Measure 53 which states that where possible obtain trail dedications and easements consistent with the trails plan.

Finding 4. That the proposed development agreement will not: a. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; b. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, or c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

The DA proposes a commercial shopping center/office park use and a City Hall or municipal use. The proposed site is currently vacant but is planned for this type of use in all the City's regulatory land use documents. It is reasonably foreseeable that such a development would take place on the site. The minor increase in FAR allowed by the DA does not adversely affect development on the site. Site design modifications including the relocation of Buildings 10 and 11 away from the adjacent residential property at 3657 Cross Creek and landscaped buffer areas between the uses for the residents at 3657 and 3661 Cross Creek have been included to ensure that the proposed development is compatible with the surrounding area and is not detrimental to the use, enjoyment or valuation of the surrounding area. The EIR was prepared for the proposed project and evaluated potential development scenarios on the subject property. The EIR found that the proposed DA project would not have adverse impacts to public health (wastewater), safety or general welfare (public services) that cannot be mitigated. The proposed DA project would have impacts which are unavoidable and unmitigatable with regards to construction noise, biological resources/open space and traffic/circulation. A Statement of Overriding Considerations with regard to those impacts will need to be adopted by the City Council upon certification of the EIR.

Finding 5. That the proposed development agreement complies with the terms, conditions, restrictions and requirements of Section 17.64.050.

A. M.M.C. Section 17.64.050.A states that a development agreement entered into by the Council may include the following terms, conditions, restrictions and requirements; provided, however, that such terms, conditions, restrictions or requirements shall not be contrary to zoning, subdivision or other ordinances, laws or regulations applicable to the proposed development:

1. The duration of the agreement, including a specified termination date if appropriate;
2. The uses to be permitted on the property;

3. The density or intensity of use permitted;
4. The maximum height, size and location of buildings permitted;
5. The reservation or dedication of land for public purposes to be accomplished, if any; and
6. The time schedule established for periodic review as required.

In association with the DA, the applicant has proposed a LCPA creating the Town Center Overlay district which establishes the uses permitted on the property, the density (floor area ratio), development standards for height, size, location, landscaping and open space. In addition, a period review of the established use is conditioned via the required CUP. The condition (No. 54.) states: "The CUP and associated conditions are subject to annual review by the City Planning Manager. Violation of any of the conditions of this approval may be cause for revocation of the CUP and termination of all rights granted there under."

B. M.M.C. Section 17.64.050.B states that a development agreement may also include additional terms, conditions, restrictions and requirements for subsequent discretionary actions in addition to those provided above; provided, that such terms, conditions, restrictions and requirements do not prevent development of the lot or parcel of land included in such agreement for the uses and to the density or intensity of development set forth in the agreement, including but not limited to the following:

1. The requirement of development schedules, providing that construction of the proposed development as a total project or in phases to be initiated and/or completed within a specified time period;

The applicant intends to construct the proposed .20 DA Project as one development and does not intend to phase the development.

2. The construction of public facilities required in conjunction with such development, including but not limited to vehicular and pedestrian rights-of-way, drainage and flood-control facilities, parks and other public facilities;

The access improvements, drainage and flood control facilities for the proposed City Hall complex could be constructed by the applicant at the same time those facilities are constructed for Parcels A and B.

3. The prohibition of one or more uses normally listed as permitted, accessory, or subject to permit in the zone where placed;

The list of permitted uses is similar to those currently permitted in the CC zone with the following uses prohibited: fast food restaurants with drive-thru facilities; liquor stores (stand alone); adult book stores; gas stations and hazardous waste facilities.

4. The limitation of future development or requirement of specified conditions under which further development not included in the agreement may occur;

The DA .20 Project allows an FAR for the maximum allowable FAR subject to a public benefit. There is no mechanism in the DA which would allow the applicant or future property owner, to develop the property further.

5. The requirement of a faithful performance bond where deemed necessary to, and in an amount deemed sufficient to guarantee the faithful performance of specified terms, conditions, restrictions and/or requirements of the agreement. In lieu of the required bond, the applicant may deposit with the City Clerk and assign to the city, certificates of deposit or savings and loan certificates or shares equal in amount to the same conditions as set forth herein. Such deposit and assignment shall comply with all the provisions and conditions of M.M.C. Chapter 3.04;

If required, the applicant is prepared to provide such bonds in order to be in compliance with M.M.C. Chapter 3.04, specifically, M.M.C. Section 3.04.020 Bonds-Alternative security.

6. The requirements of specified design criteria for the exteriors of buildings and other structures, including signs;

The architecture is envisioned as Mediterranean with modern updates. The buildings would include the use of textured clay tile, Spanish lace, cement pilasters, rough-hewn wood trellises and exposed wood rafter tails, decorative/battered walls, and an array of arches and colonnades. Included in the LCPA are specific design criteria for signage.

7. The requirement of special yards, open spaces, buffer areas, fences and walls, landscaping and parking facilities, including vehicular and pedestrian ingress and egress;

The LCPA contains development standards for setbacks (yards), open space, landscaping and parking. The difference in what is requested and what is currently allowed is detailed in the LCPA discussion. The differences are not substantial.

8. The regulation of nuisance factors such as noise, vibration, smoke, dust, odors, gasses, garbage, heat and the prevention of glare or direct illumination of adjacent properties;

These factors were analyzed in the EIR and mitigations for construction noise, dust and orders have been addressed. Lighting conditions of approval require that lighting be shielded and that non-reflective building materials be used. In response to comments from adjacent residential neighbors, Buildings 10 and 11 have been pushed back to the extent feasible from the neighboring residential properties. The landscaping plan has been revised to add additional landscaping on this shared property boundary to further shield the residential properties from the commercial uses and associated traffic. In addition, the same types of mitigations will be provided to the residence at Sycamore Farms.

9. The regulation of operating hours and other characteristics of operation which might adversely affect normal neighborhood schedule and functions on surrounding property; and

Operating hours and characteristics of operation are discussed in the conditional use permit findings analysis. The use proposed on Parcel B in Buildings 10 and 11 is 100 percent office use with a basic 9:00 a.m. to 5:00 p.m. schedule anticipated. The proposed uses in Building 8 and 9 are 64 percent office and 36 percent retail. The more intense commercial retail and restaurant uses are limited to Parcel A in order to be more compatible with the neighborhood.

10. The payment of exactions or the provision of other public benefits;

The applicant has agreed to provide the following public benefits: 1) 2.3 acres in the Civic Center Area conveyed to the City for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use infrastructure construction fund; 3) a pedestrian and bike path from City Hall (Parcel C area) throughout the project connecting to Civic Center Way; 4) dedication of trail segment fronting along Civic Center Way; and 5) conceptual architectural plans for the proposed City Hall.

The increase in allowable FAR from .15 (99,117) to .20 (132,058) includes the 20,000 square foot City Hall. The net increase of commercial floor area to the applicant is only 12,941 square feet for a total of 112,058 square feet. Sixty-one percent of the "bonus" square feet is appropriated to the 20,000 square foot City Hall while only 39 percent or 12,941 square feet is used to allow the second floors on Buildings 5 and 6.

C. Unless otherwise provided by a development agreement, the general plan, zoning, subdivision, and other ordinances, rules, regulations and official policies governing permitted uses of land, density, and design, improvement and construction standards, and specifications applicable to property subject to a development agreement shall be those applicable to such development on the date of execution of the development agreement by the council; provided, however, that a development agreement shall not:

1. Be construed to prevent the application of later adopted or amended ordinances, rules, regulations and policies in subsequent applications applicable to the property which do not conflict with such existing ordinances, rules, regulations and policies; or
2. Prevent the approval, approval subject to conditions, or denial of subsequent development applications pursuant to such existing or later adopted or amended ordinances, rules, regulations and policies.

The applicant intends to construct the proposed project as described above in the project description. This section states that should the regulations change and a more permissive FAR is allowed, the applicant is not held to a more restrictive standard if the DA is more restrictive. This will not be applicable since the applicant has requested a LCPA for development standards, Town Center Overlay, which will prescribe future development on the site.

Finding 6. That in consideration of the rights accruing to the developer under the development agreement, the developer shall provide the city or the community with special benefits which might not otherwise be provided by the developer in the absence of an agreement.

The applicant has agreed to provide the following public benefits: 1) 2.3 acres in the Civic Center Area conveyed to the City for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use infrastructure construction fund; 3) a pedestrian and bike path from City Hall throughout the project connecting to Civic Center Way; 4) dedication of trail segment fronting along Civic Center Way; and 5) conceptual architectural plans for the proposed City Hall.

The increase in allowable FAR from .15 (99,117) to .20 (132,058) includes the 20,000 square foot City Hall. The net increase of commercial floor area to the applicant is only 12,941 square feet for a total of 112,058 square feet. Sixty one percent of the "bonus" square feet is appropriated to the 20,000 square foot City Hall while only 39 percent or 12,941 square feet is used to allow the second floors on Buildings 5 and 6.

