

CALIFORNIA COASTAL COMMISSION

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

Item W12b



ADDENDUM

DATE: August 11, 2015

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item No. W 12b, City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development), Wednesday, August 12, 2015

The purpose of this addendum is to attach ex-parte communication disclosure forms submitted by Commission Chair Kinsey and Commissioner Groom for this agenda item

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication: 8-10-15

Location of communication: Telephone call
(If communication was sent by mail or
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: Fred Gaines, Esq. for Green Acres LLC

Identity of person(s) receiving communication: Commissioner Chair Steve Kinsey

Name or description of project: Malibu Coast Estates LCP-4-MAL-14-0408-1
August 2015 Agenda Item No. W12b

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

Mr. Gaines summarized his client's opposition to the Staff
Recommendation focusing on minimizing impacts on public views
and maximizing public benefits in the form of land dedication,
conservation easements and public access. Specifically, Mr. Gaines
described the three house proposal, a site plan for which was attached
to his letter to the Commission, and pointed out the reduced number

8/10/15
Date

Steve Kinsey
Signature of Commissioner

of homes, the reduced size of the homes and the greater
clustering of the homes. Mr. Gaines also advocated for a
restriction on the height of landscaping on the site.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Steve Kinsey

- 1) Name or description of project: LCP-4-MAL-14-0408-1 (Crummer)
- 2) Date and time of receipt of communication: Aug. 10, 2015 at 2:00pm
- 3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
Anne Blemker
- 5) Identity of person(s) on whose behalf communication was made:
Robert Gold, PCH Project Owner, LLC
- 6) Identity of persons(s) receiving communication:
Steve Kinsey
- 7) Identity of all person(s) present during the communication:
Susan McCabe, Anne Blemker

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing update from the project representative regarding the applicant's efforts to respond to comments made by Commissioners at the February 2015 hearing. They have worked to redesign the five (5) proposed residences to be single-story structures visually shielded by berms and have prepared new visual simulations to analyze potential public view impacts. The property owners are in agreement with the staff recommendation and request approval by the Commission.

8/10/15
Date


Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Steve Kinsey

- 1) Name or description of project: LCP-4-MAL-14-0408-1 (Crummer)
- 2) Date and time of receipt of communication: July 16, 2015 at 11:00am
- 3) Location of communication: Marin
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
Susan McCabe
- 5) Identity of person(s) on whose behalf communication was made:
Robert Gold, PCH Project Owner, LLC
- 6) Identity of persons(s) receiving communication:
Steve Kinsey
- 7) Identity of all person(s) present during the communication:
Robert Gold, Susan McCabe

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received an update from project representatives regarding their efforts to respond to comments made by Commissioners at the February 2015 hearing. They have worked to redesign the proposed residences to be single story and have prepared new visual simulations to analyze potential public view impacts. The property owners are continuing to work with staff and are hoping to return to the Commission for consideration in August.

8/10/15

Date


Signature of Commissioner

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EX PARTE COMMUNICATION DISCLOSURE FORMFiled by Commissioner: Carole Groom

- 1) Name or description of project: City of Malibu LCP Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development)
- 2) Date and time of receipt of communication: August 3, 2015 at 2 PM
- 3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication: Anne Blemker
- 5) Identity of person(s) on whose behalf communication was made: Crummer Property
- 6) Identity of persons(s) receiving communication: Carole Groom
- 7) Identity of all person(s) present during the communication: Carole Groom, Robert Gold, Susan McCabe, Steve Kaufmann, and Richard Alexander Bac

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing regarding the proposed amendments to the LUP and LIP of the city of Malibu with regard to the Crummer property proposal. The representatives went through a briefing booklet that was previously provided to staff (titled "Crummer Trust Property Planned Development" and dated August 13, 2015). The representatives stated that the proposal was originally for 5 homes on the 20+ acre site. They reaffirmed that 7 acres will be placed into a conservation easement and 1-2 acres will go to the City. They acknowledged concerns that have been raised about the visibility of the proposed homes. They stated that they are in agreement with the staff recommendation, except for one logistical issue. The representatives reiterated the main changes proposed in the staff report: reducing the homes from 2 stories to 1 story each and reducing the height and square footage of the guard house. They also stated that a 4 foot high berm is proposed to be added, which would further shield the view from public areas. The landscaping is proposed to blend with the topography, according to the representatives. They also said that the pool and cabana are now located closer to the homes, shrinking the development footprint, and that the rooflines have been dropped. In addition, the lot line has been shifted away from the bluffs as much as possible to produce a "clustering effect." The representatives also mentioned the voluntary mitigation fee of \$2 million.

Aug 17 2015
Date

Carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORMFiled by Commissioner: Carole Groom

- 1) Name or description of project:
- 2) Date and time of receipt of communication: August 7, 2015 at 9 AM
- 3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
Fred Gaines
- 5) Identity of person(s) on whose behalf communication was made:
Richard Weintraub
- 6) Identity of persons(s) receiving communication:
Carole Groom
- 7) Identity of all person(s) present during the communication:
Carole Groom, Fred Gaines, and Richard Alexander Bac

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from the representative of a client who lives across the highway from the Crummer property. I received a diagram he provided from his clients (which has been sent to staff via email by Richard Bac on August 7, 2015). The representative indicated concerns about how many houses are proposed to be built. He stated that there are a variety of solutions that would mitigate the impact of the project: smaller houses, clustering them, and other methods of minimizing view blockage. Working with other groups in Malibu, the representative advocated for an alternative plan that eliminates 2 of the houses (lots 2 and 5). He said that this would save the views of "the Queen's Necklace" bay from Malibu's biggest park (which is adjacent to the property in question). He said that this would still allow for 3 mansions to be built, each to sell for \$20-25 million. The representative also questioned if \$2 million of public benefit funds is sufficient for a project of this scope and financial gain. He also proposed that more than 1.7 acres be added to the adjacent park. Overall, the representative stated a preference for minimizing the impacts on public views and the nearby public park.

Aug 7 2015
Date

Carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Carole Groom

1) Name or description of project: W12b- No. LCP-4-MAL-14-0408-1 (Crummer Trust)

2) Date and time of receipt of communication: July 16, 2015 at 3:00 pm

3) Location of communication: Redwood City

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Susan McCabe

5) Identity of person(s) on whose behalf communication was made: Robert Gold

6) Identity of persons(s) receiving communication: Carole Groom

7) Identity of all person(s) present during the communication: Susan McCabe, Robert Gold, Carole Groom

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

The project applicant and representative indicated that Coastal Commission staff have expressed concerns that existing project proposal would block protected views. Ms. McCabe and Mr. Gold maintained that they have worked with staff and the City of Malibu over a long period of time to reduce the scope of project and be consistent with the LCP, ultimately receiving the City's approval. They provided visual representations to show that coastal views would not be blocked with the existing project proposal. They expressed disagreement with staff's recommendation of denial and indicated that a revision would require lot line adjustment and beginning the process with the City of Malibu.

Aug 7 2015
Date

Carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORMFiled by Commissioner: Carole Groom

- 1) Name or description of project: City of Malibu LCP Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development)
- 2) Date and time of receipt of communication: August 5, 2015 at 10:30 AM
- 3) Location of communication: Telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication: Patt Healy
- 5) Identity of person(s) on whose behalf communication was made: Patt Healy
- 6) Identity of persons(s) receiving communication: Carole Groom
- 7) Identity of all person(s) present during the communication: Carole Groom, Patt Healy, and Richard Alexander Bac

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I received a briefing from the person initiating communication regarding the Crummer Property item. She stated that similar properties on the bluffs have sold for \$60 million or more. She indicated that the removal of lots 2 and 5 would satisfy everyone, but that the Commissioners have talked about modifying or eliminating lots 1 and 2. She said clustering could have been considered to preserve views as well as setting the homes further back from the bluff. According to the representative, fire is a huge concern for Malibu residents. She said that the landscaping height should be limited like the height of the homes (down to one story from two stories). Her contention is that the neither the homes nor the landscaping (trees) should block the views so she advocated revising the landscaping plan. The representative is opposed to the proposal as it stands due to her concern for the blockage of ocean views.

Aug 7 2015
Date

Carole Groom
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

CALIFORNIA COASTAL COMMISSION

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



W12b

Click here to go to
 original staff report

ADDENDUM

DATE: August 10, 2015
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 12b, Wednesday, August 12, 2015
 City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1
 (Malibu Coast Estate/Crummer Trust Property Planned Development)

The purpose of this addendum is to make a correction to the staff report, attach the final executed escrow agreement, attach correspondence received to date, provide a response to some of that correspondence, and attach documentation regarding *Ex Parte* Communications from Commissioners.

A. Correction to the Staff Report

Staff hereby makes the following correction to the staff report and, thereby, to the findings that staff proposes for Commission adoption (language to be inserted is shown underlined and language to be deleted is shown in ~~line-out~~):

The first sentence of the first full paragraph on page 33 of the staff report shall be revised as follows:

Given that the subject "Crummer Trust" parcel is substantially larger than the Crown Pointe Estates parcel, and therefore represents a greater loss of visitor-serving opportunity, the Commission finds that a mitigation fee substantially greater than the approximately \$557,000 mitigation fee required in the Crown Pointe Estates project of \$2,000,000 is proportional and would be appropriate in this case. The property owner is proposing a mitigation fee of \$2,000,000, which will be implemented pursuant to an agreement between the Commission and the property owner. While the proposed fee was not derived by a specific in-lieu fee analysis based upon the impact, such an analysis is not necessary in this case because the fee is being proposed by the property owner and the Commission finds the amount to be appropriate.

B. Final Executed Escrow Agreement and Declaration of Covenants

Staff hereby replaces the current Exhibit 11 to the staff report with the final executed Escrow Agreement and Declaration of Covenants, which are attached as [Exhibit 1](#) of this addendum.

C. Correspondence Received

1. Correspondence has been received from the property owner's representative, Steven Kaufmann, dated July 28, 2015 regarding the \$2,000,000 in-lieu mitigation fee that the property owner has offered to assist in funding affordable overnight accommodations in the Malibu area. This letter is attached as [Exhibit 2](#) of this addendum.

This letter arrived prior to the issuance of the staff report, but it was inadvertently omitted from the staff report. The correction made in section A, above, is in response to the points raised in this letter.

2. Correspondence has been received from the Mountains Recreation and Conservation Authority (MRCA) indicating acceptance of the expanded open space conservation easement area (expanded from 6.23 acres to 7.69 acres) that the property owner has voluntarily agreed to dedicate to them. This letter is attached as [Exhibit 3](#) of this addendum.
3. Correspondence has been received from a number of interested parties expressing support of the proposed project and the staff recommendation, which are attached as [Exhibit 4](#) of this addendum.
4. A joint letter from the Malibu Coalition for Slow Growth, The Malibu Township Council, and Preserve Malibu Coalition was received and is attached as [Exhibit 5](#) of this addendum. The letter states that additional changes to the planned development should be required in order to ensure consistency with the LCP and to comply with Commissioner direction as expressed at the February 12, 2015 Commission hearing.

Specifically, the letter suggests that a larger open space conservation easement should be required, particularly on Lots 1 and 2, and across more of Lot 5, in order to minimize view impacts from upcoast and downcoast viewing areas. The letter also suggests allowing public access on the larger conservation easement portion of Lot 5 to maximize the public's view of the coastline downcoast. In response to the request for public access, Commission staff would note that the subject site is private property, and there has been no evidence presented of historic public access to the bluff area in this case. Moreover, Commission staff believes that the combination of the dedication of a 1.74-acre lot (Lot 7) for public use and the payment of a \$2,000,000 fee to be used for lower-cost, visitor-serving coastal amenities is adequate mitigation for the residential use of the majority of this site. In response to the concern for the impact on public views, Commission staff has assessed the visual impacts of the proposed planned development and concluded that, with the addition of the reduced building height, berm and other changes, the visual impacts will not be inconsistent with the relevant provisions of the Coastal Act or the LUP.

The letter also states that allowing the property to be subdivided into 7 new lots would create parcels that are smaller than the average size of surrounding parcels, inconsistent with the Malibu LCP. In response, Commission staff would note that this issue was analyzed by the City of Malibu prior to submittal of the proposed amendment request, and the City concluded that the proposed lots are not smaller than the average size of the surrounding residential properties.

Finally, the letter requests that landscaping be limited in height to not exceed the height of structure rooflines and that mature landscaping be initially planted to soften the view of structures. In response, Commission staff would note that the Malibu LCP requires that site landscaping consist of primarily native species and Suggested Modification 2 includes an additional requirement to design site landscaping to minimize views of the approved structures from public viewing areas, including the use of native trees to screen approved structures.

Commission staff hereby amends its recommendation to recommend that the Commission adopt the above analysis as part of its findings.

5. Correspondence received from a number of interested parties expressing opposition to the proposed project and the staff recommendation is attached as [Exhibit 6](#) of this addendum.
6. Correspondence from Fred Gaines, of Gaines & Stacey, on behalf of Green Acres, LLC, was received on August 10, 2015 and is attached as [Exhibit 7](#) of this addendum. This letter urges the Commission to deny the amendment due to alleged inconsistencies with the Coastal Act and the Malibu LCP and the alleged precedential effects of any approval.

The letter asserts that the five proposed residences will block prominent public bluewater views and scenic vistas. In response, Commission staff would note that, according to the visual analysis attached as Exhibit 7 of the staff report, no scenic vistas or bluewater views from public viewing areas will be blocked or significantly impacted by the proposed planned development. The letter also asserts that the staff recommendation does not address the specific concerns raised by numerous Commissioners at the February 12, 2015 hearing, and Mr. Gaines offers an alternative project concept that consists of only three residences on Lots 1, 3, and 4, that are limited to 5,000-6,000 sq. ft. in size and clustered in one area, in order to minimize visual impacts and limit lot coverage. Again, Commission staff does not believe that such modifications are necessary to achieve conformance with the visual protection standards in the Coastal Act or LCP, and staff does not believe that the Commissioner deliberations at the February hearing indicated that the Commission had concluded otherwise.

Mr. Gaines' letter also asserts that a visitor-serving use is viable at the subject site and conversion of the site to a lower priority use (residential) is inconsistent with the

Coastal Act and Malibu LCP. Commission staff notes that an analysis of this issue is addressed in Section V.B.1 of the staff report.

Mr. Gaines claims that the \$2,000,000 fee is illegal and that the staff report “admits” that the escrow agreement “is a ‘mechanism’ to circumvent” the Mitigation Fee Act (MFA) with no legal justification. The proposed findings state no such thing. The MFA does not bind the Commission, so there was no attempt to evade it. And it is not uncommon for an applicant to make a proposal to avoid the necessity of doing a precise, quantitative analysis of rough proportionality. Mr. Gaines does not explain on what basis he believes the fee is illegal.

Commission staff hereby amends its recommendation to recommend that the Commission adopt the above analysis as part of its findings.

C. Ex Parte Communications

Disclosure forms reflecting *Ex Parte* communications (from Commissioners Cox and Groom) received as of the date of this addendum are included as [Exhibit 8](#) of this addendum.

ESCROW AGREEMENT

This Escrow Agreement (this “**Agreement**”) is entered into as of August 7, 2015 by PCH Project Owner, LLC, a Delaware limited liability corporation (“**PCH**”) and the California Coastal Commission, a California state agency (the “**Commission**”). Each of PCH and the Commission is referred to herein as a “**Party**” and together they are referred to as the “**Parties**”.

RECITALS

A. PCH is the owner of an approximately 24-acre vacant parcel in the City of Malibu, California (the “**City**”), adjacent to Malibu Bluffs Park, commonly referred to as the “Crummer Trust” parcel and located at 21420 Pacific Coast Highway (APNs 4458-018-018, 4458-018-019, 4458-018-002) (the “**Property**”).

B. PCH has applied to the City to develop five single-family residences and ancillary facilities (the “**Project**”) on the Property. On February 24, 2014, the Malibu City Council took the following actions with respect to the Project: (i) adopted Resolution 14-11 certifying a Final Environmental Impact Report for the Project, (ii) adopted Resolution 14-12, approving a Vesting Tentative Tract Map No. 070038 (“**VTTM**”) and a Coastal Development Permit (“**CDP 07-144**”) for the subdivision of the Property, (iii) adopted Resolution 14-13, approving a Local Coastal Program Amendment (“**LCPA**”) deleting LUP Policy 2.78 and amending land use designations (collectively, “**LCPA 12-001**”), and (iv) adopted Ordinance No. 379, approving LCPA 12-001, amending the Local Implementation Plan to specify the type, density, uses, and development standards for the Property, and amending the Malibu Municipal Code to establish the Malibu Coast Estate Planned Development District on the Property.