The proposed 2.3 acre site is a convenient location within the Civic Center area to serve the citizens of Malibu as a City Hall or other municipal use. The applicant has sited the structures in the proposed locations with the intent on complying to the greatest extent possible with existing development standards. However, by including the City Hall or municipal use component, it is no longer feasible for La Paz to strictly comply with all the development standards. An LCPA has been requested to create custom development standards (Town Center Overlay).

Section 4. Local Coastal Program Amendment No. 06-003.

LCP Amendment No. 06-003 includes an amendment to the certified Local Coastal Program Local Implementation Plan, and the corollary amendments to the Zoning Code and Zoning Map. Specifically, the amendment consists of the following:

1. LCP Local Implementation Plan (LIP) Text Amendment amending Section 3.8 (Zoning Designations and Permitted Uses – Overlay Zones) to include Subsection 3.8.C (Town Center Overlay) and associated development standards in conjunction with the associated Development Agreement between the City and the project Applicant.
2. Zoning Text Amendment (ZTA) amending Malibu Municipal Code (M.M.C.) to conform to the LCP amendments by amending Title 17 (Zoning) Section 42.020 (Overlay Districts), to include Subsection 17.42.020.J (Town Center Overlay) and associated development standards.
3. Zoning Map Amendment (ZMA) amending the City of Malibu Zoning Map to conform to the LCP amendments by including the Town Center Overlay.

Additional Entitlements Requested include:

4. Coastal Development Permit (CDP) for construction of 112,058 square feet of commercial floor area, including retail, restaurant and office uses and a 20,000 square foot City Hall complex.
5. Lot Line Adjustment (LLA) between two adjacent parcels and the subsequent conveyance of a portion of one parcel (2.3 acres) to the City.
6. Conditional Use Permit (CUP) for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A. M.M.C. Section 17.66.030 requires a CUP for restaurant use within the proposed shopping center area.

Section 5. Local Coastal Program Amendment Findings.

In order to amend the LCP, the City Council must make the finding listed below.

Finding A. The text amendment to the Land Use Plan and Land Use Implementation Plan is consistent with Chapter 3 of the Coastal Act.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas.

The proposed LCP text amendment includes a development agreement and associated development standards for the DA .20 Project described above as required by LCP Section 3.8.5. The proposed text amendment and related development do not impede public access to the beach or coastal resources in any way as the proposed development is located inland in the commercially zoned Civic Center Area. The site is not designated as an Environmentally Sensitive Habitat Area (ESHA). Small patches of Coastal Sage Scrub, an ESHA, do exist on the northern edges of the site, and are slated for removal and will be mitigated pursuant to LCP requirements. However, the limited removal does not constitute a significant disruption in ESHA and the text amendment overall is consistent with Chapter 3 of the Coastal Act.

Section 6. Entitlement Request Findings.

A. General Coastal Development Permit (LIP Chapter 13)

The proposed projects have been reviewed for conformance with the LCP and the proposed LCPA by the Planning Division, the City Biologist, the City Environmental Health Administrator, the City Geologist², the City Public Works Department and the Los Angeles County Fire Department (LACFD). Pursuant to LIP Section 13.9, the following four findings need to be made on all coastal development permits.

Finding 1. 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.

As shown in the Tables 9 through 13, the projects have been reviewed for conformance with the LCP and

² Due to contractual changes during the project review period, all geological data has been reviewed by a third party geological consulting firm.

proposed LCPA. The .15 Project is in compliance with the LCP, subject to approval of the requested minor modifications and site plan reviews. The proposed DA .20 Project will conform to the LCP upon CCC certification of the LCPA for development agreement and TCO.

Finding 2. If the project is located between the first public road and the sea, that 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 site is not located between the first public road and the sea. No potential project-related or cumulative impact on public access is anticipated. The properties are not located on the seaward side of PCH and will not interfere with the public's right to access the coast or coastal resources. With regard to recreation, as discussed previously in DA Finding 3, a segment of the planned Malibu Pacific Trail appears to run along the frontage of Civic Center Way and the applicant has agreed to dedicate this trail segment to the City as part of the DA.

Finding 3. The project is the least environmentally damaging alternative.

An EIR was prepared in accordance with CEQA and the CEQA Guidelines. More specifically, the CEQA Guidelines Section 15126.6 require an EIR to describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. The discussion of alternatives, however, need not be exhaustive, but rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. An EIR is not required to consider alternatives that are deemed "infeasible."

Other alternatives are discussed in depth in Section VII of the EIR and summarized as follows:

- Commercial buildings with Surface Level Parking only – This alternative was dismissed due to the requirement of 45 percent of the site to be landscaping, 25 percent to be open space and that no parking could be provided in either the open space or landscaping area. There was no way to achieve the project's objective of even a .15 FAR with surface level only parking. In addition, the amount of hardscape required for surface level parking was not an environmentally superior alternative.
- Big Box Alternative – This alternative was considered to construct a large building or a series of large buildings which could accommodate a large "big box" retail business or a large supermarket. The positive aspects of this alternative include 11 smaller buildings into one to three larger buildings which would allow locating the structures further to the south away from surrounding residential neighborhood to the north. This would provide for greater buffers from the adjacent residential neighborhoods and possibly allow a reduction in the number of onsite drive aisles and associated hardscaping. The "big box" alternative was rejected as infeasible because it would not be consistent with the City's General Plan, Zoning and LCP which requires

commercial structures be “small scale” or “low rise,” be subordinate to the setting, and be consistent with the size and character of surrounding residential homes and other development. A “big box” store would be out of scale with surrounding residential homes and commercial development.

- The No Project Alternative – This alternative does not alter the site in any way, or increase traffic, or site lighting. However, this alternative does not meet the project objectives of commercial development on a site designated for such use in all the City’s land use regulatory documents.

- Alternate locations on the site and varying degrees of commercial use (variations in the amount of retail to office space. A variety of site layouts have been considered over the years and the driving design force has been the development standards with the Zoning Code and subsequently, the LCP. The somewhat Z-shaped parcels represent design constraints given the setback requirements of 20 percent front yard, 25 percent cumulative side yard, and a 15 percent rear yard. The setbacks combined with the 40 percent landscaping and 25 percent open space create a very specific development envelope. The Applicant, as part of the LCPA, has requested development standards which primarily accommodate the addition of the City Hall complex. There are no large footprint changes to the Applicant’s proposed commercial development as part of the DA .20 Project. The ratio of retail space and office space is discussed in terms of traffic generation in the EIR. However, since any addition of commercial space in the area will require a statement of overriding considerations, the ratio is more attributable to neighborhood compatibility. For example, the previous iteration of Buildings 10 and 11 were a mix of retail and office and located closer to the eastern property line. Due to neighbor concerns, the buildings were relocated to the furthest point (respecting setbacks) west and the use limited to the less intensive office-use only.

- The Preferred Alternative – This alternative is described in detail throughout this document as the .15 Project and meets the commercial development standards of the LCP. Implementation of this project would have similar impacts as the proposed .20 DA Project on noise, air quality, biological resources, cultural resources, hydrology/water quality, geology and soils, and similar hazard risks as identified throughout the EIR. The site preparatory activities for construction of the .15 Project would entail essentially the same area.

- The Proposed .20 DA Project – This alternative is described in detail throughout the document. Implementation of this project would have similar impacts as the .15 Project, as described above, the primary difference being that this alternative provides a public benefit.

Finding 4. 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 is not located in or adjacent to an ESHA, however, due to the scope of the project and preparation of an EIR, on October 25, 2006, the project was reviewed by the ERB. Since there were only

four of the seven ERB members in attendance at the October 25th meeting, staff requested that the project be brought back again to the November 15th meeting. On November 15, 2006, the ERB, with additional members in attendance reviewed the project and made recommendations (Attachment 3). These recommendations have been incorporated into the final project designs.

B. Environmentally Sensitive Habitat Area (ESHA) Overlay (LIP Chapter 4)

The site is not located in or adjacent to designated ESHA. Biological studies conducted did not find that the onsite vegetation met the definition of ESHA. LIP Chapter 2 defines ESHA as “any area 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”.

The biological studies did indicate that two native vegetation communities exist onsite: coastal sage scrub and a small patch of California sycamore trees. Both communities together comprise less than five percent of the onsite vegetative cover.

Coastal sage scrub is confined to the northwest corner of the site on the south-facing slope above site disturbance. The patch of vegetation onsite has been connected to a larger stand offsite to the north. Review of aerial photography; however, revealed the larger hillside area to be truncated at the site's north end through clearance, presumably for fire protection/fuel modification. The area of coastal sage scrub habitat present onsite (identified in EIR Figure V.C-4) is estimated at 21,500 square feet or roughly one half-acre of the 15.2-acre site. Coastal sage scrub is often considered ESHA because this vegetation association typically provides habitat for several special-status plant and wildlife species. However, the independent biological assessment conducted onsite determined no such special-status species were present. This factor, combined with the relatively small and isolated nature of the coastal sage scrub onsite results in a condition that does not meet the criteria as ESHA. However, the loss of open space that includes the coastal sage scrub habitat has been determined to be a potentially significant impact. Therefore, the Applicant shall provide a compensatory fee for habitat conservation to the Santa Monica Mountains Conservancy's Habitat Impact Mitigation Fund for the permanent acquisition or preservation of native habitat areas within the Santa Monica Mountains Coastal Zone.

The California sycamore woodland cells consist of several mature sycamore trees (*Platanus racemosa*) in clusters in the central and western areas of the site. The trees are possibly remnants of a riparian woodland or streamside forest. For this reason they were indicated to be sycamore woodland relics in the DEIR. During the course of the required wetland delineation study (LIP Section 3.8.5.E.5), Teracor Resource Management confirmed that the sycamores are intermixed with gum trees (*Eucalyptus sp.*) and date palms (*Phoenix sp.*), suggestive of an ornamental origin, and that the actual origin of the sycamores is not known, though they likely were either planted by property owners many years ago or may be relictual stands of trees no longer associated with freshwater braids of Malibu Creek. In either event, they are not associated with water features at this time and the site is not a wetland (Technical Memorandum, March 27, 2007). As discussed below, in the Native Tree Protection Findings, the removal of the trees will be mitigated pursuant to the requirements of LIP Section 5.5.1 by onsite replanting of sycamores on a

10 to 1 ratio.

Since the project site is not designated ESHA and the biological studies conducted did not find that the onsite vegetation met the definition of ESHA the supplemental ESHA findings in LIP Section 4.7.6 need not be made. Nevertheless, the findings have been made as follows:

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

The application does not include construction of a residence; therefore, the finding is not applicable.

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

The proposed commercial development of a shopping center/office park is a permitted use in the CC zoning district.

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.

The project site is not designated as ESHA in the LCP nor is the site directly adjacent to ESHA. The site is constrained by a number of factors that preclude total avoidance of biological resource impacts. Given the site dimensions, LCP and other requirements, including but not limited to setbacks, open space, landscaping, fire department requirements, circulation, and wastewater, it is not feasible to site the development of roads and structures to avoid impact to the coastal sage scrub and sycamore relics. Therefore, mitigations as discussed above and in the EIR are required and the project is in compliance with the provisions of Section 4.7.

C. Native Tree Protection (LIP Chapter 5)

Any development that includes the removal of one or more native tree(s) and/or the encroachment of development within the protected zone of one or more native tree(s) may be approved or conditionally approved only if the City Council make the native tree protection findings.

The five findings set forth in LIP Section 6.4 are hereby made as follows.

Finding 1. The proposed project is sited and designed to minimize removal of or encroachment in the protected zone of native trees to the maximum extent feasible.

Six sycamore trees are located in the proposed development area of Parcel A. Given the site dimensions, LCP and other requirements, including but not limited to, setbacks, open space, landscaping, fire department requirements, circulation, and wastewater, it is not feasible to site the development of roads and structures to allow retention of the trees. Any development would be expected to utilize the area of the site supporting these trees given all the constraints of siting development. In addition, the required

onsite grading and re-compaction of the site for Federal Emergency Management Act (FEMA) and geological requirements make it infeasible to site development that avoids encroaching upon and requiring the removal of the sycamore trees. Mitigations for tree removal require the replacement of the sycamore trees at a ratio of 10 to 1 onsite. Pursuant to LIP Section 5.5.1, a tree replacement plan has been submitted and reviewed by the City Biologist and is incorporated into the landscape plans. The approved landscape plans illustrate greater than 60 sycamores will be planted as part of the landscape plan, thus meeting the LCP mitigation requirement for removal of six (6) native sycamore trees.

Finding 2. The adverse impact of tree removal and/or encroachment cannot be avoided because there is no other feasible alternative.

Alternatives to the proposed development have been analyzed and due to location of the trees and required site preparatory activities, encroachment and tree removal cannot be avoided.

Finding 3. All feasible mitigation measures that would substantially lessen any significant impact on native trees have been incorporated into the approved project through design or conditions of approval.

The following protective measures (EIR Mitigation Measures) shall be incorporated into the project to lessen the impact on native trees:

1. Nesting birds are protected by both the California Department of Fish and Game (CDFG) Code and the federal Migratory Bird Treaty Act (MBTA). Removal of, or encroachment into existing onsite vegetation, should be restricted to off-peak bird nesting season, which typically occurs between February 15 and August 15. Should vegetation/tree removal be required during this period, the Applicant shall obtain the services of a qualified biologist, approved by the City, to conduct a series of nesting bird surveys pursuant to the CDFG recommended nesting bird surveys protocol methods. Specifically, the qualified biologist shall conduct a series of eight surveys, no less than seven days apart, in all areas of the subject parcel that may support nesting birds. Any active nests shall be marked and exclusionary fencing shall be placed at a 50-foot radius around the nest (200 feet for raptors). The exclusionary fencing shall remain in place until such time that the biologist determines that the nest is no longer active. All equipment and human activity shall be excluded from these areas during active nesting without exception. Should the actual construction of nests be observed by the project biologist, he/she may, with direction from the regional CDFG wildlife biologist, remove the nesting materials and/or dissuade further construction of the nest provided no egg-laying has begun.
2. Prior to the initiation of vegetation clearance and grading, a qualified biologist or ecologist shall monitor the site and attempt to clear the proposed grading area of wildlife. The monitor will be present while all vegetation is removed, and shall direct the equipment operator to avoid impacts to wildlife through normal minimization techniques.

3. Native protected tree species (i.e., sycamore) removed onsite shall be replaced in accordance with the Tree Mitigation Plan approved by the City Biologist. The approved plan includes the removal of 6 trees and a replacement onsite at a better than 10 to 1 ratio (greater than 60 sycamore trees).
4. Each replacement tree shall be monitored annually for a period of not less than 10 years. An annual monitoring report shall be submitted for the review and approval of the City for each of the 10 years. The monitoring report shall identify the size and health of each replacement tree, comparing this information with the criteria provided in the native tree replacement planting program required in Section 5.5.1.A of the LIP for determining that replacement trees are healthy and growing normally. Mid-course corrections shall be implemented if necessary. Monitoring reports shall be provided to the City annually and at the conclusion of the 10 year monitoring period that document the success or failure of the mitigation. If performance standards are not met by the end of 10 years, the monitoring program shall be extended until the standards are met.

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. The project site is slightly visible from scenic roads (PCH at Webb Way) and from Malibu Canyon Road, public areas along Civic Center and Cross Creek Roads, and also adjacent parkland area (newly acquired Legacy Park). 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.

Story poles were placed on the site in March 2007 to demonstrate how the project will change the site's visual properties. Staff visited the site to determine if any public views would be blocked, and found that no scenic views will be blocked by the project.

As discussed in the Site Plan Review Finding for Height, Findings 2 and 3, the project has been designed not to have significant adverse scenic or visual impacts. The proposed project would introduce development to a site that is currently vacant. Either project would be visible from portions of City streets (e.g. Civic Center Way, Cross Creek Road and Malibu Canyon Road) as well as from various residential and/or commercial land uses located along these streets. Visibility of the site from designated scenic routes, including PCH and Malibu Canyon Road is highly limited and obscured by topography, vegetation, and existing commercial development in the Civic Center Area. The site is visible from PCH through Legacy Park but development on the site would not result in the obstruction of any significant public scenic views (e.g. ocean, coastline, Santa Monica Mountains).

LUP Policy 6.20 and LIP Section 6.5.E.5 state, "New commercial development within the Civic Center shall be sited and designed to minimize obstructions to the maximum feasible extent of public views of

the ridgelines and natural features of the Santa Monica Mountains through measures such as clustering development, and restricting height and bulk of structures.”

The proposed development meets the goals of this policy by clustering the shopping center development around a central courtyard area and clustering the office park development away from neighboring properties and toward the knoll to the extent feasible to minimize visual impact. The proposed development sites the single-story structures closest to public streets and the two-story structures in the middle of the site so that the development appears stepped back and clustered. The proposed development has extensive landscaping proposed, the height and bulk is consistent or lower than development in the surrounding area and does not obstruct public views of any significant ridgeline or the Santa Monica Mountains.

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 discussed in Finding H. Scenic Visual and Hillside Protection, Finding 1, the proposed projects are not anticipated to have significant adverse scenic or 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 1, the project could be the least damaging alternative given the public benefit.

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 Finding H. Scenic Visual and Hillside Protection, Finding 1, the proposed project is not anticipated to have significant adverse scenic or visual impacts.

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 the D. Scenic Visual and Hillside Protection, Finding 1, the proposed project is not anticipated to have significant adverse scenic or visual impacts.

E. Transfer Development Credits (LIP Chapter 7)

LIP Chapter 7 Transfer of Development Credits (TDC), applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. 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 TDCs 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 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.