C. On May 19, 2014, the Malibu Planning Commission conditionally approved Coastal Development Permits for five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 07-145, 07-146, 07-147, 07-148 and 07-149 (together with CDP 07-144 and such CDPs may be amended in a manner acceptable to PCH in its sole and absolute discretion, the “**City CDPs**”).

D. The City submitted LCPA 12-001 (also referred to as “**LCPA 4-MAL-14-0408-1**”) to the Commission on April 21, 2014. On June 6, 2014, the Executive Director of the Commission determined that the City’s LCP amendment submittal was in proper order and legally adequate to comply with the requirements of Coastal Act Section 30510(b).

E. The Commission staff recommended that the Commission adopt certain modifications to LCPA 12-001, which modifications are shown on Exhibit 2 attached hereto (the “**Suggested Modifications**”).

F. In connection with LCPA 12-001, PCH has proposed to (i) make an in lieu payment of Two Million Dollars (\$2,000,000.00) (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the Mountains Recreation and Conservancy Authority (“**MRCA**”) in the general area of the Property, (ii) deliver to the MRCA a Grant of Conservation Easement substantially in the form of

Exhibit 4 attached hereto (the “**Grant**”) to convey an open space conservation easement to the MRCA on behalf of the people of the State of California over an approximately 6.23 acre area including all of the bluff slopes and approximately 2 acres of the canyon area of the Property as depicted on Exhibit 5 attached hereto, for the purpose of habitat protection (the “**Conservation Easement**”), and (iii) provide the MRCA with a payment of Twenty Five Thousand Dollars (\$25,000) as an endowment to monitor the Conservation Easement (the “**Easement Endowment**”). In addition, PCH shall work cooperatively with the MRCA to minimize fuel modification and identify habitat restoration opportunities within the 6.23 acre easement area. PCH and the Commission desire to establish and utilize an escrow so that, upon the fulfillment of all conditions stated in this Agreement, the In Lieu Payment, the Grant and the Easement Endowment shall be implemented in a self-executing manner.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Deposit of the In-Lieu Payment.** No later than two (2) business day prior to the Commission hearing on LCPA 12-001, presently scheduled for August 12, 2015, PCH shall provide proof to the Commission that PCH has deposited the In Lieu Payment and the Easement Endowment into a deposit account with Chicago Title Company (“**Escrow Agent**”), which Escrow Agent is acceptable to both PCH and the Commission. Escrow Agent will establish an interest bearing escrow account for the In Lieu Payment. PCH and the Commission acknowledge and agree that the additional escrow instructions (“**Escrow Instructions**”) attached hereto as Exhibit 1 are incorporated herein. PCH and the Commission shall execute such supplemental instructions and other documents and instruments as requested by Escrow Agent in connection with establishing the escrow. Escrow Agent’s fees and costs shall be paid by PCH.

2. **Deposit of Declaration of Covenants and Grant.** In order to provide further assurances to the Commission regarding the eventual payment of the In Lieu Payment, PCH has executed that certain Declaration of Covenants in the form of Exhibit 3 attached hereto (the “**Declaration of Covenants**”) and deposited it with Escrow Agent to be handled in accordance with this Agreement. In addition, PCH has deposited the Grant with Escrow Agent to be handled in accordance with this Agreement. Neither the Declaration of Covenants nor the Grant shall be delivered or otherwise effective until it is recorded in the Official Records of Los Angeles County in accordance with this Agreement.

3. **Conditions Precedent to Disbursement of In Lieu Payment.** Pursuant to this Agreement, Escrow Agent shall release the In Lieu Payment to the MRCA only upon the occurrence of the following: (i) written confirmation from the Commission staff to Escrow Agent, and (ii) written confirmation from PCH to Escrow Agent, in each case confirming that all of the following conditions precedent have been satisfied (the Parties’ duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met):

- a. The Commission has approved and certified LCPA 12-001 (including the Suggested Modifications);

- b. If the Commission has modified or otherwise adopted changes to LCPA 12-001 (other than the Suggested Modifications) (such modifications or changes being the “**Commission Modifications**”), PCH has determined, in its sole and absolute discretion, that such modifications or changes are acceptable to allow the Project to continue and has communicated its determination in writing to the Commission;
- c. The City Council of the City: (i) has accepted and agreed to the Suggested Modifications (or, if PCH has notified the Commission of its acceptance of the Commission Modifications in the manner specified in subsection 3(b) above, the City Council has accepted and agreed to both the Suggested Modifications and the Commission Modifications) as required and approved pursuant to the Commission’s certification of LCPA 12-001, and (ii) taken whatever formal legal action is required to incorporate the Suggested Modifications (and, as appropriate, the Commission Modifications) to LCPA 12-001 into the City’s Local Coastal Plan;
- d. The Executive Director of the Commission has determined that the City’s actions described in Subsection (c) above are legally adequate to satisfy the Commission’s certification of LCPA 12-001, the Executive Director has reported such determination to the Commission, the Commission has not objected to such determination, and notice of effective certification of LCPA 12-001 has been filed with the Secretary of the Natural Resources Agency for posting (the “**Final Certified LCPA**”);
- e. Any applicable appeals period and the statutes of limitation period for lawsuits and any other legal challenges to LCPA 12-001 have expired without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been commenced, or any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (i) such adjudication or resolution has upheld, in its entirety, the validity of LCPA 12-001, or (ii) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of LCPA 12-001 (as modified), but such actions are acceptable to PCH in its sole and absolute discretion such that the LCPA 12-001 is final, valid and in full force and effect;
- f. Following the foregoing actions of the City Council of the City and the Commission as set forth in in Subsections 3(a), (b), (c) and (d) above, the City has issued Notices of Final Action as to the City CDPs, without modification unless PCH has notified the Commission in writing of its determination, in its sole and absolute discretion, that such modifications are acceptable for the continuance of the Project; and
- g. Either (i) the applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits, petitions and any other legal challenges to the City CDPs, the Final Environmental Impact Report and the other City approvals have expired without any Legal Challenges having been commenced, or (ii) any and all Legal

Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (A) such adjudication or resolution has upheld, in their entirety, the validity of the City CDPs, the Final Environmental Impact Report and the other City approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the City CDPs, the Final Environmental Impact Report and the other City approvals, but such actions are acceptable to PCH in its sole and absolute discretion and PCH has indicated such in writing.

Upon the satisfaction of all of the foregoing conditions precedent and the written confirmation by PCH and the Commission delivered to Escrow Agent, Escrow Agent shall (i) disburse the In Lieu Payment to the MRCA in accordance with instructions to be delivered to Escrow Agent by the Commission, (ii) disburse the interest earned on the In Lieu Payment to PCH in accordance with instructions to be delivered to Escrow Agent by PCH, (iii) record the Grant in the Official Records of the County of Los Angeles, (iv) disburse the Easement Endowment in accordance with the agreement between PCH and the MRCA, and (v) record the Termination of Declaration as defined in Section 4 below.

4. **Recordation of the Declaration of Covenants.** If the conditions precedent set forth in Subsections 3(a), (b), (c) and (d) above are satisfied and the Final Certified LCPA is in effect and the Commission and PCH have delivered written confirmation (the Parties' duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met), Escrow Agent shall concurrently (i) cause the Declaration of Covenants to be recorded in the Official Records of the County of Los Angeles, and (ii) provide conformed copies of the Declaration of Covenants to PCH and the Commission evidencing such recordation. If the conditions precedent set forth in Section 3(a) – (g) are satisfied, the Commission shall execute and deliver to Escrow Agent an instrument in recordable form and approved by PCH as sufficient to terminate and extinguish the Declaration of Covenants (the "**Termination of Declaration**").

5. **Reservation of Rights.** PCH shall have the right (but not the obligation) to elect to terminate this Agreement by delivering written notice (the "**Termination Notice**") to the Commission and Escrow Agent, which election shall be in PCH's sole and absolute discretion, if at any time (i) any of the conditions precedent enumerated in Subsections 3(a), (b), (c), (d), (e), (f) or (g) fail to occur, or (ii) a Legal Challenge covered by Subsection 3(g) has been commenced and PCH determines in its sole and absolute discretion that it does not wish to defend against or otherwise participate in such Legal Challenge and elects to terminate this Agreement. Upon delivery of the Termination Notice to the Commission and Escrow Agent, Escrow Agent shall take the following actions: (1) promptly disburse the In Lieu Payment and all interest earned thereon to PCH, (2) promptly disburse the Easement Endowment and all interest earned thereon to PCH, (3) if the Declaration of Covenants has not been recorded, return the Declaration of Covenants to PCH, (4) return the Grant to PCH, and (5) if a Termination of Declaration has been delivered to Escrow Agent pursuant to the Declaration of Covenants, record the Termination of Declaration. Upon Escrow Agent taking such actions, the rights and obligations of the Parties hereunder shall terminate. However, nothing in this Agreement shall limit or interfere with the exercise of discretion by the Commission or the City in acting on LCPA 12-001 or the City CDPs. Similarly, except as agreed to in Section 1 and 2 above and the satisfaction of the

conditions precedent to the delivery of the In Lieu Payment, nothing in this Agreement shall limit or interfere with the right of PCH to preserve its legal position that the inclusion of an in-lieu fee mitigation requirement in LCPA 12-001 or as a condition of the CDP 07-144 or the City CDPs would be contrary to applicable state and federal constitutional and statutory law.

6. **Parties Bound; Assignment**. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties. Neither Party may assign this Agreement to any other person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld. If PCH transfers the Property prior to the recordation of the Declaration of Covenants, PCH shall cause the transferee to assume the obligations of this Agreement and the transferee will be bound by such obligations.

7. **Invalidity and Waiver**. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision in the future.

8. **Governing Law**. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of California.

9. **Conflict in Agreements**. In the event of a conflict between the general escrow instructions and the terms of this agreement, the terms of this agreement shall take priority.

10. **Entirety and Amendments**. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Exhibits attached hereto are incorporated herein by this reference for all purposes.

11. **Time**. Time is of the essence in the performance of this Agreement.

12. **Execution in Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange by facsimile or email counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in Section 15 below.

13. **Further Assurances**. In addition to the acts recited herein and contemplated to be performed, executed and/or delivered by either Party, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

14. **No Third Party Beneficiary.** The provisions of this Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or any of the documents to be executed and delivered in connection herewith.

15. **Notices.** All notices, consents, requests, reports, demands or other communications hereunder shall be in writing and may be given personally, by registered or certified mail, by email or by Federal Express (or other reputable overnight delivery service) as follows:

If to PCH:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, California 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, California 90071
Attn: Cary Kleinman

Paul Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, California 90071
Attn: Alan W. Weakland

If to the Commission:

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attention: Deanna Christensen

with a copy to:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 9410
Attention: Chief Counsel

If to Escrow Agent:

Chicago Title Company
725 S. Figueroa Street, Suite 200
Los Angeles, CA 90017
213-612-4161
joan.hawkins@ctt.com
Attention Joan Hawkins, Commercial Escrow Officer:

or to such other address or such other person as the addressee party shall have last designated by notice to the other party. All notices shall be deemed to have been given when received. All notices given by telecopy shall be followed by the delivery of a hard copy of such notice, provided that such notice shall be deemed to have been given when received by telecopy.

16. **Liability for Litigation Costs and Attorneys Fees.** PCH agrees to reimburse the Commission in full for all Commission litigation costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than PCH against the Commission, its officers, employees, agents, successors and assigns challenging the approval of the LCPA (including those charged by the Office of the Attorney General, and any court costs and attorneys' fees that the Commission may be required by a court to pay).

[Signatures on next page]

SIGNATURE PAGE TO ESCROW AGREEMENT

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

“PCH”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: 
Richard Ackerman
Authorized Signatory

“Commission”

California Coastal Commission,
a California state agency

By: _____
Name: _____
Title: _____

JOINDER BY ESCROW AGENT:

The undersigned Escrow Agent hereby accepts the foregoing Agreement and agrees to act as Escrow Agent under this Agreement in strict accordance with its terms.

Chicago Title Company

By: _____
Name: _____
Title: _____

Date executed by Escrow Agent:

August ____, 2015

EXHIBIT 1

ESCROW INSTRUCTIONS



Chicago Title Company

725 South Figueroa Street, Suite 300, Los Angeles, CA 90017
Phone: (213) 612-4161 • Fax: (213) 488-4384

1/13/2015

Date: January 13, 2015
Escrow No.: _____
Escrow Officer: Joan Hawkins

GENERAL PROVISIONS

1. DEPOSIT OF FUNDS

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub-escrow account prior to disbursement of any funds. Only cash or wire transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all fundings should be wire transfer. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

Deposit of funds into general escrow account unless instructed otherwise. You may instruct Escrow Holder to deposit your funds into an interest bearing account by signing and returning the "Escrow Instructions - Interest Bearing Account", which has been provided to you. If you do not so instruct us, then all funds received in this escrow shall be deposited with other escrow funds in one or more general escrow trust accounts, which include both non-interest bearing demand accounts and other depository accounts of Escrow Holder, in any state or national bank or savings and loan association insured by the Federal Deposit Insurance Corporation (the "depository institutions") and may be transferred to other such escrow trust accounts of Escrow Holder or one of its affiliates, either within or outside the State of California. A general escrow trust account is restricted and protected against claims by third parties and creditors of Escrow Holder and its affiliates.

Receipt of benefits by Escrow Holder and affiliates. The parties to this escrow acknowledge that the maintenance of such general escrow trust accounts with some depository institutions may result in Escrow Holder or its affiliates being provided with an array of bank services, accommodations or other benefits by the depository institution. Some or all of these benefits may be considered interest due you under California Insurance Code Section 12413.5. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations, and other benefits shall accrue to Escrow Holder or its affiliates and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations, interest or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Chicago Title Company. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.

3. SUPPLEMENTAL TAXES

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this escrow. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

4. UTILITIES/POSSESSION

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

5. PREPARATION AND RECORDATION OF INSTRUMENTS

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

6. AUTHORIZATION TO FURNISH COPIES

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

7. RIGHT OF CANCELLATION

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver, one copy of such notice to each of the other principals at the addresses stated in this escrow UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH DELIVERY. YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

8. PERSONAL PROPERTY

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested. By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

9. RIGHT OF RESIGNATION

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow. Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

11. ACTION IN INTERPLEADER

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the

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principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

12. TERMINATION OF AGENCY OBLIGATION

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due Chicago Title Company, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

13. CONFLICTING INSTRUCTIONS

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

14. DELIVERY RECEIPT

Delivery to principals as used in these instructions unless otherwise stated herein is to be by hand in person to the principal, regular mail, email or fax to any of the contact information provided in these instructions. If delivered by regular mail receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned may be delivered to the contact information shown herein. All notices, change of instructions, communications and documents are to be delivered in writing to the office of Chicago Title Company as set forth herein.

15. STATE/FEDERAL CODE NOTIFICATIONS

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the County in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said County and Escrow Holder shall debit the account of Buyer for same at close of escrow.

16. NON-RESIDENT ALIEN

The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations thereunder, provide in part, that a transferee (buyer) of a U.S. real property interest from a foreign person (non-resident alien) must withhold a tax equal to ten percent (10%) of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service within twenty (20) days after the transfer. Chicago Title Company has not and will not participate in any determination of whether the FIRPTA tax provisions are applicable to the subject transaction, nor act as a Qualified Substitute nor furnish tax advice to any party to the transaction. Chicago Title Company is not responsible for determining whether the transaction will qualify for an exception or an exemption and is not responsible for the filing of any tax forms with the Internal Revenue Service as they relate to FIRPTA. Chicago Title Company is not the agent for the Buyer for the purposes of receiving and analyzing any evidence or documentation that the Seller in the subject transaction is a U.S. citizen or resident alien. The Buyer is advised they must independently make a determination of whether the contemplated transaction is taxable or non-

taxable and the applicability of the withholding requirement to the subject transaction, and should seek the advice of their attorney or accountant. Chicago Title Company is not responsible for the payment of this tax and/or penalty and/or interest incurred in connection therewith and such taxes are not a matter covered by the Owner's Policy of Title Insurance to be issued to the Buyer. The Buyer is advised they bear full responsibility for compliance with the tax withholding requirement if applicable and/or for payment of any tax, interest, penalties and/or other expenses that may be due on the subject transaction.

17. ENCUMBRANCES

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

You are authorized, without the need for further approval, to debit my account for any fees and charges that I have agreed to pay in connection with this escrow, and for any amounts that I am obligated to pay to the holder of any lien or encumbrance to establish the title as insured by the policy of title insurance called for in these instructions. If for any reason my account is not debited for such amounts at the time of closing, I agree to pay them immediately upon demand, or to reimburse any other person or entity who has paid them.