The proposed DA .20 Project includes a land division, although an argument can be made as to whether or not a TDC should be required. The purpose of the TDC is to ensure that density increases are not permitted without the development potential on another lot being retired. The newly created lot (Parcel C) to be conveyed to the City does not create any additional density allowance as the proposed 20,000 square feet of City Hall space has been deducted from the development bonus given the applicant as part of the DA .20 Project. The DA .20 Project provides for 132,058 square feet to be utilized as follows: 112,058 square feet for the shopping center and office park use and 20,000 square feet to be used as a City Hall complex. The applicant could have requested to utilize all of the 132,058 square feet on the two lots and provided no allowance for square footage of a City Hall. There can be no increase in the density of the lots as the development potential is prescribed as part of the LCPA associated with the DA. In this instance, a requirement for TDC is unwarranted as there are no cumulative impacts of the proposed development with regard to density and upon certification of the LCPA the proposed project will be consistent with the policies of the LCP.

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.

There are no new residential building sites and/or units created by the requested land division. The newly created lot would be zoned commercial as the future City Hall location. No variances or modifications would be requested to develop the property as the LCPA, Town Center Overlay, creates specific development standards for site development.

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

As discussed above in E. Transfer of Development Credits, Finding 1, there is no increase in density allowed as a result of the land division. In this case, the DA .20 Project, the density would be the same on the project site whether or not an additional parcel was created. Therefore, no lot needs to be retired for permanent open space.

F. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood, and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Council has determined that the project is located on a site or in an area where the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed in the EIR for the hazards listed in LIP Section 9 and compliance with the development standards in 9.4.

The project was analyzed in the EIR for the hazards listed in LIP Section 9.2.A. (1-7). Analysis of the project for hazards is discussed thoroughly in EIR Section V.E. Geology/Soils.

Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City Geologic Data maintained by the City; 2) Ensitu Engineering Company reports/letters dated 09/19/05, 03/06/06, 03/10/06; 3) Fugro West reports/letters dated 08/09/04, 05/31/05, 10/07/05, 04/10/06, 12/03/07; 4) Geopentech letter dated 12/20/07; 5) GeoSoils Inc. reports/letters dated 10/16/86, 12/12/88, 12/13/88, 03/22/89, 04/11/89, 4/17/89; 6) Gold Coast GeoServices reports/letters dated 11/22/99, 11/9/00, 12/12/01, 02/07/02, 07/28/03, 10/25/03, 06/22/04, 09/14/04, 09/21/04, 10/25/04, 12/13/05, 04/03/06; 7) Hope Engineering letter dated 04/03/06; 8) Hydroquip Pump and Dewatering Corporation letter dated 04/11/06; 9) Jensen Design and Survey dated 01/12/04; and 10) Leighton and Associates report, 1994.

Faulting

The site is not designated within an Alquist-Priolo Special Studies zone. The Malibu Coast fault was mapped by the U.S. Geological Survey projecting through the southern half of the site. However, Gold Coast GeoServices, GeoConcepts and GeoSoils have all independently studied the site and believe that the location of the fault was postulated and not based on an actual subsurface fault investigation. Although the precise location of the fault is not known, it can be concluded that it is not on the project site. References to Parcel A and B in the geo-studies include the area conveyed to as Parcel C as the studies evaluated both existing parcels for their geological characteristics.

Liquefaction

The California Division of Mines and Geology (CDMG) Seismic Hazard Map of the Malibu Beach Quadrangle (2001) indicates the entire Civic Center Area is susceptible to liquefaction. Liquefaction is the process by which water-saturated sediment loses its strength and fails during strong ground shaking, generally associated with moderate to great earthquakes. The greatest potential hazard due to liquefaction at the site is ground settlement. This hazard is mitigated by the geotechnical recommendations for construction as identified below.

Groundwater/Liquefaction

Groundwater encountered as “perched water” was encountered at relatively shallow depths varying from 8 to 29 feet across the property. The top of the groundwater surface slopes northward across the property, ranging from 8 feet mean sea level (msl) in the southern limits of the site to approximately 34 feet msl in the northernmost areas of the site. The groundwater level beneath Parcel A ranges from about 8 feet above mean sea level at the southern most portion of the site (as Civic Center Way) to about 15 feet deep in the northern limits of the proposed boundary for this parcel. The groundwater level underlying Parcel C is approximately 16 feet above msl in the general location of the proposed City Hall. The groundwater level under Parcel B ranges from approximately 13 feet msl at the southern limits of this proposed parcel boundary to approximately 34 feet in the northern limits. Groundwater elevations beneath the site are identified and delineated in EIR Figures V.E-6 and on page V.E-12.

Conventional septic system leach lines are generally feasible in areas of property having groundwater levels deeper than 15 feet. However, because the groundwater occurs at relatively shallow depths, an advanced onsite water treatment system is proposed using a subsurface drip disposal system throughout the project. Due to the relatively shallow groundwater table in the project vicinity, the effects of effluent on an OWTS could result in “groundwater mounding”, which could impact existing septic systems by raising the area water table. In addition, groundwater mounding could adversely alter the characteristics of the soil, thus affecting the liquefaction potential of the soil beneath the proposed structures.

A letter dated November 9, 2007 was submitted by E.D. Michael, Consulting Geologist, representing the property owner at 3657 Cross Creek Road which raised concerns with the groundwater level data. On November 26, 2007, Mr. Michael submitted a 142-page report, entitled “Hydrogeologic Study of the Malibu Floodplain” which provided additional hydrogeological considerations and argued that Fugro’s hydrogeologic assessment of the proposed development and the numerical model developed for their assessment was in error.

The report was reviewed by an independent geotechnical consultant, GeoPentech, which concluded that “The primary basis for Mr. Michael’s assertions were that Fugro used misinterpreted groundwater levels beneath the proposed development and inaccurate hydraulic conductivity values. However, Mr. Micheal’s interpretation of groundwater levels in the proposed development did not consider the measurements that were collected by Fugro from monitoring wells on the La Paz site. These measurements supported Fugro’s interpretation and indicated the water levels used in Fugro’s assessment were conservative with respect to their analysis of possible maximum groundwater level rise.” In addition, “The results of the sensitivity analysis further indicated that the proposed development would not cause a hydrogeologic issue as a result of groundwater mounding. Our preliminary review of the other hydrogeologic issues that were identified by Mr. Michael and were not considered in Fugro’s assessment would also not likely change Fugro’s conclusions regarding possible maximum groundwater level rise as a result of wastewater disposal.”

The issue of groundwater mounding has been evaluated by project hydrogeologic consultant Fugro West Inc. and Ensitu Engineering. They have demonstrated that the proposed OWTS will not result in a significant rise in groundwater levels across the site including areas adjacent to the subterranean parking structures.

Landslide

The presence of landslides on the site was extensively analyzed as discussed in the EIR (see Landslide Hazards). In addition, fault trenching was performed across the subject site and adjacent properties, as were additional Cone Penetrometer Test borings, and no conclusive evidence of faulting across the site and adjacent properties was discovered.

The ERB requested staff to verify that Parcel C did not contain a landslide. Staff has verified that there is no landslide on Parcel C.

Flood

The proposed site was evaluated for flood hazards and as discussed throughout the report, the project has been designed to meet the FEMA requirements.

Fire

The entire City of Malibu is located within the fire hazard zone. The fuel modification plan was revised per ERB recommendations however a condition of approval requires that fuel modification plan be revised (if necessary) and re-approved by the Los Angeles County Fire Department.

The five findings set forth in LIP Section 9.3 are hereby made as follows.

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The projects will incorporate all recommendations contained in the above cited geotechnical report and the following EIR Mitigation Measures, as such, the proposed project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, fire or any other hazards.

The proposed project shall be constructed in accordance with the geotechnical engineering recommendations as presented in the Engineering Geological and Geotechnical Engineering Reports (and subsequent Responses to City Comments), for the Proposed Malibu-La Paz Ranch, LLC, Civic Center Way, City of Malibu California, by Gold Coast GeoServices, Inc.

1. All uncertified fill material placed within the fault trenches shall be removed and replaced as 90 percent compacted fill during the planned site preparations and rough grading.
2. Temporary dewatering and discharge activities shall be monitored by the dewatering contractor and conducted in strict accordance with the Los Angeles Regional Water Quality Control Board's

Order No. R4-2003-0111 (Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties (General Permit No. CAG994004).

3. As recommended by the Project Geotechnical Engineer, all structures located within the “moderate and high” risk surface manifestation hazard areas shall be provided with a minimum 10-foot thick 90 percent compacted fill blanket. It is recommended that the compacted fill blanket be reinforced with *Tensar BX1200* geogrid or equivalent placed at two-foot vertical intervals up to two feet below the planned finish rough grade pad. Recommendations addressing over-excavation, installation of geogrid and backfilling of these areas shall be provided during the plan check approval process that addresses temporary stability of construction excavations and bottoms.
4. The structural engineer shall provide a letter along with supporting information, prior to plan check approval, indicating that the proposed buildings can tolerate the anticipated total and differential movements, or that site-specific geotechnical recommendations will be required.
5. The proposed structures should be constructed utilizing post-tensioned foundation systems and post-tensioned slabs-on-grade designed by the project structural engineer.
6. The Project Geotechnical Consultant shall provide appropriate geotechnical recommendations for restrained walls and include recommendations for damp-proofing or waterproofing and means for removing any water collected (e.g., sump pump), in accordance with the City’s Geotechnical Guidelines.
7. Complete grading plans that include the existing and proposed grades, grading yardages, proposed subterranean parking, the limits and depths of removals under the structures and flatwork areas, and grading cross-sections have been submitted to City Geotechnical staff for review. Remedial grading to mitigate liquefaction and other geotechnical hazards must be clearly defined in grading yardages, and illustrated on the plans. Such plans submitted during final plan check shall substantially reflect the concept plans in this EIR.
8. The Applicant shall obtain final construction plan approval for the proposed OWTS for Parcel A, Parcel B, and the City Hall Projects from the City Environmental Health Administrator. Final approval of construction plans are subject to the conditions enumerated in the October 4, 2006 Conformance Review by the City’s Environmental Health Administrator. The Environmental Health Administrator found that the OWTS were feasible and met the City’s requirements. The final design must be engineered to meet the effluent limits specified in Waste Discharge Requirements (WDR), taking into account the Malibu Lagoon bacteria and nutrient total maximum daily load (TMDL) requirements of the California Regional Water Quality Control Board (RWQCB) and the United States Environmental Protection Agency (US EPA).

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Hazards Finding 1 above, the proposed projects as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will have no significant adverse impacts on the site stability or structural integrity.

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

As discussed in A. General Coastal Development Permit, Finding 1, the project could be the least damaging alternative given the public benefit.

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

The projects are specifically cited to meet LCP setback standards or as close as possible on the DA .20 project. The entire site, with the exception of the proposed City Hall location is within the floodplain with similar geologic issues, as such, there are no alternatives that would avoid or substantially lessen impacts on site stability or structural integrity.

Finding 5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As stated in F. Hazards, Findings 1 and 4 above, the proposed projects as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will have no significant adverse impacts on the site stability or structural integrity. Therefore, no adverse impacts are anticipated to result from hazards or conflict with sensitive resource protection policies contained in the LCP.

In addition, pursuant to LIP Section 9.4.19 (X and Y), the property owner will be required, as a condition of approval, to record a deed restriction acknowledging and assuming the hazard risk of development at the site. The deed restriction shall state that the proposed project is subject to flooding, geologic hazards and wildfire hazards and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against liability, claims, damages or expenses arising from any inquiry or damage due to such hazards.

G. Shoreline and Bluff Development (LIP Chapter 10)

The subject project is not located on or along the shoreline or any bluff as defined in the LCP. Findings per Section 10.2 of the LCP are not applicable.

H. Public Access (LIP Chapter 12)

The subject property is not located between the first public road and the sea and will not hinder the public's right or ability to access the coast, either during short-term construction activities or through long-term operation of a shopping center and office park. Findings for lateral, vertical and bluff top access are not applicable.

Trail/Recreational Access. A segment of the "Planned" Malibu Pacific Trail (former Coastal Slope Trail) mapped on the City's Master Trail Plan and LCP Trails map is shown crossing the front of the subject property parallel to Civic Center Way. The applicant is proposing an offer to dedicate (OTD) for this trail segment as part of the DA.

I. Land Division (LIP Chapter 15)

The DA .20 Project requests a lot line adjustment to realign two adjacent parcels (A and B). Subsequently, 2.3 acres of Parcel B will be conveyed to the City as a public benefit. However, according to a letter from CCC staff dated November 9, 2006 (received during the DEIR comment period), "The proposed project involves a land division in order to create three parcels from two existing parcels.... The project should be evaluated for conformance with the applicable provisions of Chapter 15." As discussed previously under F. Transfer Development Credits, the conveyance does not constitute a land division and the findings for land division need not be made. Nevertheless, the 16 findings have been made and are listed below. The required findings for a lot line adjustment are first (Sections I - LCP and J - M.M.C.) and are followed by the LCP required land division findings (Section K).

The six findings set forth in LIP Section 15.5 are hereby made as follows.

Finding 1. All the parcels involved in lot line adjustment are legal parcels.

Staff has confirmed that all parcels involved in the proposed LLA are legal parcels. Examination of the Certificates of Compliance for existing Parcel A and B, No. 98-01 and No.99-03 respectively, found that the parcels previously received Certificates of Exception from the County of Los Angeles on May 7, 1970 and are in compliance with the provisions of the Subdivision Map Act.

Finding 2. The lot line adjustment complies with the applicable provisions of the Subdivision Map Act.

Staff has determined that the proposed LLA complies with the Subdivision Map Act. Government Code Section 66412.d requires conformance with the general plan, any applicable coastal plan, zoning and building ordinances. A. General Coastal Development Permit, Finding 1 substantiates that the proposed project will comply with the LCP upon certification of the LCPA.

Finding 3. The reconfigured parcels comply with the LCP size standards and the parcels can be developed consistent with all LCP policies and standards or, if the existing parcels do not meet this

requirement, then the reconfigured parcels can accommodate development that does not have greater conflicts with the LCP policies and standards than would have occurred from development on the existing parcels.

The irregular Z-shape of the existing parcel configuration created problems with siting building locations meeting setback requirements and pushed development out toward the edges of the parcel versus the current configuration with the DA .20 Project development project which allows a greater clustering of development while still meeting current LCP setback standards on two out of three parcels (A and B). The LCPA for the TCO has specific setback standards for Parcel C due to orientation and proposed use of the structure and the proposed project will comply with the LCP upon certification of the LCPA.

The lot line adjustment is necessary to accommodate the proposed configuration of the buildings and provide ample yard setbacks, landscaping and open space. This parcel configuration allows for the more "intense" retail uses to be positioned as far forward (to the South of the property adjacent to Civic Center Way) as is feasible. This clustering of the retail use allows for the most intense commercial activities (including traffic circulation) to occur farthest from the surrounding residential districts and it also maximizes contiguous open space.

Increasing the size of Parcel A to accommodate more development area, by taking that area from Parcel B, results in a reduction to required fuel modification for those undisturbed areas of chaparral and coastal Sage Scrub to the north of the property. This lot line configuration also allows the development which would have otherwise been sited on existing Parcel B (Parcel B having a steeper average gradient than existing Parcel A) to be sited on flatter land. Thus, the LLA allows for reduction in landform alternation, clustering of development near existing adjacent "commercial" development, reduction in fuel modification, and siting of commercial development as far from residential zones as feasible.

In addition, as discussed in A. General Coastal Development Permit, Finding 3, the proposed reconfigured parcels can accommodate development that does not have greater conflicts with the LCP policies and standards than that which could have occurred from development on the existing parcels.

Finding 4. If environmentally sensitive habitat is present on any of the parcels involved in the lot line adjustment, the lot line adjustment will not increase the amount of environmentally sensitive habitat that would be damaged or destroyed by development on any of the parcels, including any necessary road extensions, driveways, and required fuel modification.

As discussed in the EIR, and Finding C, least damaging alternative, the site is not designated ESHA and the small Sycamore Woodland relic cells are in the very center of the existing Parcel A and any development of the site would be expected to utilize the center given all the constraints of siting development. The small patches of coastal sage scrub would be equally impacted if the lots lines were not realigned as they would still be within the fuel modification zone of any proposed development on the site.

Finding 5. As a result of the lot line adjustment, future development on the reconfigured parcels will

not increase the amount of landform alteration (including from any necessary road extensions or driveways) from what would have been necessary for development on the existing parcels.

There will be no increase in landform alteration, including roads and driveway as a result of the lot line adjustment. The lot line adjustment moves the northernmost property boundary of Parcel A further northward encompassing the flat disturbed area currently shared with Parcel B, no additional building area is created by the lot line adjustment. Since any roadway to Parcel B would have to traverse Parcel A, there is no additional landform alteration required with the realigned Parcels A and B.

Finding 6. As a result of the lot line adjustment, future development on the reconfigured parcels will not have greater adverse visual impacts from a scenic road, public trail or trail easement, or public beach than what would have occurred from development on the existing parcels.

The proposed LLA is a minor boundary change moving the northern property line of existing Parcel A further northward to encompass existing disturbed area currently shared by Parcel B. There is no greater visual impact from any scenic viewing areas as the setbacks are roughly the same and the proposed development is still subject to the standards of the LCP with regard to visual impacts.

J. Malibu Municipal Code (M.M.C.) Findings – Lot Line Adjustment

M.M.C. Title 16 (Subdivisions) implements the Subdivision Map Act for land divisions in the City. M.M.C. Section 16.28.020 requires the following findings for lot line adjustments.

Finding A. The lots proposed to be created by the lot line adjustment comply with all applicable zoning regulations, except lot size requirements; however, the lots created shall each comply with the dimension requirement of the zoning ordinance.

The realigned lots comply with all the applicable lot dimension requirements of the existing CC zoning.

Finding B. The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities.

The LLA is a boundary change on paper and in itself will not result in the need for additional improvements and/or facilities.

Finding C. No additional parcels shall result from the lot line adjustment, and any land taken from the one parcel shall be added to an adjacent parcel.