18. ENVIRONMENTAL ISSUES

Chicago Title Company has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxicification, if applicable, will be done directly and by principals outside of escrow. Chicago Title Company is released of any responsibility and/or liability in connection therewith.

19. USURY

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

20. DISCLOSURE

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

21. FACSIMILE SIGNATURE

Escrow Holder is hereby authorized and instructed that, in the event any party utilizes "facsimile" transmitted signed documents or instructions to Escrow Holder, you are to rely on the same for all escrow instruction purposes and the closing of escrow as if they bore original signatures.

22. CLARIFICATION OF DUTIES

Chicago Title Company serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

23. FUNDS HELD IN ESCROW

When the company has funds remaining in escrow over 90 days after close of escrow or estimated close of escrow, the Company shall impose a monthly holding fee of \$25.00 that is to be charged against the funds held by the Company.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

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MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS

CHICAGO TITLE COMPANY CONDUCTS ESCROW BUSINESS UNDER CERTIFICATE OF AUTHORITY NO. 350 ISSUED BY THE CALIFORNIA DEPARTMENT OF INSURANCE.

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EXHIBIT 2

LCPA 12-001

[INSERT FULL TEXT OF LCPA WITH SUGGESTED MODIFICATIONS]

III. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified Land Use Plan is shown in straight type. Language proposed by the City to be deleted is shown in ~~line-out~~. Language proposed by the City to be added is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~double line-out~~. Language recommended by Commission staff to be inserted is shown double underline. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

| |
|--|
| <i>SUGGESTED MODIFICATION NO. 1</i> |
|--|

Land Use Plan Chapter 5, Section C.2 (Land Use Designations):

PLANNED DEVELOPMENT (PD): The PD designation is a specially tailored land use designation with a corresponding zoning district ~~which~~ that establishes zoning regulations and sets specific development standards for a specific planned development. The PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs, ~~provides for a mix of residential and recreational development~~ on the approximately 24-acre Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway (APNs 4458-018-019, 4458-018-002, and 4458-018-018). ~~in the event of permanent relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed of the park in accordance with Policy 2.78 of the Land Use Plan.~~

NOTE: The owner of the Crummer Trust Site as of the date of the Coastal Commission's action on LCP Amendment No. LCP-4-MAL-14-0408-1 ("Applicant") has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay an in-lieu fee to the Mountains Recreation and Conservation Authority for use in developing lower cost visitor accommodations, to be released upon Applicant's securing of entitlements to subdivide and to develop the site consistent with this revised definition of the PD designation above.

IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified Implementation Plan is shown in straight type. Language proposed by the City to be deleted is shown in ~~line-out~~. Language proposed by the City to be added is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~double line-out~~. Language recommended by Commission staff to be inserted is shown

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

SUGGESTED MODIFICATION NO. 2

Local Implementation Plan Section 3.3(Q) “Planned Development (PD) Zone”:

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development, consistent with the PD Land Use Designation in Chapter 5 (Section C.2) of the Land Use Plan, on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development consisting of five single-family residences and 1.744 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD District consists of the land designated as Assessor Parcel Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018, known as Malibu Coast Estate, and formerly known as the “Crummer Trust” parcel.

2. Permitted uses

~~The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.~~

The following uses and structures permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on the “Malibu Coast Estate Planned Development Vesting Tract Map 1” of this LIP.

a. Lot Nos. 1-5

- i. One single-family residence per lot
- ii. Accessory uses (one second residential unit or guest house unit per lot pursuant to Government Code Section 65852.2), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director) or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
- iii. Domestic animals, kept as pets

- iv. Landscaping
 - b. Lot No. 6
 - i. Uses and structures maintained by either the owners of Lots 1-5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guardhouse, private access road, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.
 - c. Lot No. 7
 - i. Parks and public open space, excluding community centers
 - ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and reasonably similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050. Night lighting of recreational facilities shall be prohibited, except for the minimum lighting necessary for public safety.
 - iii. Onsite wastewater treatment facilities
3. Lot development criteria

~~In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LUP, unless indicated otherwise in the approved Planned Development. All new lots created in Malibu Coast Estate shall comply with the following criteria:~~

- a. Lots No. 1-5
 - i. Minimum lot area: 113,600 square feet (2.60 acres)
 - ii. Minimum lot width: 115 feet
 - iii. Minimum lot depth: 480 feet
- b. Lot No. 6
 - i. Minimum lot area: 125,700 square feet (2.88 acres)
 - ii. Minimum lot width: 625 feet
 - iii. Minimum lot depth: 100 feet
- c. Lot No. 7

- i. Minimum lot area: 75,640 square feet (1.74 acres)
- ii. Minimum lot width: 460 feet
- iii. Minimum lot depth: 100 feet

4. Property development and design standards

Development in Malibu Coast Estate shall be subject to all applicable standards of the Malibu LIP, unless otherwise indicated in this LIP Section 3.3(O). The following development standards shall replace the corresponding development standards otherwise contained in each noted LIP Section 3.6 for those lots in Malibu Coast Estate. All requirements of the LCP, including LIP Section 3.5, that are not inconsistent with the criteria listed below shall remain in effect for those lots in Malibu Coast Estate.

a. Lot Nos. 1-5

- i. Development Footprint and Structure Size (Replaces corresponding standards in LIP Section 3.6(K))
 - a) The total development square footage (TDSF) on each of Lot Nos. 1-5 shall not exceed ~~eleven thousand one hundred seventy two (11,172) square feet~~ the following square footage per lot:-
 - Lot 1 – 10,052 sq. ft.
 - Lot 2 – 9,642 sq. ft.
 - Lot 3 – 9,434 sq. ft.
 - Lot 4 – 9,513 sq. ft.
 - Lot 5 – 10,990 sq. ft.
 - b) ~~Structures Greater than Eighteen (18) Feet in Height. Notwithstanding any other provision of this chapter, the TDSF for a structure greater than eighteen (18) feet in height shall not be greater than permitted for single story construction. The second floor area plus the area of vaulted ceilings above eighteen (18) feet in height shall not exceed two-thirds of the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.~~
 - c) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
 - d) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot

- projection) shall be included in TDSF.
- c) The development footprint on each lot (Lot Nos. 1-5) shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Structures on Lot 5 shall be setback a minimum of 190 feet from the edge of the bluff as identified on “Malibu Coast Estate Planned Development Map 1” in order to ensure that impacts to public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are minimized. The structural setback on Lot 5 does not apply to at grade improvements or low profile above-grade improvements for accessory uses not to exceed 10 feet in height.
- ii. Setbacks (Replaces corresponding standards in LIP Section 3.6(F))
- a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less. However, the front yard setback for Lot 5 shall be at least forty-three (43) feet.
- b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.
- c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.
- d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.
- iii. Structure Height (Replaces corresponding standards in LIP Section 3.6(E))
- a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet ~~unless height increases up to twenty four (24) feet flat roof and twenty eight (28) feet pitched roof are approved subject to LIP Section 13.27 (Site Plan Review), except on Lot 2, structures shall not be higher than eighteen (18) feet, except the easternmost approximately 2,500 sq. ft. of the residence on Lot 2 and the southwestern corner of the residence on Lot 5 shall not be higher than 15 feet, as indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Height is measured from natural or finished grade, whichever is lower. A pitched roof is a roof with a slope of 3:12 or steeper.~~
- b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened. ~~Mechanical equipment behind a mansard roof may exceed twenty four (24) feet in height but in no case shall it exceed the height of the mansard roof.~~

- c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.
- iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))
 - a) Notwithstanding other provisions of this Code, all grading associated with the berm, ingress, egress, including safety access, shall be considered exempt grading.
 - b) Non-exempt grading shall be limited to 2,000 cubic yards per lot.
 - c) Net export shall be limited to 3,500 cubic yards per lot.
- v. Impermeable Coverage, Landscaping, and Berm
 - a) The impermeable coverage requirement in LIP Section 3.6(I) shall apply.
 - b) In addition to the requirements of LIP Section 3.10, site landscaping shall be designed to minimize views of the approved structures as seen from public viewing areas, including the use of native trees to screen approved structures.
 - c) A natural-looking earthen berm that is 4 feet in height (except for the northernmost approximately 30 foot long portion on Lot 1 that shall be no less than 2 feet in height) above finished grade shall be constructed along the east side of all approved structures on Lots 1 and 2 to minimize views of the development from downcoast public viewing locations. The location and height of the berm shall substantially conform to that indicated on "Malibu Coast Estate Planned Development Map 1" of this LIP. The berm shall be vegetated with native species that blend with the natural bluff landscape.
- vi. Parking (In addition to the parking standards of LIP Section 3.14)
 - a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
 - b) One enclosed or unenclosed parking space for a guest unit or second unit.
- vii. Colors and Lighting (In addition to the standards of LIP Section 6.5(B))
 - a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check

- and must be approved by the Planning Director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.
- b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4. To insure the protection of scenic and visual resources in accordance with the provisions of the LCP, any future improvements to structures or significant changes to landscaping beyond that authorized by the Coastal Development Permit (CDP) for each residential lot (Lots 1-5), which would ordinarily be exempt from a CDP pursuant to LIP Section 13.4.1, shall be subject to a new CDP or permit amendment.

b. Lot No. 6

i. Structure Size

The total development square footage of all structures shall not exceed 2180 square feet. The development footprint (gate and guardhouse) shall substantially conform to that indicated on "Malibu Coast Estate Planned Development Map 1" of this LIP.

ii. Setbacks

- a) Buildings, not including projections permitted in Section 3.5 of the Malibu LIP shall maintain a minimum setback of fifty (50) feet from all property lines.
- b) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.

iii. Structure Height

- a) Structure height shall not exceed ~~16.5~~ 12 feet, as measured from natural or finished grade, whichever is lower.
- b) In no event shall the maximum number of stories above grade be greater than one.
- c) A basement, cellar or subterranean garage shall not be permitted.

iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 1,000 cubic yards.

- c) Net export shall be limited to 2,500 cubic yards.

- v. Impermeable Coverage (Replaces corresponding standard in LIP Section 3.6(I))

The impermeable coverage requirement in LIP Section 3.6(I) shall not apply. Up to 44,000 square feet of impermeable coverage shall be permitted.

- vi. Parking (In addition to the parking standards of LIP Section 3.14)

The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking. Parking within the property boundaries shall not be located on or obstruct fire department access.

- vii. Colors and Lighting
 - a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
 - b) Lighting must comply with LIP Section 6.5(G).

c. Lot No. 7

- i. Site Design

Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations. The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

- ii. Parking (In addition to the parking standards of LIP Section 3.14)

Adequate parking shall be provided to serve the proposed recreational uses. Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses.

The Planning Director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement as long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided.

iii. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with LIP Section 13.4.9 and the temporary use permit process contained within Malibu Municipal Code Chapter 17.68.

~~5. Permit Required.~~

~~All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.~~

SUGGESTED MODIFICATION NO. 3

Add "Malibu Coast Estate Planned Development Map 1" (attached as Exhibit 3 of this staff report) as a map in Appendix 2 of the Local Implementation Plan.

V. FINDINGS FOR DENIAL OF THE CITY OF MALIBU LUP/LIP AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF MALIBU LUP/IP AMENDMENT, IF MODIFIED AS SUGGESTED

The proposed amendment affects the Land Use Plan (LUP) and Local Implementation Plan (LIP) components of the certified Malibu LCP. The standard of review that the Commission uses in reviewing the adequacy of the LUP amendment is whether the LUP, as amended, would continue to meet the requirements of and be consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the LIP, pursuant to Sections 30513 and 30514 of the Coastal Act, is whether the LIP, as amended, would remain in conformance with, and adequate to carry out, the provisions of the LUP portion of the certified City of Malibu LCP,

EXHIBIT 3

FORM OF DECLARATION OF COVENANTS

[INSERT DECLARATION OF COVENANTS]

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attn: Deanna Christensen

ABOVE SPACE RESERVED FOR RECORDER'S USE ONLY

DECLARATION OF COVENANTS

This Declaration of Covenants (this "**Declaration**"), is made as of _____, 201__, by **PCH PROJECT OWNER LLC**, a Delaware limited liability company ("**Owner**") for the benefit of the **CALIFORNIA COASTAL COMMISSION**, a California state agency (together with its successors and assigns, the "**CCC**").

RECITALS

A. Owner owns certain real property located in the City of Malibu, State of California, which real property is more fully described and shown in the attached Exhibit A (the "**Real Property**").

B. The term "**Owner**" as used herein means Owner and each of Owner's successors in interest, including heirs, successors and assigns, and including all successors-in-interest to all or any portion of the Real Property, including portions or parcels resulting from the subdivision of the Real Property.

C. The City of Malibu (the "City") has approved and submitted to the CCC its Local Coastal Plan Amendment 12-001 also referred to as "LCPA 4-MAL-14—408-1 (the "**LCPA**") for approval and certification which, *inter alia*, allows the Real Property to be improved with five single-family residences totaling 49,611 square feet and 1.74 acres of park and open space (collectively the "**Residential Entitlement**").

D. On May 19, 2014, the City of Malibu Planning Commission conditionally approved Coastal Development Permits and granted other approvals for the development of five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 07-145, 07-146, 07-147, 07-148 and 07-149 (which, together with CDP 07-144 approved by the Planning Commission on January 6, 2014, are collectively referred to as the "**City CDPs**") for the Real Property.

E. On _____, 2015, the CCC approved the LCPA with certain suggested modifications. Subsequently, the City Council of the City accepted and approved the LCPA with such modifications and the LCPA became final, valid and in full force and effect (the “**Final Certified LCPA**”).

F. In connection with the CCC approval of the LCPA, Owner has agreed to make an in lieu payment of Two Million Dollars (\$2,000,000.00) under certain conditions (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the Mountains Recreation and Conservancy Authority (“**MRCA**”) in the general area.

G. In connection with the In Lieu Payment, Owner has agreed to execute and record this Declaration to assure CCC that the In Lieu Payment will be made under certain conditions specified herein.

H. Owner desires to enter into and record this Declaration to ensure that all subsequent owners of any portion of the Real Property will acquire such interests with full knowledge of and subject to the obligations set forth in this Declaration.

I. Owner, as declarant under this Declaration, declares that the Real Property is, and shall be, held, conveyed, hypothecated, encumbered, licensed, leased, rented, used and occupied subject to the following covenants. All of the covenants, conditions and restrictions set forth in this Declaration shall run with the land, and shall be binding upon the Real Property and the Owner and all parties having or acquiring any right, title or interest in the Real Property, or any portion thereof, and shall inure to the benefit of CCC and the successors and assigns of CCC.

J. This Declaration shall not have any legal effect until it has been recorded in the Official Records of the County of Los Angeles.

ARTICLE I

COVENANTS REGARDING THE ENTITLEMENT OF THE REAL PROPERTY

1. **Owner’s Obligation.** If, at any time, the Real Property receives valid Final Entitlements for the development and use of the Real Property for a proposed residential development, including, without limitation, the Residential Entitlement, then Owner shall pay to the MRCA Two Million Dollars (\$2,000,000), within fifteen (15) business days after the Final Entitlements are achieved (the “**Obligation**”) (which amount shall be increased annually on July 1 of each year in accordance with increases in the Consumer Price Index (CPI) California – All Urban Consumers, with July 2015 used as the base year). As used herein, “**Final Entitlements**” means the Final Certified LCPA, issuance of the requisite Coastal Development Permits, site plan approval, tract map approval, certification of the Final Environmental Impact Report and all other governmental approvals required for the development and construction of the residential units and all related roads, utilities and other infrastructure (the “**Entitlements**”), together with the expiration of all applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits and any other legal challenges to such Entitlements without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been

commenced, or (ii) any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (A) such adjudication or resolution has upheld, in their entirety, the validity of such Entitlements and any other City or the CCC approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the Entitlements and the other City and the CCC approvals, but such actions are acceptable to Owner in its sole and absolute discretion.

2. Collection of Obligation, Liens.

A. **Right to Enforce.** CCC may enforce the Owner's Obligation to pay the amounts provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or CCC may foreclose by judicial proceedings (including, without limitation, injunctive relief) or through the exercise of the power of sale pursuant to Section 2.C enforce the lien rights created or pursue any other lawful remedy. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien rights.

B. **Creation of Lien.** If Owner fails to satisfy the Obligation to pay within the time period stated in Section 1 above, together with the late charge described in Civil Code Section 5650(b), interest at the rate permitted in such Section, and all costs that are incurred by CCC or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against Real Property upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to Owner as provided in Civil Code Section 5675(e).