No new parcels will be created as a result of this lot line adjustment.

Finding D. The proposed adjustment will result in a generally continuous and straight property line extending the full length of the property's dimensions.

The realigned parcels are generally continuous with straightened property lines.

Finding E. Adjacent property owner(s) directly involved in the lot line adjustment have provided written authorization to the applicant supporting the proposed action.

All properties directly involved in the lot line adjustment are currently owned by the property owners on record requesting this CDP.

K. Findings for Land Division LIP Chapter 15

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 percent and will not result in grading on slopes over 30 percent. All required approvals certifying that these conditions are met shall be obtained.

The proposed lot line adjustment and conveyance to a public entity does not create parcels with identified building sites that cannot be developed consistent with all policies and standards of the proposed LCPA. The proposed development will not be subject to flooding, erosion, geologic or extreme fire hazards if constructed per the recommendations and requirements of the City Geologist, City Coastal Engineer, City Public Works Department and LACFD.

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 lot line adjustment clusters development on each parcel while maximizing open space and landscaping. Parcel C is conveyed as public benefit to house a City Hall complex. Thus the size and shape of Parcels A and B mimic the proposed design of the City Hall complex while the open space and landscaping within the rear yard of Parcel A and front yard of Parcel B maximize the sense of public open space.

The impacts of developing the proposed 3-parcel configuration (DA .20 Project) have been analyzed in the EIR. Specifically addressing site disturbance is the section on Geology and Soils (V.E), and addressing sedimentation is the section on Hydrology and Water (V.E – V.F).

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 percent and does not result in grading on slopes over 30 percent. All required approvals certifying that these conditions are met shall be obtained.

Access to all three parcels is shown on the site plan, Figure III-3 of the EIR. All proposed access roads will be all-weather safe, meet LACFD regulations and do not involve slopes over 30 percent.

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 identified on the Illustrative Site Plan, vehicular access to the project site for Parcels A and B is proposed via the central ingress/egress driveway from Civic Center Way (identified as La Paz Lane). An easement is proposed for Parcel B to take legal access through Parcel A. Parcel C, the City Hall complex is to be served by a new, un-named public street.

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; 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.

The proposed lot line adjustment and conveyance minimize visual resources and complies by: a. having building sites clustered to the extent feasible while still meeting setbacks and maximizing open space and landscaping; b. not building on ridgelines; c and d. providing access for all three parcels as described above in Finding 4; e. not increasing the density as discussed in the Transfer of Development discussion; f. limiting grading to the minimum required to meet geotechnical and flood safety requirements; g and h. landscaping any graded slopes in accordance with the LCP requirements.

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 lot line adjustment and conveyance are 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 adequacy of public services was analyzed in the EIR, Section V.J. Public Services. As mitigated, the proposed project with the City Hall complex is anticipated to have a less than significant impact to public services.

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 adequacy of the water supply and appropriate conditions for an OWTS were analyzed in the EIR,

Section V.F. Hydrology/Water Quality. The site is to be served by Water District 29 which has adequate water supply. The project would connect to the existing 12-inch water main located in the centerline of Civic Center Way. The project will "T" off from that main and extend new water mains onto and within the project site to serve hydrants throughout the project in accordance in the provisions of the Los Angeles County Fire Code (Title 32). With regard to wastewater, Applicant has obtained final feasibility approval from the City Environmental Health Administrator for the OWTS for the proposed project including the additional parcel and City Hall complex. The Regional Water Quality Control Board (RWQCB) will review the final OWTS design during the issuance of the WDR permit to ensure compliance with the TMDL (TDML)/Clean Water Act Section 303d requirements.

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).

A LCPA, the Town Center Overlay, creating specific development standards is requested as part of this application. As such, the proposed development is consistent with regard to density and upon certification of the LCPA the proposed project will be consistent with the policies of the LCP. 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.

The parcel sizes of the project are specified in the Town Center Overlay LCPA as Parcel A (7.16 acres), Parcel B (5.7 acres) and Parcel C (2.3 acres). Upon certification of the LCPA, the proposed project will be consistent with the policies of the LCP.

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 originating parcels are not designated ESHA or ESHA buffer and the newly conveyed land does not consist 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 originating parcels are not designated ESHA or ESHA buffer and the conveyed land does not consist of ESHA or ESHA buffer. The fuel modification does not impact ESHA or ESHA buffer as the surrounding parcels are not designated as ESHA.

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

The project site is not on a coastal bluff or beach and the originating parcels are not designated ESHA or ESHA buffer and the conveyed land does not consist of ESHA or ESHA buffer.

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.

The project site is not located on the beach; therefore, the finding is not applicable.

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

The project site is not located on the beach; therefore, the finding is not applicable.

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.

As discussed in E. Transfer of Development Credits, a requirement for TDC is unwarranted as there are no cumulative impacts of the proposed development with regard to density and upon certification of the LCPA the proposed project will be consistent with the policies of the LCP.

L. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design and performance requirements. The City of Malibu Environmental Health Administrator has found that the WMSMP for the OWTS is feasible and meets the requirements of the City of Malibu. The OWTS options were analyzed in the EIR, Section V.F. Hydrology / Water Quality.

The wastewater management master plan (WMSMP) prepared by Lombardo and Associates, Inc. dated April 1, 2008, describes a wastewater system and its operation for the Proposed Project that provides “no net discharge” to groundwater (see Appendix L of the EIR). This Plan is intended to address the requirements of Title 22, Disinfected Tertiary Treatment Standards, of the State of California Health and Safety Code, the Los Angeles Regional Water Quality Control Board, and the City of Malibu regulations applicable to wastewater management systems and the reuse of treated wastewater. The WMSMP identifies a wastewater management system which includes wastewater collection, treatment, and reuse of treated wastewater to provide for the wastewater management needs of the Proposed Project, as well as to provide a source of non-potable water for reuse in commercial buildings (i.e., toilet flushing only) and within landscape areas. Thus, the wastewater management system would effectively treat wastewater generated by the Proposed Project while minimizing potable water demand and environmental impacts through the reuse of treated effluent (generated by the wastewater system) for toilet flushing and landscape irrigation.

The maximum sustained daily wastewater flow from the wastewater treatment system is estimated at

24,700 gpd.³ The wastewater system capacity is 28,000 gpd. The proposed design of the wastewater system would result in a net zero discharge to groundwater during normal operations. Should the system operate outside of its specifications, “off-specification” wastewater would be discharged through a subsurface drip irrigation system for up to 20 days, consistent with The California Code of Regulations, Title 22, Division 4, Chapter 3, Article 10, Section 60341(b).⁴ Specifically, 100% of the properly treated effluent from the wastewater system would be reused for landscape irrigation and toilet flushing purposes. An effluent storage tank would be provided for seasonal periods when treated effluent generation is greater than the Proposed Project water demand (for landscape irrigation and toilet flushing only). The effluent storage tank would provide for 76 days of recycled water storage at the design dispersal rates.⁵ The proposed storage volume of the effluent storage tank is 800,000 gallons.⁶ For seasonal periods when treated effluent generation is less than landscape irrigation water demand, an additional source of potable water would be required. Table 1 below identifies the proposed components and technology for the wastewater system. Figure III-18 in the EIR presents a conceptual process flow diagram of the proposed wastewater system.

Table 1
Proposed Project Wastewater Management System

Wastewater Component	Technology
Collection	Grease Traps, Septic Tanks & Effluent Collection System.
Treatment	Title 22 Compliant System using recirculating synthetic media filters, Nitrex™ denitrification filter and UV – Ozone disinfection with influent equalization storage.
Reuse – in buildings	Dual piping (purple pipe system) to convey treated wastewater to restrooms for reuse (flushing toilets).
Reuse – in landscape irrigation	Drip irrigation system, with some spray irrigation.
Storage Tank	Discharge flow storage tank for effluent storage during seasonal low evapotranspiration periods.
Source Lombardo and Associates, Inc., Wastewater Management Master Plan (Table 2.14), July 2008, and Christopher A. Joseph and Associates, Inc., July 2008.	

Unless otherwise noted, the following summary of the proposed wastewater treatment system shown in Figure III-18 is excerpted from the Wastewater Management System Master Plan prepared by Lombardo Associates, Inc., dated July 7, 2008 (See Appendix L of the EIR):

Collection. This would include grease traps, septic tanks, and the associated effluent collection system sized based on the L.A County Plumbing Code Table K-3 design flows associated with the buildings they would serve (see Appendix __, Table 2-16 for grease trap and septic tank sizes). Each septic tank would have duplex pumps to pump septic tank effluent to the wastewater treatment site through a 2-inch

³ City of Malibu Hydrogeology Review Sheet (Comment #11), June 26, 2008.

⁴ Soil leaching with treated wastewater or potable water would occur to flush out the accumulated salts resulting from evapotranspiration of the irrigation water, consistent with Section 2.12 (Salt Leaching and Nutrient Management) of the WMMP.

⁵ City of Malibu Hydrogeology Review Sheet (Comment #5), June 26, 2008.