C. **Notice of Default; Foreclosure.** CCC or its authorized representative may record a notice of default and may cause the Real Property with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, and as provided in Civil Code Sections 5700 through 5715. However, as a condition precedent to the holding of any such sale under Section 2924c appropriate publication shall be made. In connection with any sale under Section 2924c CCC is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

D. **Termination of this Declaration.** This Declaration shall automatically terminate and be of no further force or effect, if (i) the payment of the In Lieu Payment is made by Owner to the MRCA, or (ii) at any time the Final Certified LCPA is invalidated, repealed or modified, whether by judicial action or a legislative action by the City, so as to not permit residential development on the Real Property in accordance with the Residential Entitlements. Concurrently with the occurrence of either of the foregoing events, CCC shall execute and deliver to Owner one or more instruments or documents in recordable form as requested by Owner to terminate this Declaration and to release Owner for any liability in connection with this Declaration (a "**Termination of Declaration**").

3. **Sale of Property.** If, at any time after the recordation of this Declaration in the Official Records of the County of Los Angeles, Owner sells the Real Property or any portion thereof to an unaffiliated third party purchaser in an arms' length transaction, CCC shall have the right (but not the obligation) to deliver written notice to Owner declaring the Obligation to be due and payable, in which event Owner shall pay the Obligation to CCC concurrently with the closing of the sale of the Real Property.

ARTICLE II

MISCELLANEOUS

1. **General Provisions.** Except as set forth in Article IV and unless specifically otherwise provided to the contrary in this Declaration, all notices, requests, demands, or other communications required under this Declaration (collectively, "**Notices**") shall be in writing and delivered (a) personally; (b) by certified mail, return receipt requested and postage prepaid; or (c) by overnight courier (such as UPS, FedEx, or Airborne Express) (any such notice shall be deemed delivered one (1) business day following deposit with such an overnight courier). The initial addressees for any notices to Owner and to CCC shall be as set forth below. All notices given in accordance with the terms hereof shall be deemed given when received as provided above, or upon refusal of delivery.

2. **Notices to Owner.** Notices to Owner pursuant to this Declaration shall be directed as follows:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, CA 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, CA 90071
Attn: Cary Kleinman

Paul, Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Attn: Alan W. Weakland

or to such other address as Owner provides in writing CCC at the address(es) set forth in Section 3, below.

3. **Notices to CCC.** Notices to CCC pursuant to this Declaration shall be directed as follows:

South Central Coast District

California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001
Attention: Deanna Christensen

4. **Change of Address(es)**. The addresses above may be changed by providing the new address to the other notice recipients in accordance with Section 1.

5. **Applicable Law**. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

6. **Counterparts**. This Declaration may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one (1) and the same agreement.

7. **Exhibits**. All of the exhibits to this Declaration are hereby incorporated as though fully set forth herein.

8. **Liberal Construction**. The provisions of this Declaration shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

9. **Headings**. The headings used in this Declaration are for convenience and reference only and the words contained herein shall not be held to expand, modify, or aid in the interpretation, construction or meaning of this Declaration.

10. **Incorporation of this Declaration into Deeds**. Any deed or other instrument by which all or any portion of the Real Property is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration and any instrument of conveyance shall be deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

11. **Successors and Assigns**. The provisions of this Declaration shall be binding upon all persons acquiring an interest in the Real Property, whether it be fee, easement, leasehold or otherwise, and each of their successors and assigns, and shall be for the benefit of CCC. The Obligations of Owner hereunder are personal to CCC and may not be assigned to any person or entity without Owner's prior written consent, which may be granted or withheld in its sole and absolute discretion.

12. **Severability**. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

13. **Time of Essence**. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

[Signatures on next page]

IN WITNESS WHEREOF, Owner has executed this Declaration, as of the date first written above.

“Owner”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: _____
Richard Ackerman
Authorized Signatory

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are 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 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

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

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 2 IN THE WESTERLY BOUNDARY OF PARCEL 1 AS DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO STATHAM INSTRUMENTS, INC., RECORDED DECEMBER 30, 1957, AS INSTRUMENT NO. 1542 IN BOOK 56325 PAGE 391, OF OFFICIAL RECORDS OF COUNTY OF LOS ANGELES, CALIFORNIA, THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, NORTHWESTERLY ALONG A TANGENT CURVE (A TANGENT AT SAID CORNER BEARING SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 130 FEET THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 204.20 FEET; THENCE TANGENT TO SAID CURVE SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 130 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 204.20 FEET TO A POINT IN THE WESTERLY BOUNDARY OF SAID PARCEL 1; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST ALONG SAID WESTERLY BOUNDARY 75.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON, BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 2:

BEGINNING AT A POINT IN THE CENTER LINE OF THE STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY DESCRIBED IN PARCEL 1 OF THE DEED TO THE STATE OF CALIFORNIA, RECORDED ON MARCH 22, 1944 AS INSTRUMENT NO. 1279 IN BOOK 20743 PAGE 271, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING IN THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS HAVING A BEARING AND LENGTH OF NORTH 85 DEGREES 35 MINUTES 30 SECONDS EAST 5221.78 FEET AND BEING MARKED BY A BRASS CAP MONUMENT "SOLSTICE CANON L-B", AS SHOWN IN THE COUNTY OF LOS ANGELES SURVEYOR'S FIELD BOOK 1652 PAGES 67 AND 68 ON FILE IN THE OFFICE OF

THE COUNTY SURVEYOR OF SAID COUNTY: THENCE ALONG SAID CENTER LINE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 370.32 FEET; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 50.00 FEET TO THE TRUE POINT OF BEGINNING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND; THENCE CONTINUING SOUTH 5 DEGREES 24 MINUTES 30 SECONDS EAST 437.77 FEET; THENCE SOUTH 31 DEGREES 48 MINUTES 00 SECONDS EAST 119.06 FEET; THENCE SOUTH 38 DEGREES 14 MINUTES 53 SECONDS EAST 249.12 FEET; THENCE SOUTH 18 DEGREES 51 MINUTES 46 SECONDS EAST 71.80 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO CECILE A. TREBAOL, ET AL., RECORDED AUGUST 27, 1943 AS INSTRUMENT NO. 705 IN BOOK 20185 PAGE 361, OF SAID OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE DEED TO MARK R. MILLER AND WIFE, RECORDED NOVEMBER 12, 1943 AS INSTRUMENT NO. 883 IN BOOK 20375 PAGE 377 OF SAID OFFICIAL RECORDS, NORTH 73 DEGREES 42 MINUTES 05 SECONDS EAST 305.76 FEET TO THE NORTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO CARL R. HENDERSON AND WIFE RECORDED ON MAY 21, 1943 AS INSTRUMENT NO. 184 IN BOOK 20004 PAGE 197 OF SAID OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE LAST MENTIONED DEED AS FOLLOWS: SOUTH 78 DEGREES 21 MINUTES 55 SECONDS EAST 210.16 FEET; NORTH 86 DEGREES 45 MINUTES 34 SECONDS EAST 315.61 FEET AND NORTH 77 DEGREES 35 MINUTES 06 SECONDS EAST 214.39 FEET TO THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO CLICERIO MINORINI AND WIFE, RECORDED ON FEBRUARY 11, 1942 AS INSTRUMENT NO. 576, IN BOOK 19075 PAGE 301, OFFICIAL RECORDS, SAID SOUTHWEST CORNER BEING A POINT IN THE NORTHERLY LINE OF THE LAND DESCRIBED IN PARCEL 1 OF THE DEED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 2, 1939 AS INSTRUMENT NO. 668, IN BOOK 16845 PAGE 253, OF SAID OFFICIAL RECORDS; THENCE ALONG THE WESTERLY LINE OF THE LAND DESCRIBED IN THE ABOVE MENTIONED DEED TO MINORINI, NORTH 20 DEGREES 00 MINUTES 23 SECONDS WEST 719.46 FEET AND NORTH 14 DEGREES 39 MINUTES 24 SECONDS WEST 118.48 FEET TO THE SOUTHERLY LINE OF SAID STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY; THENCE ALONG SAID PACIFIC COAST HIGHWAY SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 1033.71 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 3:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL 2 ABOVE DESCRIBED, SAID CORNER BEING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND, KNOWN AS PACIFIC COAST HIGHWAY; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 433.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 25 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE, NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 130 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES ARC DISTANCE OF 204.20 FEET TO A POINT IN THE WESTERLY BOUNDARY

OF SAID PARCEL 2, DISTANT THEREON SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 255.00 FEET FROM THE NORTHWEST CORNER OF SAID PARCEL; THENCE NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST 255.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953, IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 4:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 1 ABOVE DESCRIBED, SAID CORNER BEING THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO CECILE A. TREBAOL, ET AL., RECORDED AUGUST 27, 1943 AS INSTRUMENT NO. 705 IN BOOK 20185 PAGE 361, OFFICIAL RECORDS; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 2, NORTH 18 DEGREES 51 MINUTES 46 SECONDS WEST 71.80 FEET; NORTH 38 DEGREES 14 MINUTES 53 SECONDS WEST 249.12 FEET, AND NORTH 31 DEGREES 48 MINUTES 00 SECONDS WEST 119.60 FEET TO AN ANGLE POINT IN SAID WESTERLY BOUNDARY, SAID POINT BEING ALSO IN THE EASTERLY LINE OF THE STRIP OF LAND 60 FEET IN WIDTH, HEREINAFTER DESCRIBED AS PARCEL 4; THENCE ALONG SAID EASTERLY LINE AS FOLLOWS: SOUTHEASTERLY ALONG A CURVE. (A TANGENT AT SAID POINT BEARING NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST) CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 70 FEET THROUGH A CENTRAL ANGLE OF 14 DEGREES 30 MINUTES 00 SECONDS AN ARC DISTANCE OF 17.72 FEET, TANGENT TO SAID CURVE SOUTH 19 DEGREES 54 MINUTES 30 SECONDS EAST 87.68 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 160 FEET; SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 79 DEGREES 50 MINUTES 35 SECONDS AN ARC DISTANCE OF 222.96 FEET; TANGENT TO SAID CURVE SOUTH 59 DEGREES 56 MINUTES 05 SECONDS WEST 113.92 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 120 FEET; SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30 DEGREES 30 MINUTES 00 SECONDS AN ARC DISTANCE OF 63.88 FEET TANGENT TO SAID CURVE SOUTH 29 DEGREES 26 MINUTES 05 SECONDS WEST 163.25 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 120 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09 DEGREES 28 MINUTES 27 SECONDS AN ARC DISTANCE OF 19.84 FEET; THENCE RADIAL TO SAID CURVE, SOUTH 70 DEGREES 02 MINUTES 22 SECONDS EAST 13.61 FEET TO THE MOST WESTERLY CORNER OF SAID LAND DESCRIBED IN DEED TO CECILE A. TREBAOL, ET AL., THENCE NORTH 44 DEGREES 41 MINUTES 05 SECONDS EAST ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN SAID DEED 204.39 FEET; THENCE NORTH 82 DEGREES 01 MINUTES 05 SECONDS EAST 355.14 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OF OFFICIAL RECORDS.

SAID FOUR PARCELS ABOVE MENTIONED OF LAND IS SHOWN ON CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 31, 1985 AS INSTRUMENT NO. 85-1293123.

PARCEL NO. 5:

AN EASEMENT FOR ROADWAY PURPOSES AND PURPOSES OF INGRESS AND EGRESS OVER A STRIP OF LAND 60 FEET IN WIDTH LYING 30 FEET ON EACH SIDE OF AND PARALLEL WITH THE FOLLOWING DESCRIBED CENTER LINE, TO WIT:

COMMENCING AT A POINT IN THE CENTER LINE OF THE STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY AS DESCRIBED IN PARCEL 1 OF THIS DESCRIPTION, SAID POINT BEING MARKED BY A BRASS CAP MONUMENT "SOLSTICE CANON L-B"; THENCE ALONG SAID CENTER LINE SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 117.98 FEET; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 50.00 FEET TO THE TRUE POINT OF BEGINNING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND THENCE CONTINUING SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 230.00 FEET; THENCE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 358.30 FEET; THENCE SOUTHEASTERLY 157.08 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 107.77 FEET; THENCE SOUTHEASTERLY 25.31 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 19 DEGREES 54 MINUTES 30 SECONDS EAST 87.68 FEET; THENCE SOUTHERLY 181.16 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 130 FEET; THENCE TANGENT SOUTH 59 DEGREES 56 MINUTES 05 SECONDS WEST 113.92 FEET; THENCE SOUTHWESTERLY 79.85 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET; THENCE TANGENT SOUTH 29 DEGREES 26 MINUTES 05 SECONDS WEST 163.25; THENCE SOUTHWESTERLY 41.45 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET THENCE TANGENT SOUTH 13 DEGREES 36 MINUTES 05 SECONDS WEST 122.70 FEET; THENCE SOUTHWESTERLY 129.81 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 125 FEET; THENCE TANGENT SOUTH 73 DEGREES 06 MINUTES 05 SECONDS WEST 154.35 FEET; THENCE SOUTHWESTERLY 27.26 FEET ALONG THE ARC OF TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET; THENCE TANGENT SOUTH 62 DEGREES 41 MINUTES 19 SECONDS WEST 112.34 FEET; THENCE SOUTHERLY 138.32 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 16 DEGREES 33 MINUTES 55 SECONDS EAST 18.67 FEET TO A POINT IN THE NORTHERLY LINE OF THE 60 FOOT STRIP OF LAND KNOWN AS MALIBU ROAD, SAID POINT BEING SOUTH 73 DEGREES 26 MINUTES 05 SECONDS WEST 1431.32 FEET AND NORTH 16 DEGREES 33 MINUTES 55 SECONDS WEST 30.00 FEET, FROM ENGINEER'S CENTER LINE STATION 903 71.78 B.C. LINE 1, AT THE EASTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE SHOWN ON LOS ANGELES COUNTY SURVEYOR'S MAP F.M. NO. 11698, SHEET 3, AS NORTH 73 DEGREES 29 MINUTES 00 SECONDS EAST.

APNS: 4458-018-002, 018, 019

EXHIBIT 4

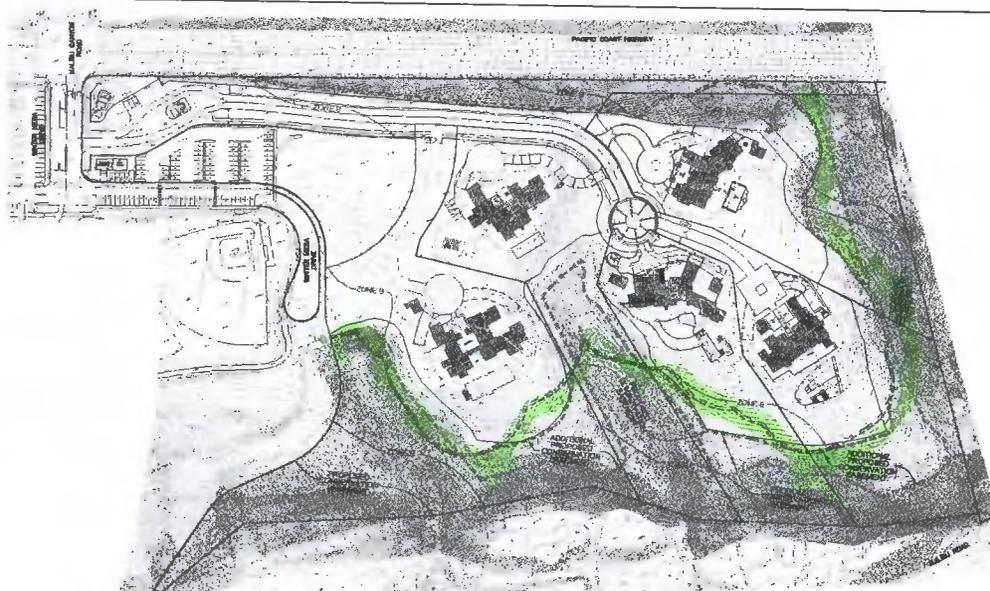
FORM OF GRANT OF CONSERVATION EASEMENT

[INSERT FORM OF GRANT OF CONSERVATION EASEMENT]

EXHIBIT 5

LOCATION OF CONSERVATION EASEMENT

[INSERT MAP SHOWING LOCATION OF CONSERVATION EASEMENT]



GENERAL NOTES:

- 1. **OWNER:** PTH PROJECT OWNER, LLC
200 W. BROADWAY
SUITE 2000
DALLAS, TEXAS 75201
TEL: 214.760.1234
- 2. **ARCHITECT:** PTH PROJECT OWNER, LLC
200 W. BROADWAY
SUITE 2000
DALLAS, TEXAS 75201
TEL: 214.760.1234
- 3. **ENGINEER:** PTH PROJECT OWNER, LLC
200 W. BROADWAY
SUITE 2000
DALLAS, TEXAS 75201
TEL: 214.760.1234
- 4. **PROJECT ADDRESS:** 200 W. BROADWAY, SUITE 2000, DALLAS, TEXAS 75201

LEGEND:

- PROPOSED EASEMENT
- EXISTING EASEMENT
- EXISTING CONSERVATION EASEMENT
- EXISTING CONSERVATION EASEMENT
- EXISTING CONSERVATION EASEMENT
- EXISTING CONSERVATION EASEMENT

CONSERVATION EASEMENT AGREEMENT TO THE PROPOSED CONSERVATION EASEMENT

This Conservation Easement Agreement is made this 1st day of January, 2010, between PTH PROJECT OWNER, LLC, a limited liability company organized under the laws of the State of Texas, and BRP MANAGEMENT, LLC, a limited liability company organized under the laws of the State of Texas.

WHEREAS, PTH PROJECT OWNER, LLC is the owner of the property located at 200 W. BROADWAY, SUITE 2000, DALLAS, TEXAS 75201, and BRP MANAGEMENT, LLC is the owner of the property located at 200 W. BROADWAY, SUITE 2000, DALLAS, TEXAS 75201;

AND WHEREAS, PTH PROJECT OWNER, LLC and BRP MANAGEMENT, LLC desire to enter into a conservation easement agreement for the property located at 200 W. BROADWAY, SUITE 2000, DALLAS, TEXAS 75201;

NOW, THEREFORE, PTH PROJECT OWNER, LLC and BRP MANAGEMENT, LLC agree to the following terms and conditions:

ARTICLE I. PURPOSE AND SCOPE

1.1 The purpose of this Conservation Easement Agreement is to preserve the natural, cultural, and historical resources of the property located at 200 W. BROADWAY, SUITE 2000, DALLAS, TEXAS 75201.

1.2 The scope of this Conservation Easement Agreement shall include all of the property located at 200 W. BROADWAY, SUITE 2000, DALLAS, TEXAS 75201, as shown on the site plan attached hereto as Exhibit A.

ARTICLE II. DEFINITIONS

2.1 "Property" shall mean the property located at 200 W. BROADWAY, SUITE 2000, DALLAS, TEXAS 75201, as shown on the site plan attached hereto as Exhibit A.

2.2 "Easement" shall mean the conservation easement granted by PTH PROJECT OWNER, LLC to BRP MANAGEMENT, LLC for the Property.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1 PTH PROJECT OWNER, LLC represents and warrants that it is the owner of the Property and has the authority to grant the Easement.

3.2 BRP MANAGEMENT, LLC represents and warrants that it is qualified to manage the Property and will use the Easement for the purposes set forth in this Agreement.

| NO. | DESCRIPTION | DATE | BY |
|-----|---|----------|------------------------|
| 1 | PROPOSED CONSERVATION EASEMENT CRUMMER SITE (VTIM 070038) | 1/1/2010 | PTH PROJECT OWNER, LLC |
| 2 | CONSERVATION EASEMENT AGREEMENT TO THE PROPOSED CONSERVATION EASEMENT | 1/1/2010 | PTH PROJECT OWNER, LLC |
| 3 | ARTICLE I. PURPOSE AND SCOPE | 1/1/2010 | PTH PROJECT OWNER, LLC |
| 4 | ARTICLE II. DEFINITIONS | 1/1/2010 | PTH PROJECT OWNER, LLC |
| 5 | ARTICLE III. REPRESENTATIONS AND WARRANTIES | 1/1/2010 | PTH PROJECT OWNER, LLC |

PROPOSED CONSERVATION EASEMENT CRUMMER SITE (VTIM 070038)

PTH PROJECT OWNER, LLC c/o BRP MANAGEMENT, LLC - 24200 PACIFIC COAST HWY
IN THE CITY OF WAUWATOSH, COUNTY OF WAUKESHA, STATE OF WISCONSIN

| | |
|------|------------------------|
| DATE | 1/1/2010 |
| BY | PTH PROJECT OWNER, LLC |

RICHARD RICHARDS
(1916–1988)

GLENN R. WATSON
(1917–2010)

HARRY L. GERSHON
(1922–2007)

STEVEN L. DORSEY
WILLIAM L. STRAUSS
MITCHELL E. ABBOTT
GREGORY W. STEPANICICH
QUINN M. BARROW
CAROL W. LYNCH
GREGORY M. KUNERT
THOMAS M. JIMBO
ROBERT C. CECCON
STEVEN H. KAUFMANN
KEVIN G. ENNIS
ROBIN D. HARRIS
MICHAEL ESTRADA
LAURENCE S. WIENER
B. TILDEN KIM
SASKIA T. ASAMURA
KAYSER O. SUME
PETER M. THORSON
JAMES L. MARKMAN
CRAIG A. STEELE
T. PETER PIERCE
TERENCE R. BOGA
LISA BOND
JANET E. COLESON
ROXANNE M. DIAZ
JIM G. GRAYSON
ROY A. CLARKE
MICHAEL F. YOSHIBA
REGINA N. DANNER
PAULA GUTIERREZ BAEZA
BRUCE W. GALLOWAY
DIANA K. CHUANG
PATRICK K. BOBKO
NORMAN A. DUPONT
DAVID M. SNOW
LOLLY A. ENRIQUEZ
KIRSTEN R. BOWMAN
GINETTA L. GIOVINCO
TRISHA ORTIZ
CANDICE K. LEE
JENNIFER PETRUSIS
STEVEN L. FLOWER
TOUSSAINT S. BAILEY
AMY GREYSON
DEBORAH R. HAKMAN
D. CRAIG FOX
MARICELA E. MARROQUIN
KATHERINE L. WISINSKI
SERITA R. YOUNG
SHIRI KLIMA
SEAN B. GIBBONS
AARON C. O'DELL
AMANDA L. CHARNE
STEPHANIE CAO
PATRICK D. SKAHAN
STEPHEN D. LEE
YOUSTINA N. AZIZ
BRENDAN KEARNS
KYLE H. BROCHARD
NICHOLAS R. GHIRELLI
ISRA SHAH
CHRISTINA L. BROWNING
ISAAC M. ROSEN

OF COUNSEL
ROCHELLE BROWNE
TERESA HO-URANO
GENA M. STINNETT

July 28, 2015

VIA ELECTRONIC MAIL

Christopher Pederson, Chief Counsel
Alex Helperin, Senior Staff Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

Re: **City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development)**

Dear Chris and Alex:

As you know, at its February 2015 meeting, the Commission heard and then continued the City of Malibu Local Coastal Program amendment (“LCPA”) for the Malibu Coast Estate/Crummer Trust Property Planned Development (“PD”). The LCPA is now scheduled to return to the Commission at the August 12 meeting. I write specifically to provide a fuller discussion of the \$2,000,000 in-lieu fee that PCH Property Owners, LLC (the “Applicant”) has offered to assist in funding affordable overnight accommodations in the Malibu area, and hope that this will be helpful to both Staff and the Commission.

At the outset, the Applicant wishes to thank both Legal and Planning Staff for your efforts over the course of well over a year to arrive at a mutually acceptable agreement that assures payment of the \$2,000,000 (the “Fee”) upon securing final entitlements for the Malibu Coastal Estates planned development. We continue to fully support the results of that cooperative effort, but believe more discussion of the issue, at least from the Applicant’s perspective, would be helpful to the process. To that end, we would appreciate your including this letter as an exhibit to the Staff Report.

The Commission’s 2010 Decision

At the February 2015 hearing, several Commissioners discussed the \$2,000,000 fee amount. Not addressed in that discussion was the context in which the Fee amount was originally determined and agreed to. It may be that

SAN FRANCISCO OFFICE
TELEPHONE 415.421.8484

ORANGE COUNTY OFFICE
TELEPHONE 714.990.0901

TEMECULA OFFICE
TELEPHONE 951.695.2373

Addendum
Exhibit 2

Christopher Pederson, Chief Counsel
Alex Helperin, Senior Staff Counsel
July 28, 2015
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Commissioners assumed that when the LCPA was initially considered by the Commission in 2010, the \$2,000,000 amount was fully analyzed and calculated based on a formula, and that with the passage of time, the Fee would increase to an amount more than \$2,000,000. There was, however, no particular analysis or formula applied. The Fee was, for lack of a better description, arbitrary, but was agreed to by the Applicant at the 2010 hearing on the basis of an LCPA that would allow for 54,509 square feet of residential development on the Crummer Property. As discussed below, a \$2,000,000 fee is also significantly greater than any fee possible based on past Commission decisions or the circumstances presented by the LCPA.

In the months before the 2010 hearing, Staff discussed a fee amount ranging from \$250,000 to \$500,000 with the Applicant's representative. That fee amount was then increased to \$750,000 upon agreement by the Applicant and reflected in the Staff Report. On the eve of the hearing, Executive Director Douglas told the Applicant that the fee amount should again be increased, this time to \$1,000,000. And, at the hearing, the Commission increased the fee to \$2,000,000 based on what we would characterize as a subjective discussion of "proportionality," with only a reference to the Crowne Point Estates property as discussed below. Nevertheless, the Applicant agreed to that amount based on the Commission's assurance that the fee would not increase above \$2,000,000 and in fact the Commission approved the 2010 LCPA with a \$2,000,000 fee which allows for the total development of 54,509 square feet on the property consistent with the amount of developable square footage when the Applicant proposed the Fee.

Other than a reference to a project-driven LCPA in Ventura County (LCPA MAJ-1-VENT-07-009) for the Crowne Point Estates project, for which the property owner was required to pay a mitigation fee of \$557,084, neither the 2010 Staff Report nor the adopted Revised Findings included any analysis of how the \$1,000,000 amount or \$2,000,000 amount was conceived except: "Given that the subject 'Crummer Trust' parcel is substantially larger than the Crowne Point Estates parcel, and therefore represents a greater loss of visitor-serving opportunity, Commission staff has found that a mitigation fee of \$750,000 would be appropriate in this case."

The Revised Findings explained: "... the property owner has offered to pay an in-lieu mitigation fee of ~~\$750,000~~ \$2,000,000 to assist in funding affordable overnight accommodations elsewhere in the coastal zone. (Revised Findings, LCPA 2-09-A, p. 19.) The Revised Findings at page 20 (unchanged from the original Staff Report) further explained that where a property owner proposes to build new overnight luxury accommodations, Land Use Plan ("LUP") Policy 2.35 and

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Implementation Plan ("IP") Section 12.10 allows for the payment of an in-lieu fee of \$10,419 applied to 15% of the total new luxury accommodations, which would yield a fee, adjusted for inflation, of \$196,335.50, significantly less than the \$750,000 fee proposed by the applicant. (Apparently the Revised Findings did not modify the \$750,000 figure.) At page 22, the Revised Findings additionally stated: ". . . **the Commission staff has found** finds that a mitigation fee of ~~\$750,000~~ \$2,000,000 **would be is proportional and** appropriate in this case." There was, however, no explanation or analysis of how the fee amount was "proportional." To reiterate, the \$2,000,000 fee amount was not based on any calculation. It was arbitrary but agreed to with the proviso, on the record, that this was the end of the discussion of the Fee. Consistent with this agreement, the Applicant has consistently represented to Staff that it would continue to offer the \$2,000,000 Fee, provided that the Project is not materially altered or additional material conditions are imposed on the Project. As you know, the Fee is reflected in the Escrow Agreement and Covenant crafted and agreed to by the Commission Staff and the Applicant.

An In-Lieu Fee is an Exaction That Must Satisfy the "Essential Nexus" and "Rough Proportionality" Requirements Set Forth in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*

The Fee, which constitutes an in-lieu fee, is premised on two Coastal Act policies that are incorporated in the Malibu LCP. Section 30213 of the Act states that lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided. Section 20222 also provides that visitor-serving commercial recreational facilities have a priority over, for example, private residential development. (It should be noted that the Crummer LPCA approved by the City includes 1.74 acres to be donated by the Applicant to the City, which pursuant to the LPCA is zoned for public recreation.)

An in-lieu fee is an exaction and, as such, it is subject to two constitutional limitations. The first constitutional limitation arises from *Nollan v. California Coastal Commission* (1987) 483 U.S. 825. There must be an "essential nexus" between the burden created by a project and the exaction or mitigation measure imposed to address it.

As you know, in *Nollan*, the Commission imposed a condition on its approval of the rebuilding of a beachfront home that required the dedication of a lateral beach access easement. The Commission reasoned that the new house would block the view of the ocean and would create a wall of residential houses, preventing the public

Christopher Pederson, Chief Counsel
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from “psychologically . . . realizing” the existence of the shoreline. The U.S. Supreme Court invalidated the condition.

The Court in *Nollan* held that it is an unconstitutional taking of property for a government entity to require the dedication of an easement as a condition of granting a development permit unless a substantial relationship (*i.e.*, an “essential nexus”) exists between the impact of the proposed development and the permit condition. The Court required a precise correlation between the condition imposed and the specific type of burden on access created by the project. It noted, for example, that a height limitation, a width restriction, a ban on fences, or even the requirement of a viewing spot would have protected the public’s ability to see the beach. The Court concluded, however, that a lateral public access easement along the beach was not substantially related to any burden or impact created by rebuilding a residence because the project would not interfere with public use of the beach. (*Nollan*, 483 U.S. at 836-840.)

The second constitutional limitation is the legal requirement that the extent of an exaction must bear a reasonable relationship to the burden created by the development. In *Dolan v. City of Tigard* (1994) 512 U.S. 374, the U.S. Supreme Court held that in addition to satisfying the *Nollan* “nexus” test, there must be “rough proportionality” between a condition and extent of the impact it is supposed to mitigate. (*Dolan*, 512 U.S. at 390-391.) The Court explained: “No precise mathematical calculation is required, but the city must make some sort of *individualized determination* that the required dedication is related *both in nature and extent* to the impact of the proposed development.” (*Id.* at 391.)

The *Nollan* and *Dolan* standards have been held to apply in the context of ad hoc mitigation fees, and therefore apply here. (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 230; *Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 227-237.) In determining the appropriate amount of a fee, the focus of inquiry is not, for example, on the amount of profit a project may be anticipated to generate or the amount an applicant may be able to afford to pay, as there is no justification for using such metrics in the Coastal Act or for that matter the state or federal constitutions. Rather, the fee must be based on the burden or impact the project would create which according to the January 2015 Staff Report, is

Christopher Pederson, Chief Counsel
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the lost opportunity for a visitor-serving commercial use on the Crummer Property, and the Fee amount must be roughly proportional to that burden or impact.¹

The \$2,000,000 Fee the Applicant has Offered Substantially Exceeds the Amount of the Fee That Would be Required Applying the *Nollan/Dolan* “Nexus” and “Rough Proportionality” Requirements

The Applicant has committed, through the Escrow Agreement and Covenant, to pay a \$2,000,000 mitigation fee and has taken the additional step of engaging State Park so that the Fee will be used in funding specific affordable overnight accommodations at lower Topanga State Park. We thought, however, that it would be helpful to the Commission and Staff to address the different ways an in-lieu might be calculated in the context of the Applicant’s project and this LCPA based on prior decisions of the Commission. In no case would the fee approach or exceed the \$2,000,000 the Applicant has offered.

A. No Fee Based Because There is no Lost Opportunity for a Visitor-Serving Commercial Use; A Visitor-Serving Commercial Use Would Not be Permissible Without an LIP Amendment.

As noted, the January 2015 Staff Report explains as the burden or impact associated with the five-home project the assumed lost opportunity for a visitor-serving commercial use. However, as a matter of both fact and law, approval of the LCPA would not result in a lost opportunity for a visitor-serving commercial use on the Crummer Property.

As to the factual assessment, this may be best addressed by the Staff Report itself, which discussed the constraints of the “Crummer” site:

¹ The constitutional standards are not unique to the Commission. As noted in the January 2015 Staff Report, the Mitigation Fee Act (“MFA”; Govt. Code § 66000 et seq.) guides the adoption and collection of development impact fees by local agencies. Consistent with *Nollan* and *Dolan*, “the MFA requires local agencies adopting impact fees to show that there is a reasonable relationship (“nexus”) between the type of impacts, the use of fee revenue, and the development projects upon which the fee is imposed. The MFA also requires local agencies to show that the amount of the fee is roughly proportional to the impact of development projects and the estimated reasonable cost of plan activities that would be required to mitigation those impacts.” (Jan. 2015 Staff Report, p. 30.)