⁶ Lombardo and Associates, Inc., Wastewater Management Master Plan (Table 2.7), July 2008

pressure pipe. A 3-inch pipe would be used where more than two septic tank effluent pipes converge.

Treatment. A flow equalization tank of 28,000 gallon capacity is included in the process to ensure as steady a flow through the treatment system as possible. The recirculating media filter (RMF) treatment systems require recirculation tanks in addition to treatment units. The Nitrex™ denitrification filter can be utilized as a wetland system and thereby achieve additional treatment and aesthetic improvements.

Two identical filtration systems would be used to ensure turbidity levels are within permit/reuse requirements prior to disinfection. The pre-and final filters would consist of: 1) Multi-Media pressure filter – at 5 gpm/sf; and 2) Dual Micron Filters (Cartridge or Backwashable) 10 microns and 5 microns, respectively. The disinfection system would consist of an ozone and an UV system. The disinfection system would be sized for an average flow rate of 18 gpm (28,000 gpd), with the capability of treating peak flows up to 25 gpm (36,000 gpd).

Storage Tank. The storage tank for treated wastewater would be sized for the extreme rainfall events of the mid 1990's and would provide for 76 days of recycled water storage at the design dispersal rate. The wastewater generation rate during winter months (when most rainfall occurs) would be expected to be less than the design rate.⁷ The storage tank is sized at 800,000 gallons and to be located under the parking area, just north of Building 6.

Reuse. Treated wastewater effluent would be used for toilet flushing via a dual plumbing system (purple pipe) and landscape irrigation predominately via drip irrigation, with some spray irrigation. The drip and spray irrigation system average application rate would be 0.063 inches/day (0.039 gpd/sf). Drip irrigation of Title 22 Disinfected Tertiary Treated Wastewater would occur at approximately 6 – 8 inch soil depth. Drip dispersal of “off-spec” wastewater, as discussed above, would occur with a redundant parallel drip dispersion system at 24+ - 30 inches, unless the LARWQCB allows the shallow drip system to be used for both purposes. Automatic valves would be activated to direct treated wastewater to the lower drip irrigation system when continuous turbidity measurements or total coliform laboratory results indicate Department of Public Health standards for unrestricted water reuse are not being met.

The non-potable, treated wastewater, would be conveyed in purple pipes with appropriate backflow preventors as required by Title 22 regulations to avoid connection to the potable water supply. No reuse of the non-potable, treated wastewater within restaurant bathrooms has been included within the WMSMP. The WMSMP also includes odor control features, electrical controls and monitoring, reliability features for each unit process including an emergency generator, and a performance monitoring plan. Site plans of the proposed wastewater system showing the dispersal areas and the landscape areas are presented in EIR Section V.I.4 Public Utilities – Wastewater.

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

The applicant is requesting a CUP for both projects to allow up to 10,000 square feet of Buildings 5, 6

⁷ *City of Malibu Hydrogeology Review Sheet (Comment #5), June 26, 2008.*

and 7 to be used as restaurant space with outdoor seating (restaurants propose to serve beer, wine and liquor) and no amplified entertainment. The restaurant use is part of the variety of uses envisioned in the shopping center as prescribed in the LCPA request for the TCO. The proposed hours of operation for the restaurants are Sunday-Thursday 8:00 a.m. – 12:00 a.m., and Friday-Saturday 8:00 a.m. - 1:00 a.m.

Pursuant to M.M.C. Section 17.66.080, the City Council may approve, deny and/or modify an application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. The CUP findings can be supported based on the findings below:

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

The proposed restaurants are conditionally permitted uses in the underlying CC zoning district as well as the TCO. The project has been conditioned to comply with all applicable provisions of the M.M.C.

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

The restaurant uses are consistent with the uses envisioned in a shopping center and have been sited in the center of the subject property to have the least impact upon adjacent residentially zoned properties.

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

The OWTS requirements for the proposed development, including restaurant use, have been analyzed in the EIR, V.F. Hydrology/Water Quality and have been found to be feasible on the proposed site.

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

The subject site is commercially zoned but currently vacant. The site is surrounded by a variety of uses including residential to the north and upslope. The proposed hours of operation are limited to 8:00 a.m. to 12:00 a.m., Sunday through Thursday, and from 8:00 a.m. to 1:00 a.m., Friday through Sunday. The proposed project has been designed to be sensitive to the existing residential development by its siting (respecting privacy through vegetative screening, shielding lighting to eliminate glow and night lighting) and overall site landscaping to soften the visual impact of new development and change of use at the site. The proposed development and limited restaurant use will not interfere with the parking and circulation in the area as the site has adequate onsite parking and the daytime uses will offset the demand for later, evening restaurant uses and overall the use is compatible with similar adjacent commercial uses in the surrounding neighborhood.

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

As conditioned, the proposed restaurant use will have limited hours of operation. No amplified entertainment will be permitted. The proposed uses are not anticipated to generate any impacts that would be incompatible with uses permitted by the General Plan, LCP or M.M.C., or any uses in the vicinity.

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

The adequacy of public utilities and services has been analyzed in the EIR, Section I, Public Utilities and J, Public Services. The 10,000 square feet of restaurant use is approximately 14 percent of the overall (68,997 square feet) development proposed for Parcel A of DA .20 Project.

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

The proposed development and limited restaurant use will not interfere with the parking and circulation in the area as the site has adequate onsite parking and the daytime uses will offset the demand for later, evening restaurant uses and overall the use is compatible with similar adjacent commercial uses in the surrounding neighborhood.

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

As discussed in LCPA Finding 1, a shopping center is to provide a variety of uses, including restaurants.

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

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

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

The subject application proposes limited restaurant use in Buildings 5, 6 and 7 of the subject shopping center portion of the development. Applications for restaurants to serve beer, wine and liquor are conditionally permitted uses in a commercial zone. As the TCO will have an underlying commercial, the proposed uses will not be detrimental to the public interest, health, safety, convenience or welfare.

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

The project site is located within a Federal Emergency Management Administration (FEMA) designated flood zone. The project had been designed to FEMA development requirements by raising the finished floor on average approximately three feet. Due to the slight grade on the project site, the actual finished floor varies from building to building as the development moves to the rear of the site.

Section 9. Conditions of Approval.

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves DA No. 07-001, LCPA No. 06-003 (and corollary amendments), CDP No. 05-107, LLA No. 05-004 and CUP No.05-004 subject to the conditions listed below. In addition to the conditions listed below, the mitigations from the Mitigation Monitoring Program, Table X-1 of Environmental Impact Report No. 06-001 shall apply.

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. The project is to construct 112,058 square feet of shopping center and office park development and a 20,000 square foot City Hall complex as depicted on the project plans on two realigned parcels and contains the following:
 - a. Fuel Modification plan for wildfire hazard reduction
 - b. Alternative onsite wastewater treatment system
 - c. Grading consisting of 25,445 cubic yards of non-exempt grading— with 35,634 cubic yards of export and 14,545 cubic yards of import
 - d. Driveway and safety access improvements
 - e. Lot Line Adjustment to adjust property boundaries
 - f. Development Agreement No. 07-001
 - g. Local Coastal Program Amendment No. 06-003
 - h. Conditional Use Permit for up to 10,000 square feet of restaurant use in Buildings 4, 5 and 6

No building permits shall be issued until the Applicant has supplied proof that LLA No. 05-004 had been recorded by Los Angeles County and proof that the recorded LLA has been provided to the Los Angeles County Assessor's Office.

Subsequent submittals for this project shall be in substantial compliance with the plans referenced above. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the associated agenda report for this project. In the event the project plans conflict with any conflict with any condition of approval, the condition shall take precedence.

3. Pursuant to LIP Section 13.18.2, 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 the City Council's decision and prior to issuance of any development permits.
4. Coastal Development Permit No. 05-107 shall not become effective unless and until the following legislative act (LCPA No. 06-003) is approved and in effect.
5. This permit shall be null and void if the project has not commenced within four (4) 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 (2) weeks prior to the expiration of the four -year period and shall set forth the reasons for the request.
6. This resolution and the referral sheets attached to the associated agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the LLA plans submitted to the City of Malibu Public Works/Engineering Services Department for Lot Line Adjustment recordation.
7. This resolution and the referral sheets attached to the associated agenda report for this project shall be copied in their entirety and attached to the revised property deed and legal descriptions which shall be submitted to the Planning Division for review prior to recordation of revised property deeds.
8. This resolution and the referral sheets attached to the associated agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
9. The project shall conform to all requirements of the City of Malibu Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, Los Angeles County Water District No. 29, and Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
10. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
11. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.

12. Minor changes to the approved plans or the conditions 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.
13. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Where, as a result of this evaluation, the Planning Manager determines that the project may have an adverse impact on cultural resources; a Phase II Evaluation of cultural resources shall be required pursuant to Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code.
14. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 48 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Geologist

15. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction.
16. Final plans approved by the City Geologist shall be in substantial conformance with the approved coastal development permit relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment to this coastal development permit or a new Coastal Development Permit.