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“ . . . [G]iven the limited development area due to setback requirements, height requirements, and potential parking and traffic circulation conflicts with the adjacent athletic field uses, it is not likely a visitor-serving commercial retail use would be feasible in this location. The [existing *sic*] athletic fields generate a significant amount of traffic and parking demand during peak use periods which would present significant conflicts with any visitor-serving commercial retail use. It is not likely an economically feasible commercial visitor serving retail use, other than a luxury hotel, would be feasible in this location. Since 1993 no retail visitor serving commercial development proposals have been proposed on the subject site. It should also be noted that the nearby Civic Center area is clearly in a more appropriate location for visitor serving commercial retail and restaurant type uses.” (Jan. 2015 Staff Report, p. 29.)

Commissioner discussion at the February 2015 hearing focused on issues relating to the five houses approved by the City of Malibu. The evidence clearly demonstrates that a visitor serving commercial retail use, including a luxury hotel, is not feasible at all on this property. The attached Updated Hotel Feasibility Report, dated April 28, 2015, prepared by PKF Consultants, also concludes that the hotel use on the Crummer site is currently not feasible and will not be feasible in the foreseeable future.²

It is legally undisputed that the Crummer site is zoned in the certified LCP as Planned Development (PD) (see Chapter 5, C(2)) and the certified LUP Map also designates the property PD. The certified IP provides that “[t]he PD District is intended to provide for a mix of residential and recreational development of the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway.” In addition, the only reference to commercial use in the certified LUP in connection with the Crummer Property is the language in the now moot Policy 2.78, which provides in part that “if no agreement is reached to relocate the existing athletic fields the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving).” The fundamental legal problem is that a visitor-serving commercial use cannot currently be developed on the property because the property’s zoning does not permit such use.

² The attached report updates a Hotel Feasibility Report prepared by PKF dated February 2010 and was requested by a number of Commissioners at the February 2015 hearing.

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Alex Helperin, Senior Staff Counsel
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There is, therefore, a fundamental legal impediment to any low cost visitor-serving commercial use on the Crummer Property – the assumed lost opportunity – is that such a use would not be permissible or possible without an amendment to the certified IP, and the record demonstrates that the City of Malibu does not believe that CV-2 is an appropriate use on the Property. Accordingly, a fee analysis with those constraints in mind would result in no lost opportunity for development of visitor-serving commercial use on the property and, consequently, no fee.

B. Application of Certified LUP Policy 2.35 and IP Section 12.10 Would Result in a Fee of \$196,336.50.

The January 2015 Staff Report explained that “[i]n the event a property owner proposes to build new overnight luxury accommodations, LUP Policy 2.35 and IP Section 12.10 allows for a payment of an in-lieu fee of \$10,419 applied to 15% of the total new luxury accommodations built on a property as a mechanism to ensure compliance with the objections of Section 30213 and 30222 of the Coastal Act and Policies 2.33, 2.34, 2.36, and 2.37 of the Malibu LCP.” (Jan. 2015 Staff Report, p. 28.) The Staff Report noted that a PKF Study prepared for the Applicant indicated that a hotel of approximately 110 rooms at most could theoretically be developed on the property, not taking into account the constraints stated above in the Staff Report which demonstrate that any such *theoretical* hotel would in fact not be feasible. The Staff Report accurately explains:

“Assuming these would be luxury accommodations, 15% of the rooms would be assessed the fee which adjusted for inflation would be \$196,336.50, significantly less than the \$2,000,000 fee proposed by the property owner.” (*Id.*; emphasis added.)

C. Application of the Most Recent Formula the Commission Used for the Ventura LCP for the Promenade Parcels Would Result a Fee of \$940,194.

In July 2014, the Commission approved City of San Buenaventura LCPA SBV-MAJ-2-12 (Promenade Parcels). In that decision, the Commission provided the most consistent application of the Coastal Act policies addressing the priority for visitor-serving commercial development in its approval of an LCPA re-zoning the site from visitor-serving commercial to residential use. The Commission’s analysis tracked the constitutional requirements set forth in *Nollan* and *Dolan*, above. The

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Commission first focused on the “nexus”, *i.e.*, the burden or impact it perceived would result from approval of the LCPA – the “loss of low-cost overnight accommodations opportunities.” The Commission explained:

“In an effort to protect lower cost visitor-serving facilities, the Commission has previously imposed in lieu mitigation fees when development proposes residential or only high cost accommodations. As such, in past actions, the Commission has found that the loss of low cost hotel units should, under most circumstances, be mitigated at a 1:1 ratio lost to new units provided. For high cost overnight visitor accommodations or residential development where low cost alternatives are not included onsite, a mitigation fee of \$30,000 per room is required for 25% of the high cost rooms constructed. By requiring an in-lieu fee, a method is provided to assure that some degree of lower cost overnight accommodations will be protected.” (Staff Report, LCPA SBV-MAJ-2-12, p. 21.)

The Commission then analyzed the cost of providing a “room” or “bed” lost under the circumstances – in essence, a determination of “rough proportionality.” It explained that the \$30,000 per room in-lieu fee amount was established based on figures provided by Hostelling International in a letter dated October 26, 2007. In calculating the fee, the Commission then explained:

“Therefore, consistent with recent past commission actions, an in-lieu fee requirement of \$30,000 per room has been proposed by the City to apply to 25% of the hotel rooms that could potentially be built onsite. The City has also estimated, based on the size/configuration of the site, that an approximately 210 room hotel would be the maximum size of a hotel at this location. However, the City’s proposal did not take into account an added amount to compensate for inflation since 2010 (Consumer Price Index), . . . and according to the U.S. Bureau of Labor Statistics CPI Inflation Calculator, \$30,000 in 2007 has the buying power of \$34,188.88. . . Furthermore, the full amount for a 210 unit hotel, which could potentially be built on the subject site equates to the following in-lieu mitigation fee: 210 rooms x 25% x \$34,188.88 = approximately \$1,800,000.” (*Id.*, p. 22.)

Here, looking at both “nexus” and “rough proportionality,” and following recent past Commission decisions, a fee amount for a hypothetical 110-unit hotel on the Crummer site – assuming such a hotel were feasible (which it is not) -- would be:

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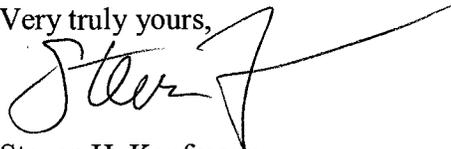
110 rooms x 25% x \$34,188.88 = \$940,194, approximately fifty (50%) of the Fee offered by the Applicant. Of course, as noted above, Malibu's LCP contains an existing LUP policy concerning the calculation of an in-lieu fee in the event new overnight luxury accommodations are created which policy would apply to the Crummer Property. Either calculation results in an amount far less than the \$2,000,000 Fee the Applicant has offered.

Conclusion

An in-lieu fee to address the lost opportunity of providing a visitor-serving commercial use requires analysis of the burden or impact resulting from the project and then a determination of a fee amount that must be roughly proportional to its burden or impact. In this case, the Applicant has instead offered a \$2,000,000 mitigation fee, the payment of which is ensured by a very carefully drafted Escrow Agreement and Covenant, and the fee amount far exceeds the amount which could be required either based on (1) a determination of whether a visitor-serving commercial is feasible, (2) the fee provision in the certified LCP, or (3) application of the Commission's recent decision in applying a formula to determine the appropriate fee amount.

We appreciate the opportunity to provide this further input.

Very truly yours,



Steven H. Kaufmann

Attachment: Updated Hotel Feasibility Report (PKF Consultants, 4/28/15)

Ccs (with attachment):

Dr. Charles Lester, Executive Director
Jack Ainsworth, Senior Deputy Director
Steve Hudson, Deputy Director
Deanna Christensen, Coastal Staff Analyst
Jamee Patterson, Supervising Deputy Attorney General
Robert Gold, PCH Property Owners, LLC
Susan McCabe, McCabe & Company

April 28, 2015



PCH Project Owner, LLC
c/o BRP LLC
315 South Beverly Drive
Suite 311
Beverly Hills, California 90212
Mr. Robert Gold, Vice President

RE: 24200 Pacific Coast Highway, Malibu, CA A/K/A Crummer Trust Property (the "Site")

Dear Mr. Gold:

In accordance with our agreement, we have completed our analysis of the feasibility of a potential hotel development on the above referenced site in Malibu, California for PCH Project Owner, LLC (the "Owner"). We have toured the Site and analyzed the potential feasibility of developing a hotel on the Site. This report is subject to the General Statement of Assumptions and Limiting Conditions presented in the Addenda.

SITE OVERVIEW AND BACKGROUND

The Site, also known as the Crummer Trust Property, is located on Pacific Coast Highway (PCH) in Malibu, adjacent to Bluffs Park, just south of Pepperdine University and across PCH from the formerly proposed Rancho Malibu Hotel, also known as the Adamson Hotel site, which is now being considered for other uses, including a cemetery. The Site encompasses 23.9 acres on a sloping bluff of varying topography, of which approximately 5.5¹ acres is allocated to a conservation easement. This results in a net developable area of approximately 18.4 acres, or 801,504 square feet. We note that the actual developable area of the Site may actually be significantly smaller than 18.4 acres, as this figure does not take into consideration height restrictions or landscaping, open space, bluff setbacks, safety setbacks, and parking requirements as dictated by the zoning of the parcel.

SITE AND OPERATIONAL CHALLENGES

Just in reviewing the zoning restrictions and site-specific preparations needed to build a hotel at the subject Site, we are of the opinion that the subject Site suffers from both site and operational challenges that would render a hotel of any quality level physically infeasible. Our primary concerns regarding the preparation of the subject Site for the development of a hotel are discussed below.

¹We are of the understanding that PCH Property Owner, LLC is currently under discussions with the Coastal Commission Staff to increase the size of the proposed conservation easement.

Site Challenges

Topographical Challenges

While the Site is 18.4 acres after deduction of the proposed conservation easement, the Site's steep topography, south facing bluff layout, a ravine that bisects a portion of the Site, as well as safety and bluff setback requirements limit the buildable area of the Site to approximately nine acres. For the purpose of this study, we have not been requested to provide a potential layout of a hotel on the site; however, code requirements for parking, loading, fire access, open space, parking, height restrictions, and required landscaping coupled with the limited buildable area could further limit the number of rooms and additional facilities that could be constructed within the developable land on the Site. There are superior sites for hotel development, including the Nobu Ryokan Hotel at 22752 Pacific Coast Highway nearing completion, that provide a location and layout more economically beneficial for hotel operations while also having the advantage of a beachfront location and two affiliated restaurants adjacent to that property.

Grading Limitations

Malibu's Local Coastal Plan limits grading to 1,000 cubic yards per acre. This limitation could significantly affect what could be developed on the Site. For example, in order to meet Malibu's parking requirements, plans for the proposed 146-room Rancho Malibu Hotel project included a subterranean parking garage containing 489 spaces (which was approximately 500 cars less than required under the City's ordinance and required a variance) also generated more than 50,000 cubic yards of grading beyond what was permitted by code.

Sewage Disposal Costs

Until such time as the Site is able to connect to a municipal sewer, we have been informed that there is not sufficient space to percolate the amount of cleaned effluent that would be generated from a hotel. Preliminary estimates for site grading and preparation (excluding actual building or above ground construction) are \$14 million for the proposed residential uses at the Site; this estimate incorporates an onsite waste water treatment package plant (estimated at a cost of \$750,000 to \$1,000,000) and access for five home sites. We note that the site preparation costs may be significantly higher for a hotel property with significantly greater density and parking requirements than the current plan of five home sites. However, we are also aware that the City of Malibu has recently formed a Community Facilities District (CFD) to fund the design of a proposed municipal wastewater treatment system, which has been approved by the City and the Coastal Commission. The implementation of the municipal wastewater treatment system could bring down the site preparation costs for the Site. However, if the Owner attempts to build a zero discharge system, this would significantly add to the site preparation and operational costs.

Height Restrictions

The City of Malibu has an 18-foot height restriction on buildings which may be increased to 24 (flat roof) feet and 28 feet (pitched roof) with City approvals. This would allow for a

maximum of two stories, and would limit the height of structures housing public spaces such as the lobby and ballroom, which typically have heights approximating or exceeding these ranges.

Measure R

The recently approved Measure R in the City of Malibu requires that after approval of a commercial development by the City, the development plan for the project must be approved in a popular vote. Measure R was a direct response to concerns about potential impacts from the proposed Rancho Malibu hotel project directly north of PCH from the subject Site. Complying with Measure R adds considerable uncertainty, as well as costs, on the viability of any hotel project on the Site.

Operational Challenges

Access Challenges

Vehicular ingress and egress from PCH to the proposed hotel will be limited to Winter Mesa Drive to the south, which is shared with the adjacent Malibu Bluffs Park directly west of the subject Site. While a traffic impact study has not been undertaken for a proposed hotel on the Site, it is likely that the limited entryway to the proposed hotel could create significant negative traffic impacts to the local thoroughfares, particularly during special events, which will be an important generator of room occupancy. Such limited/shared access would also make it extremely difficult to service the Site as a hotel. As such, potentially significant infrastructure improvements to address potential traffic impacts would likely be required, adding to the costs of such a proposed project.

Lack of On-Site and Area Amenities

As will be discussed in a later section of this report, the potential positioning of a hotel at the subject Site is limited to luxury/resort. As a coastal luxury resort, the proposed hotel at the subject Site would need to compete with and achieve comparable rates to other coastal luxury resorts such as Montage Laguna Beach, St. Regis Monarch Beach, and the Four Seasons Santa Barbara. We find that these competitive properties generally have superior access to nearby amenities, as well as and site-specific traits, such as an on-site golf course. The subject Site does not have beach access nor does it enjoy proximity to desirable area amenities, such as shopping venues and restaurants.

With its isolated location, the subject at the Site will be charged with the responsibility of creating its own demand rather than relying on the demand that currently exists in the market. However, the size and zoning restrictions of the Site does not allow for the development of additional facilities within the hotel itself, such as a full-service spa facility or adequate meeting space, due to the lack of developable area that can be allocated to these amenities. Furthermore, its coastal orientation and location places the Site significantly farther from commercial and leisure demand generators in the immediate area, such as Santa Monica, making it a less desirable lodging option for those who wish to remain proximate to the areas in which they are either doing business or leisure attractions

that they are visiting. We find it unreasonable that the subject Site, with its limited facilities and amenities, as well as its poor proximity to area demand generators, will be able to attract higher-rated commercial, leisure, or group travelers or command the occupancy and average daily rates to make this scenario financially feasible.

Poor Visibility and Access

The subject Site's environs include less than ideal access and visibility from PCH and a range of surrounding improvements that limit the subject Site's appeal as a destination luxury resort. This includes Malibu Bluffs Park with its ball fields directly west, the residential-serving commercial uses to the east, and the proposed cemetery uses to the north of PCH.

Seasonality of Travel Patterns

We consider the Malibu hotel market as highly seasonal, with peak use during the summer months with an expectation of vacancy rates in the off-season reflective of the more remote location and lack of critical mass as compared to Santa Monica and Santa Barbara. Therefore, in order to generate more off season vacancies, we would recommend that a significant amount of meeting space and amenities be included in the project. This may reduce the number of rooms that the Site could accommodate, further impacting the economic feasibility of the Site as a hotel.

ANALYSIS OF HOTEL FEASIBILITY

Although the challenges presented above render a hotel at the Site physically infeasible, we have also toured the Site and reviewed its locational aspects in the context of a coastal lodging facility. Based on the site size of 801,504 square feet and a FAR of 0.15, the maximum allowable development is 120,226 square feet of improvements. Preliminary estimates for site grading and preparation (excluding actual building or above ground construction) are \$14 million for the proposed residential uses at the Site. Just based on the site preparation costs alone, which would likely be significantly higher due to the greater density and parking requirements for a hotel, the subject's starting basis prior to construction of the hotel facilities places it firmly in the category of luxury hotels and resorts and makes the luxury tier the only potentially economically feasible type of development on the Site. This limits the potential positioning of a hotel at the Site to luxury/resort as a result of site preparation costs alone, requiring the Site to achieve rates commensurate with luxury resorts along the southern California coast line.

For full service, luxury hotels, it is industry practice to allocate 1,000 square feet of gross building area for each hotel room and ancillary spaces, which includes an onsite restaurant, as well as a bar and catering kitchen for room service and meetings. The amount of square feet of gross building area for the proposed hotel at the Site may increase due to the smaller room count compared to hotel properties located along the southern California coast. Therefore, based on the allowable FAR, the maximum range of hotel

rooms that could be accommodated would range from 110 to 120 rooms for a luxury, full-service hotel.

As previously noted, the height restrictions at the subject Site would limit a building to a maximum height of 18 feet, which would result in a one-story hotel. With a FAR limiting the development to 120,226 square feet, coupled with the code requirements for parking, loading, fire access, open space, and required landscaping, the number of rooms and additional facilities that could be constructed would yield even less than 110 to 120 rooms, making the project even less feasible.

Luxury Hotel Feasibility

According to *HVS Hotel Development Cost Survey 2014/15*, the per-room range of costs for luxury hotels and resorts range from \$513,600 to \$1,005,500 per room, with an average cost of \$705,100 per room. As a point of comparison, we have presented the development budgets of three southern California coastal resorts. Comp #1 represents actual cost for a coastal resort developed in 2008/09, and Comps #2 and #3 represent the budget of hotels currently under development.

| Comparable Luxury, Southern California Coastal Resort Development Budgets | | | |
|--|------------------|------------------|--------------------|
| | Amount Per Room | | |
| | Comp #1 | Comp #2 | Comp #3 |
| Land Purchase Price/Site Preparation | \$176,117 | \$109,946 | \$177,515 |
| Building Improvements | 428,414 | 514,491 | 495,140 |
| Personal Property (FF&E) | 69,617 | 41,098 | 141,160 |
| Legal, Title, and Escrow Fees | 13,043 | 101,378 | 148,588 |
| Real Estate Taxes | 9,477 | 11,151 | 14,675 |
| Contingency Fees | 6,247 | 37,068 | 2,699 |
| Pre-Opening Expenses and Working Capital | 37,163 | 12,195 | 32,367 |
| Financing Costs | 13,915 | N/A | 54,850 |
| Interest Carry | 60,440 | N/A | N/A |
| Entrepreneurial Profit | N/A | 25,424 | 31,072 |
| Leasehold Payments | N/A | 20,152 | N/A |
| Total Development Costs | \$814,433 | \$852,751 | \$1,098,066 |

As can be seen from the table above, the actual and estimated development costs of the comparable developments ranges from \$814,433 per room to \$1,098,066 per room. Based on the foregoing, we are of the opinion that the cost per room to develop a luxury hotel or resort commensurate with other luxury hotel and resorts along the coast would range from \$700,000 to \$900,000 for the subject Site.

In order to achieve critical mass, hotels in the competitive set typically have larger room counts, as can be seen, by the following summary of six luxury coastal properties that are typically recognized as being among the highest positioned properties in California and would ultimately be competitive to the subject Site.

| Proposed Malibu Hotel Competitive Supply | |
|---|------------|
| Primary Competition | Room Count |
| Four Seasons Santa Barbara | 207 |
| Montage Laguna Beach | 262 |
| Bacara Resort & Spa | 354 |
| St. Regis Monarch Beach | 400 |
| Ritz-Carlton Laguna Niguel | 396 |
| Fess Parker's DoubleTree | 360 |
| Competitive Market Total | 1,979 |
| Average Room Count | 330 |

Source: PKF Consulting

The following table presents the historical operating performance of the six coastal hotels previously presented.

| Historical Market Performance of the Competitive Supply | | | | | | | | | |
|--|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|----------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2008 | 722,335 | N/A | 439,322 | N/A | 60.8% | \$412.35 | N/A | \$250.79 | N/A |
| 2009 | 722,335 | 0.0% | 375,044 | -14.6% | 51.9 | 356.53 | -13.5% | 185.11 | -26.2% |
| 2010 | 722,335 | 0.0 | 416,222 | 11.0 | 57.6 | 341.06 | -4.3 | 196.52 | 6.2 |
| 2011 | 722,335 | 0.0 | 465,883 | 11.9 | 64.5 | 357.63 | 4.9 | 230.66 | 17.4 |
| 2012 | 694,960 | -3.8 | 464,179 | -0.4 | 66.8 | 379.39 | 6.1 | 253.41 | 9.9 |
| 2013 | 701,530 | 0.9 | 488,348 | 5.2 | 69.6 | 382.55 | 0.8 | 266.30 | 5.1 |
| 2014 | 722,335 | 3.0 | 526,905 | 7.9 | 72.9 | 403.19 | 5.4 | 294.11 | 10.4 |
| CAAG | 0.0% | | 3.1% | | | -0.4% | | 2.7% | |

Source: PKF Consulting USA

Supply within the competitive set during the preceding seven years has remained flat with fluctuations due to renovations. During the same period, demand as measured in occupied room nights, increased at a compound annual growth rate (CAAG) of 3.1 percent. The market experienced its lowest level of occupancy of 51.9 percent in 2009 due to the effects of the economic downturn, but occupancy levels have enjoyed year-over-year increases since then. Between 2008 and 2014, average daily rate (ADR) decreased an average of 0.4 percent annually, mainly attributed to the decreases experienced in 2009 and 2010. The competitive market average daily rate has not yet surpassed pre-recession levels.

Given the subject Site's access and site environs and the historical performance of the competitive supply, we estimate that the property could achieve an ADR (Average Daily Room Rate) of approximately \$415 at an occupancy level of 65 percent. Relative to the competitive supply, this places the proposed hotel below the market average in terms of occupancy due to its isolated location in a less established leisure destination and at the market average in terms of average daily rate. Using this and five comparable financials of Southern California coastal luxury resorts, we have projected the potential value per key of the subject Site as a luxury hotel.

| Summary of Net Value | | |
|---------------------------|--------------------------------------|--|
| Basis | # | Notes |
| Rooms | 120 | Maximum allowable rooms |
| Occupancy | 65% | Slightly below market |
| ADR | \$415 | At market |
| Other Spend | \$187 | 45% of rooms revenue, comps at 40% |
| Total Daily Spend | \$602 | Rooms plus Other Spend |
| Occupied Rooms | 28,470 | 120 rooms @ 365 days @ 65% |
| Total Revenue | \$17,132,000 | Occupied Rooms X Daily Spend |
| NOI % (of Total Revenues) | 21% | Comps average 25%, 21% after reserve |
| NOI | \$3,598,000 | |
| NOI per Key | \$29,983 | |
| Capitalization Rate | 7.0% | Coastal cap rates range from 6% to 10% |
| Value | \$51,400,000 | |
| Value per Key | \$428,000 | |
| Cost per Key | \$700,000-\$900,000 | |
| Spread | (\$272,000 - \$472,000) | |
| Total Cost Deficit | (\$32,600,000 - \$56,600,000) | |

As previously noted, the development of a luxury, coastal resort ranges from approximately \$700,000 to \$900,000 per guest room, or \$84,000,000 to \$108,000,000 for a 120-room luxury, coastal resort. As shown in the table above, the value of the Site developed as a luxury, coastal resort is estimated at \$51.4 million, or \$428,000 per guestroom. After taking into consideration the projected income for the subject, we are of the opinion that a luxury, coastal resort is not feasible at the Site, as the anticipated income will not cover the capital invested.

SUMMARY OF CONCLUSIONS

Based on our foregoing analysis, the site and operational challenges associated with the development and operation of a proposed hotel of any quality renders this project infeasible. Even if a hotel could be built on the subject Site, a luxury resort is the only type of lodging facility that would potentially support the costs associated with development. However, the specific site attributes and zoning result in a low-rise luxury property with operational issues, significant site issues that reduce the ability of the property to compete on a regional basis in the luxury resort market, and a cost basis reflective or exceeding that of a world class resort.

Financial feasibility is based on whether a proposed project will attain a cash flow of sufficient quantity, quality, and duration to allow investors to recover the capital invested and achieve the necessary and expected rate of return. Similar to the conclusion reached in a previous engagement relating to the subject Site in 2010, given the scale of site preparation and site deficiencies and our analysis of projected occupancy and rate levels, the total costs of hotel construction, current capitalization rates, it is our opinion that the subject Site has significant cost factors and operational factors that would inhibit it from becoming an economically feasible hotel project at this time and in the foreseeable future.

We thank you for the opportunity to conduct this study.

Sincerely,

PKF Consulting
a *Subsidiary of CBRE, Inc.*

A handwritten signature in black ink, appearing to read "Bruce Baltin". The signature is fluid and cursive, with a large initial "B" and a long horizontal stroke.

Bruce Baltin
Senior Vice President

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

This report is made with the following assumptions and limiting conditions:

Economic and Social Trends - The consultant assumes no responsibility for economic, physical or demographic factors which may affect or alter the opinions in this report if said economic, physical or demographic factors were not present as of the date of the letter of transmittal accompanying this report. The consultant is not obligated to predict future political, economic or social trends.

Information Furnished by Others - In preparing this report, the consultant was required to rely on information furnished by other individuals or found in previously existing records and/or documents. Unless otherwise indicated, such information is presumed to be reliable. However, no warranty, either expresses or implied, is given by the consultant for the accuracy of such information and the consultant assumes no responsibility for information relied upon later found to have been inaccurate. The consultant reserves the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

Hidden Conditions - The consultant assumes no responsibility for hidden or unapparent conditions of the property, subsoil, ground water or structures that render the subject property more or less valuable. No responsibility is assumed for arranging for engineering, geologic or environmental studies that may be required to discover such hidden or unapparent conditions.

Hazardous Materials - The consultant has not been provided any information regarding the presence of any material or substance on or in any portion of the subject property or improvements thereon, which material or substance possesses or may possess toxic, hazardous and/or other harmful and/or dangerous characteristics. Unless otherwise stated in the report, the consultant did not become aware of the presence of any such material or substance during the consultant's inspection of the subject property. However, the consultant is not qualified to investigate or test for the presence of such materials or substances. The presence of such materials or substances may adversely affect the value of the subject property. The value estimated in this report is predicated on the assumption that no such material or substance is present on or in the subject property or in such proximity thereto that it would cause a loss in value. The consultant assumes no responsibility for the presence of any such substance or material on or in the subject property, nor for any expertise or engineering knowledge required to discover the presence of such substance or material. Unless otherwise stated, this report assumes the subject property is in compliance with all federal, state and local environmental laws, regulations and rules.

Zoning and Land Use - Unless otherwise stated, the projections were formulated assuming the hotel to be in full compliance with all applicable zoning and land use regulations and restrictions.

Licenses and Permits - Unless otherwise stated, the property is assumed to have all required licenses, permits, certificates, consents or other legislative and/or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

Engineering Survey - No engineering survey has been made by the consultant. Except as specifically stated, data relative to size and area of the subject property was taken from sources considered reliable and no encroachment of the subject property is considered to exist.

Subsurface Rights - No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials, except as is expressly stated.

Maps, Plats and Exhibits - Maps, plats and exhibits included in this report are for illustration only to serve as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced or used apart from the report.

Legal Matters - No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate consultants.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

(continued)

Right of Publication - Possession of this report, or a copy of it, does not carry with it the right of publication. Without the written consent of the consultant, this report may not be used for any purpose by any person other than the party to whom it is addressed. In any event, this report may be used only with proper written qualification and only in its entirety for its stated purpose.

Testimony in Court - Testimony or attendance in court or at any other hearing is not required by reason of rendering this appraisal, unless such arrangements are made a reasonable time in advance of said hearing. Further, unless otherwise indicated, separate arrangements shall be made concerning compensation for the consultant's time to prepare for and attend any such hearing.

Archeological Significance - No investigation has been made by the consultant and no information has been provided to the consultant regarding potential archeological significance of the subject property or any portion thereof. This report assumes no portion of the subject property has archeological significance.

Compliance with the American Disabilities Act - The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We assumed that the property will be in direct compliance with the various detailed requirements of the ADA.

Definitions and Assumptions - The definitions and assumptions upon which our analyses, opinions and conclusions are based are set forth in appropriate sections of this report and are to be part of these general assumptions as if included here in their entirety.

Dissemination of Material - Neither all nor any part of the contents of this report shall be disseminated to the general public through advertising or sales media, public relations media, news media or other public means of communication without the prior written consent and approval of the consultant(s).

Distribution and Liability to Third Parties - The party for whom this report was prepared may distribute copies of this appraisal report only in its entirety to such third parties as may be selected by the party for whom this report was prepared; however, portions of this report shall not be given to third parties without our written consent. Liability to third parties will not be accepted.

Use in Offering Materials - This report, including all cash flow forecasts, market surveys and related data, conclusions, exhibits and supporting documentation, may not be reproduced or references made to the report or to PKF Consulting in any sale offering, prospectus, public or private placement memorandum, proxy statement or other document ("Offering Material") in connection with a merger, liquidation or other corporate transaction unless PKF Consulting has approved in writing the text of any such reference or reproduction prior to the distribution and filing thereof.

Limits to Liability - PKF Consulting cannot be held liable in any cause of action resulting in litigation for any dollar amount which exceeds the total fees collected from this individual engagement.

Legal Expenses - Any legal expenses incurred in defending or representing ourselves concerning this assignment will be the responsibility of the client.



MOUNTAINS RECREATION & CONSERVATION AUTHORITY
 Ramirez Canyon Park
 5810 Ramirez Canyon Road
 Malibu, California 90265
 Phone (310) 589-3230 Fax (310) 589-3237

July 23, 2015

John Ainsworth
 California Coastal Commission
 89 S. California Street, Suite 200
 Ventura, California 93001

**City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1
 (Malibu Coast Estate/Crummer Trust Property Planned Development)**

Dear Mr. Ainsworth:

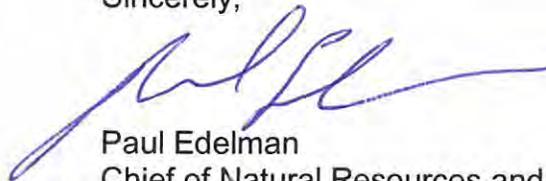
The Santa Monica Mountains Conservancy (SMMC) is the owner of approximately 83-acres immediately to the west of the Crummer Trust property (SMMC's Malibu Bluffs), which is managed by the Mountains Recreation and Conservation Authority (MRCA).

On April 7, 2010 the MRCA and the Crummer property owner executed a letter agreement that contained the description of a 6-acre conservation easement that the Crummer property owner voluntarily agreed to dedicate to the MRCA. A copy of the Letter Agreement is attached.

The terms of the Letter Agreement was incorporated in the Dedication to the MRCA, which is an exhibit to the Escrow Agreement dated as of January 2015 between the property owner and the Coastal Commission.

The MRCA understands that subsequent to the execution of the Escrow Agreement, the property owner has proposed to increase the size of the area included in the conservation easement by approximately 1.47-acres as indicated on the attached site plan, thereby enhancing the conservation easement. The resulting 7.69-acre conservation easement fully addresses our concerns, and the MRCA has no objection to the Crummer project proceeding as approved last year by the City of Malibu.

Sincerely,



Paul Edelman
 Chief of Natural Resources and Planning

Addendum
 Exhibit 3

Christensen, Deanna@Coastal

From: Timothy Silvestre <tsilvestre@strategiclaw.com>
Sent: Thursday, July 30, 2015 3:49 PM
To: Christensen, Deanna@Coastal
Subject: Malibu AYSO Supports Crummer Project

Honorable Chairman Kinsey and Coastal Commission Members:

I am the Regional Commissioner of Malibu AYSO, an organization that supports an active recreational soccer league for over 600 children and young adults ages 4 to 18 in the City of Malibu. The growth and, at times, viability of Malibu AYSO has been challenged by a dearth of field space in Malibu for our practices and games. Since the creation of the Crummer development on land adjacent and surrounding our primary field space at Bluffs Park, Malibu AYSO has supported this project. Robert Gold and his development team have responded to the demands of the Malibu residents and have downsized the development considerably while maintaining the corresponding benefits they originally pledged to the people of Malibu. As you know, on approval of this development plan, the City of Malibu will receive near two acres of flat land ideally situated next to Bluffs Park, along with \$1,000,000 to be used to develop and expand Malibu's open space for residents and visitors.

Thus, I am writing you today on behalf of Malibu AYSO, which fully supports the Crummer project coming before you on August 12, 2015. This is a low scale, low impact project with incredible benefits for the Malibu community that will last for a generation of Malibu residents and visitors. Malibu AYSO respectfully requests that the California Coastal Commission approve the Crummer project on August 12!

Thank you.

Tim Silvestre, Regional Commissioner
Malibu AYSO Region 759

Addendum
Exhibit 4

Christensen, Deanna@Coastal

From: Jefferson Wagner <zumajays@mac.com>
Sent: Friday, August 07, 2015 4:36 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Letter of Support

**Re: LCP-4-MAL-14-0408-1
Support of the Crummer Project, City of Malibu
Item 12b**

Dear Commissioners:

As a former councilmember of the City of Malibu, and current business owner, property owner and resident of Malibu, I would like to voice my support for the Crummer Project next to Bluffs Park. After almost nine long years of working with City staff, the community and your staff, the Coastal Commission has been tasked to make a determination on a project that has changed immensely in recent years and even dating back to the 80s, when the prior owner had some highly publicized and somewhat controversial ideas for the property.