Public Works/Grading

17. This project proposes to construct improvements within the Public Street right-of-way. The applicant shall obtain encroachment permits from the Public Works Department prior to commencement of any work within the Public right-of-way.
18. Street improvements are required for Civic Center Way abutting the project. Street improvements shall be to the satisfaction of the Director of Public Works and shall include curb, gutter, pave out and sidewalk.
19. Exported soil from the site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.

20. Grading and Drainage plan shall be approved by the Public Works Department and Environmental and Building Safety Division prior to the issuance of grading permits for the project. This plan shall include:
- a. Public Works Department general notes.
 - b. Slopes created for development shall not exceed 3 (horizontal) to 1 (vertical).
 - c. The existing and proposed square footage of impervious coverage on the property shall be shown on the Grading Plan (including separate areas for buildings driveways, walkways, and parking areas).
 - d. The limits of land to be disturbed during project development shall be delineated on the grading plan and a total area shown on the plan. Areas disturbed by grading equipment beyond the limits of grading shall be included within the area delineated.
 - e. The grading limits shall include temporary cuts made for retaining walls, buttresses, and over excavations for fill slopes and shall be shown on the grading plan.
 - f. Private storm drain systems shall be shown on the Grading Plan.
 - g. Public storm drain modifications shown on the Grading Plan shall be approved by the Public Works Department or by the County Flood Control District prior to the issuance of the Grading permit.
21. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the waste discharge identification number (WDID) prior to the issuance of grading permits.
22. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the raining season). The following elements shall be included:
- a. Locations where concentrated runoff will occur.
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures.
 - c. The plans shall identify erosion control materials such as rolled products, straw or compost slope protection or the use of polymers to stabilize disturbed areas as required by the State General Construction Activity Permit.
 - d. Location and sizing criteria for silt basins, sandbag barriers, and silt fencing.
 - e. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
23. A Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the grading permits for the project. This plan shall include:
- a. Dust control plan for the management of fugitive dust during extended periods without rain.
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff.
 - c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset.

- d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
24. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2.B.2.
25. A Water Quality Mitigation Plan (WQMP) is required for this project. This document is also commonly known as a Standard Urban Stormwater Management Plan (SUSMP). The WQMP shall be supported by hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the pre-development and post-development drainage of the site. The preliminary WQMP submitted in September of 2006 shall be used as the basis of the final WQMP. The Engineer shall submit detailed design and siting information on all Best Management Practices (BMPs) proposed for inclusion within the project. The following elements shall be included within the WQMP:
- a. Site Design
 - b. Source Control BMPs
 - c. Treatment Control BMPs
 - d. Drainage Improvements
 - e. Methods for onsite percolation, site re-vegetation and an analysis for off-site project impacts.
 - f. Measures to treat and infiltrate runoff from impervious areas.
 - g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure.
 - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during the construction prior to the issuance of grading permits.
 - i. The WQMP (SUSMP) shall be submitted as part of the building plan check submittal and the fees prescribed by Council, shall be paid prior to the start of technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded at the County Recorder.
 - j. The project appears to incorporate many Water Quality BMPs. It is suggested that the applicant seek recognition under the Leadership in Energy and Environmental Design (LEED) program sponsored by the Green Building Council, www.usgbc.org.
26. A preliminary Elevation Certificate is required for all developments located within Special Flood Areas. The final Elevation Certificate, based on actual construction, will be required prior to receiving final approval of the construction.
27. Geology and Geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The developer's consulting engineer shall sign the final plans prior to the issuance of permits.

28. Exported soil from the site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.

Water Service

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

Onsite Wastewater Treatment System

30. Prior to issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of the Section 18.9 of the LCP related to continued operation, maintenance and monitoring of onsite facilities.

Solid Waste

31. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.

Framing

32. When the framing is completed, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. The Planning Division shall sign off stating that said document has been received and verified.
33. No structure may exceed 32 feet in height as measured from finished grade, pursuant to the Town Center Overlay development standards.

Colors/Materials

34. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
35. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.

36. New structures shall incorporate colors and exterior materials that are compatible with the surrounding landscape. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible. All windows shall be comprised of non-glare glass.

Lighting

37. A Lighting Plan (including all proposed light standards, shielding and wattage) for the entire site shall be submitted for review and approval by Planning Division Staff prior to Plan Check submittal of the project. Permitted lighting shall conform to the following standards:
- a. Exterior lighting shall be minimized and restricted to low intensity features shielded, so that no light source is directly visible from public viewing areas.
 - b. All lighting fixtures shall be located so as to shield direct rays from adjoining properties. Said shielding shall be required so that light measured five feet outside the property boundary shall not exceed one foot-candle.
 - c. Luminaries/light standards shall be of a low level, indirect diffused type and shall not exceed fifteen feet in height.
 - b. Security lighting controlled by motion detectors may be attached to the building provided it is directed downward and is limited to 60 watts or the equivalent.
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent.
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent
 - e. Site perimeter lighting shall be prohibited.
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
 - g. Only low level landscape lighting shall be permitted within the 50 foot landscape buffer area on Parcel B.
38. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot-candle.

Security

39. Twenty-four hour "roving" security shall be provided for the entire commercial development. A security guard shall patrol the parking lot during all non-daylight hours to ensure that the parking areas do not become an attractive nuisance.
40. A fence shall be added along the northern property line to prohibit pedestrian traffic to the Malibu

Knolls neighborhood.

41. A gate with a key system for "after hours" tenant-only use shall be installed on Parcel B for access to Buildings 10 and 11.

Biology/Landscape

42. Invasive plant species, as determined by the City of Malibu, are prohibited.
43. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
44. Grading shall be scheduled only during the dry season from April 1 through October 31st. If it becomes necessary to conduct grading activities from November 1 through March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
45. Grading scheduled between February 15 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 100 feet (250 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site.
46. The landscape and fuel modification plan has been conditioned to protect natural resources in accordance with the Local Coastal Program. All areas shall be planted and maintained as described in the landscape and fuel modification plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project. The fuel modification plan shall be revised (if necessary) and re-approved by the Los Angeles County Fire Department prior to plan check submittal.

Prior to Occupancy

47. Prior to issuing a Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
48. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
49. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be

issued until the Planning Division has determined that the project complies with this coastal development permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

Restaurant

50. The proposed hours of operation are limited to 8:00 a.m. to midnight Sunday through Thursday, and from 8:00 a.m. - 1:00 a.m. on Friday through Sunday.
51. No live entertainment or amplified sound will be permitted without a Conditional Use Permit in accordance with the provisions of the Town Center Overlay District. Additionally, no outdoor speaker/pager system or shall be allowed.
52. No trash or recycling pick up is permitted between the hours of 10:00 p.m. and 8:00 a.m.
53. Once obtained, the applicant is required to provide to the Planning Division a copy of the California Department of Alcohol Beverage Control issued On-Premise Consumption License.
54. The CUP and associated conditions are subject to annual review by the City Planning Manager. Violation of any of the conditions of this approval may be cause for revocation of the CUP and termination of all rights granted there under.

Fixed Conditions

55. This coastal development permit runs with the land and binds all future owners of the property.
56. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
57. The project shall be designed so that it is capable of connecting to any future municipal wastewater treatment facility in the Civic Center Area.
58. The pathway and onsite trails at the La Paz Ranch development site shall be permitted to be used by pedestrians and golf carts, as well as for emergency evacuation routes.
59. The landscaping for the La Paz site shall be coordinated with the landscaping proposed for the Legacy and Linear Parks in the Civic Center Area. Compliance with this condition will require landscaping plans to be reviewed by Planning Division staff in conjunction with the City Biologist.
60. An evacuation plan for the La Paz Project shall incorporate the use of the facility for emergency use by the surrounding property owners as well as emergency responders. The evacuation plan

shall be prepared in conjunction with the City's Emergency Services Coordinator.

Section 10. Approval of Amendments to the Certified Local Coastal Program LIP.

Subject to the contingency set forth in Section 11, the City Council hereby adopts Local Coastal Program Amendment No. 06-003 amending the Local Implementation Plan.

Section 11. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit DA No. 07-001 and LCPA No. 06-003 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.

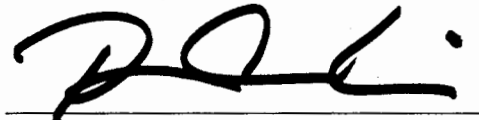
Section 12. Effectiveness.

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

Section 13. Certification.

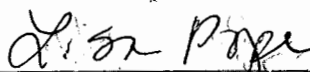
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th of November, 2008.



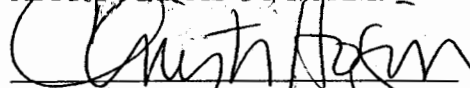
PAMELA CONLEY ULICH, Mayor

ATTEST:



LISA POPE, City clerk
(seal)

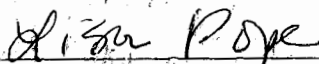
APPROVED AS TO FORM:



CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 08-52 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 10th day of November, 2008, by the following vote:

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



LISA POPE, City Clerk
(seal)