Of course, leaving the property alone/undeveloped would be most people's dream.

The City, MRCA, and State Parks cannot expect to purchase or "retire" these expensive properties. Land use is often a compromise between property owners and the general public, with agencies guiding development.

Therefore, I believe that the proposal before you offers the lowest amount of development the City could ever see on the property. The scale of the project is appropriate and the owners have agreed to further modify the project by reducing the height of all the homes to 18 feet.

In this land use decision, I would prefer dealing with someone with the integrity of Robert Gold and his partners who have provided amenities, both financially and with provisions for open space, which we may not find with others.

If Mr. Gold earns his entitlements, he must still answer to the public.

For these reasons I believe the project deserves your approval.

Thanks,

Jay

Christensen, Deanna@Coastal

From: Kearsley <bestdad@msn.com>
Sent: Sunday, August 02, 2015 3:12 PM
To: Christensen, Deanna@Coastal; Ainsworth, John@Coastal
Subject: SUPPORT of the Crummer Project, City of Malibu

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Deanna.christensen@coastal.ca.gov
John.ainsworth@coastal.ca.gov

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Honorable Chair Kinsey and Commission Members:

I am writing to express my strong support for the "Crummer Project."

As a resident of Malibu who lives in close proximity to Bluffs Park, I know all about this site and the potential for its development. Over the years, we have heard proposals ranging from office buildings to clusters of condos and other far-reaching designs that would be inappropriate for the location. However, the project that now comes before you on August 12 is none of those things. On top of that, it will be providing our town with real tangible benefits for young and old, resident and visitor a-like.

Simply stated, this project consisting of five single-family one-story homes is as reasonable as we are going to get. Add to this the land dedication and millions of dollars to the City and State Parks, I can't see a reason why anyone would not vote to approve this.

I believe this project will be a great benefit to not just the youth sports community, but everyone who uses Bluffs Park. We urge you to support the Crummer Project when it comes before you on August 12, 2015.

Thank you,

Ken Kearsley

Christensen, Deanna@Coastal

From: Kearsley <bestdad@msn.com>
Sent: Sunday, August 02, 2015 3:21 PM
To: Christensen, Deanna@Coastal; Ainsworth, John@Coastal
Subject: SUPPORT of the Crummer Project, City of Malibu

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Deanna.christensen@coastal.ca.gov
John.ainsworth@coastal.ca.gov

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Honorable Chair Kinsey and Commission Members:

I am writing you today as residents of for over 50 years.

I would like to go on record as supporters of the Crummer project.

One thing that I know from our many years in this town is that we have a tremendous lack of active park space and not nearly enough ball fields for our growing population. I know how important it is to provide our local youth with the parks and facilities they need and deserve to have right in their backyard. Malibu can do better by its young residents and young visitors, and approving this project would be a good start.

The Crummer project will be a great benefit to Malibu without any of the negative impacts that can come with new developments. We urge the Commission to support this project on August 12.

Thank you,

Barbara Kearsley

6474 Sycamore Meadows Dr.

Malibu, CA 90265

Attn: Deanna Christensen (805) 641-1732

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Received

AUG 03 2015

California Coastal Commission
South Central Coast District

~~Deanna.Christensen@coastal.ca.gov~~
~~deanna.christensen@coastal.ca.gov~~

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Honorable Chair Kinsey and Commission Members:

We are writing you today as residents of West Malibu for over 50 years.

We would like to go on record as supporters of the Crummer project.

One thing that we know from our many years in this town is that we have a tremendous lack of active park space and not nearly enough ball fields for our growing population. My son played little league and my daughter played soccer at Bluff's Park, so we know how important it is to provide our local youth with the parks and facilities they need and deserve to have right in their backyard. Malibu can do better by its young residents and young visitors, and approving this project would be a good start.

The Crummer project will be a great benefit to Malibu without any of the negative impacts that can come with new developments. We urge the Commission to support this project on August 12.

Thank you,



Kim and Cheryl Calvert

Malibu, CA

Attn: Deanna Christensen - Coastal Commission

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Received

AUG 03 2015

California Coastal Commission
South Central Coast District

Deanna.Christensen@coastal.ca.gov
Deanna.Christensen@coastal.ca.gov

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Honorable Chair Kinsey and Commission Members:

I am writing you today as residents of for over 60 years.

I would like to go on record as supporters of the Crummer project.

One thing that I know from our many years in this town is that we have a tremendous lack of active park space and not nearly enough ball fields for our growing population. I know how important it is to provide our local youth with the parks and facilities they need and deserve to have right in their backyard. Malibu can do better by its young residents and young visitors, and approving this project would be a good start.

The Crummer project will be a great benefit to Malibu without any of the negative impacts that can come with new developments. We urge the Commission to support this project on August 12.

Thank you,



Cynthia Stuffmann

6460 Zumirez

Malibu, CA

Christensen, Deanna@Coastal

From: Elaine Rene-Weissman <elaine@erwdesign.com>
Sent: Monday, August 03, 2015 12:18 PM
To: Ainsworth, John@Coastal; Christensen, Deanna@Coastal
Cc: rgold@bigrockpartners.com
Subject: Crummer Project

Good Morning Commissioners,

I am writing in support of the Crummer Project in Malibu, LCP-4-MAL-14-0408-1, and I urge you to approve the Project as currently designed.

I have been a Malibu resident for more than twenty years. Our three children attended the Malibu public schools, and I currently serve as a Community Liaison to the Santa Monica Malibu Unified School District. The owners of the Crummer Project, by offering two acres of land and considerable monetary donations, are significantly contributing to the betterment of Malibu's recreational services, and to improved public amenities.

Five homes on a 24-acre property is a modest project, and compatible with Malibu's environment. The property owners have refined the design, height, adjacencies, and footprint of the project multiple times, responding to numerous iterations of local community comment. The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act, and it is time to give approval to the project.

Thank you for your consideration.

Sincerely,

Elaine René-Weissman, Architect + LEED AP
SMMUSD District Liaison
ERW DESIGN
6624 Dume Drive
Malibu, CA 90265
310 457 1809 t
www.erwdesign.com

Christensen, Deanna@Coastal

From: Apodaca, Paul M <pmapodaca@hrl.com>
Sent: Tuesday, August 04, 2015 10:06 AM
To: Christensen, Deanna@Coastal
Cc: 'mark.persson@malibu.org'
Subject: Crummer Project

Honorable Chair Kinsey and Commission Members:

I am writing you today in support of the Crummer project coming before you on August 12, 2015. As a member of the Malibu Chamber of Commerce, we have been hearing about this proposed project for many years. Although over time, the project has decreased in size immensely, the benefits to our community have not. As it now stands, the Crummer project is five one-story homes on 24 acres. Malibu will receive nearly 2 acres of land and \$1 Million for the construction of either a new multi-purpose sports field and much needed additional parking. Lastly, there will be a \$2 million donation to build lower cost accommodations.

This is a low scale, low impact project with lots of benefits for the local community, and all visitors to the coast. We respectfully ask the California Coastal Commission to approve the Crummer project on August 12!

Thank you.

Paul Apodaca
Vice Chairman - Finance
Malibu Chamber of Commerce
P: 310-456-9025
www.malibu.org

Christensen, Deanna@Coastal

From: Sophie Kidan <sophie.kidian2@verizon.net>
Sent: Tuesday, August 04, 2015 12:05 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Project ~

Honorable Chair Kinsey and Commission Members:

I am writing you today in support of the Crummer project coming before you on August 12, 2015. As a Malibu resident, we have been hearing about this proposed project for many years. Although over time, the project has decreased in size immensely, the benefits to our community have not. As it now stands, the Crummer project is five one-story homes on 24 acres. Malibu will receive nearly 2 acres of land and \$1 Million for the construction of either a new multi-purpose sports field and much needed additional parking. Lastly, there will be a \$2 million donation to build lower cost accommodations.

This is a low scale, low impact project with lots of benefits for the local community, and all visitors to the coast. We respectfully ask the California Coastal Commission to approve the Crummer project on August 12!

Thank you,

Sophie Kidian



*Sophie Kidian
Realtor ~ BRE# 01259395
Seabreeze Estates Realty
20710 PCH #10
Malibu, CA. 90265
CELL: 310 962-2561
Sophie.kidian2@verizon.net*

*Beyond right and wrong, there is a field. I will meet you there.
Rumi*

Christensen, Deanna@Coastal

From: Michael mazzola <michelangelo19@me.com>
Sent: Tuesday, August 04, 2015 3:54 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Support

Honorable Chair Kinsey and Commission Members:

I am writing you today in support of the Crummer project coming before you on August 12, 2015. As a Malibu resident, we have been hearing about this proposed project for many years. Although over time, the project has decreased in size immensely, the benefits to our community have not. As it now stands, the Crummer project is five one-story homes on 24 acres. Malibu will receive nearly 2 acres of land and \$1 Million for the construction of either a new multi-purpose sports field and much needed additional parking. Lastly, there will be a \$2 million donation to build lower cost accommodations.

This is a low scale, low impact project with lots of benefits for the local community, and all visitors to the coast. We respectfully ask the California Coastal Commission to approve the Crummer project on August 12!

Thank you.

warmly,
Michael Mazzola
213.422.5169

Christensen, Deanna@Coastal

From: mark davis <mark.davis84@gmail.com>
Sent: Tuesday, August 04, 2015 3:57 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Support

Honorable Chair Kinsey and Commission Members:

I am writing you today in support of the Crummer project coming before you on August 12, 2015. We have been hearing about this proposed project for many years. Although over time, the project has decreased in size immensely, the benefits to our community have not. As it now stands, the Crummer project is five one-story homes on 24 acres. Malibu will receive nearly 2 acres of land and \$1 Million for the construction of either a new multi-purpose sports field and much needed additional parking. Lastly, there will be a \$2 million donation to build lower cost accommodations.

This is a low scale, low impact project with lots of benefits for the local community, and all visitors to the coast. We respectfully ask the California Coastal Commission to approve the Crummer project on August 12!

Sincerely,

Mark Davis

Christensen, Deanna@Coastal

From: Lynne <malibulynne@gmail.com>
Sent: Tuesday, August 04, 2015 5:30 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Support

Honorable Chair Kinsey and Commission Members:

I am writing you today in support of the Crummer project coming before you on August 12, 2015. As a Malibu resident, we have been hearing about this proposed project for many years. Although over time, the project has decreased in size immensely, the benefits to our community have not. As it now stands, the Crummer project is five one-story homes on 24 acres. Malibu will receive nearly 2 acres of land and \$1 Million for the construction of either a new multi-purpose sports field and much needed additional parking. Lastly, there will be a \$2 million donation to build lower cost accommodations.

This is a low scale, low impact project with lots of benefits for the local community, and all visitors to the coast. We respectfully ask the California Coastal Commission to approve the Crummer project on August 12!

Thank you.

Lynne Daniels

21625 Pacific Coast Highway,
Malibu, CA 90265

Christensen, Deanna@Coastal

From: Justine Kingman Petretti <justineandsky@yahoo.com>
Sent: Wednesday, August 05, 2015 9:44 AM
To: Christensen, Deanna@Coastal
Subject: Crummer Project

Honorable Chair Kinsey and Commission Members:

My name is Justine Petretti. I am a mother of three, the former Juan Cabrillo Elementary School PTA President, and current Vice Chair of the Malibu Parks and Rec Commission. I am writing you today IN SUPPORT of the Crummer project coming before you on August 12, 2015. As a longtime Malibu resident, we have been hearing about this proposed project for many years. Although over time, the project has decreased in size immensely, the benefits to our community have not. As it now stands, the Crummer project is five one-story homes on 24 acres. Malibu will receive nearly 2 acres of land and \$1 Million for the construction of either a new multi-purpose sports field or a skatepark, and much needed additional parking. Lastly, there will be a \$2 million donation to build lower cost accommodations.

This is a low scale, low impact project with lots of benefits for the local community, and all visitors to the coast. We respectfully ask the California Coastal Commission to approve the Crummer project on August 12!

Sincerely,

Justine Petretti
30608 Vista Sierra Drive
Malibu, CA 90265

Christensen, Deanna@Coastal

From: Geoff Stern <ellenstern@gmail.com>
Sent: Wednesday, August 05, 2015 2:52 PM
To: Christensen, Deanna@Coastal; Ainsworth, John@Coastal
Subject: Crummer Letter

Importance: High

**Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu**

Honorable Chairman Kinsey and Commission Members:

As the current Board Member of Malibu Little League, I am writing to express our strong support for the project located at the "Crummer" site adjacent to Bluffs Park. It has been well documented that our City has a shortage of playing fields for Malibu's youth. Although many other ideas have been discussed over the years to fill this void none have come to fruition. The Crummer Project represents a real opportunity to expand Bluffs Park and create additional active park space for the City while locking in an appropriate development for this amazing location.

The project, five homes, is a far less intense use and development, then the past proposals for the site, which included a large-scale hotel, a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes. The project which has been extensively reviewed by the City also includes a dedication by the property owner of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of the new athletic fields and other improvements including the addition of 54 much-needed public parking spaces and a \$2 million donation to State Parks to build cabins at Topanga State Park, just down PCH from Bluffs Park.

We believe this project will be a great benefit to not just the youth sports community, but everyone in Malibu who uses Bluffs Park. We urge you to support the Crummer Project when it comes before you on August 12, 2015.

Sincerely,

Geoff Stern
Board Member, Malibu Little League

Christensen, Deanna@Coastal

From: Geoff Stern <malibusoftball@hotmail.com>
Sent: Wednesday, August 05, 2015 2:55 PM
To: Christensen, Deanna@Coastal; Ainsworth, John@Coastal
Subject: Crummer Letter

Importance: High

**Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu**

Honorable Chairman Kinsey and Commission Members:

As the current president of Malibu Little League, I am writing to express our strong support for the project located at the "Crummer" site adjacent to Bluffs Park. It has been well documented that our City has a shortage of playing fields for Malibu's youth. Although many other ideas have been discussed over the years to fill this void none have come to fruition. The Crummer Project represents a real opportunity to expand Bluffs Park and create additional active park space for the City while locking in an appropriate development for this amazing location.

The project, five homes, is a far less intense use and development, then the past proposals for the site, which included a large-scale hotel, a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes. The project which has been extensively reviewed by the City also includes a dedication by the property owner of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of the new athletic fields and other improvements including the addition of 54 much-needed public parking spaces and a \$2 million donation to State Parks to build cabins at Topanga State Park, just down PCH from Bluffs Park.

We believe this project will be a great benefit to not just the youth sports community, but everyone in Malibu who uses Bluffs Park. We urge you to support the Crummer Project when it comes before you on August 12, 2015.

Sincerely,

Gregg Brock
President, Malibu Little League

MALIBU LITTLE LEAGUE

August 5, 2015

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001

Attn: Deanna Christensen

Deanna.christensen@coastal.ca.gov
John.ainsworth@coastal.ca.gov

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Honorable Chairman Kinsey and Commission Members:

The Malibu Little League Board of Directors is writing to express our strong support for the project located at the "Crummer" site adjacent to Bluffs Park. It has been well documented that our City has a shortage of playing fields for Malibu's youth. Although many other ideas have been discussed over the years to fill this void none have come to fruition. The Crummer Project represents a real opportunity to expand Bluffs Park and create additional active park space for the City while locking in an appropriate development for this amazing location.

The project, five homes, is a far less intense use and development, then the past proposals for the site, which included a large-scale hotel, a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes. The project which has been extensively reviewed by the City also includes a dedication by the property owner of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of the new athletic fields and other improvements including the addition of 54 much-needed public parking spaces and a \$2 million donation to State Parks to build cabins at Topanga State Park, just down PCH from Bluffs Park.

We believe this project will be a great benefit to not just the youth sports community, but everyone in Malibu who uses Bluffs Park. We urge you to support the Crummer Project when it comes before you on August 12, 2015.

Sincerely,

Malibu Little League

Board of Directors

August 6, 2015

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Deanna.christensen@coastal.ca.gov
John.ainsworth@coastal.ca.gov

**Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu**

Honorable Chair Kinsey and Commission Members:

We are writing to express our support for the "Crummer Project."

As residents of Malibu who live in close proximity to Bluffs Park, we know the history of this site and the potential for its development. Over the years, we have heard proposals ranging from office buildings to clusters of condos and other far reaching designs that would be inappropriate for the location. However, the project that now comes before you on August 12th, is a more suitable and viable option. The project will also be providing our town with real tangible benefits for young and old, resident and visitor a-like.

The project consists of five single-family one-story homes which is very reasonable considering what Malibu has been faced with in the past. The owner also has dedicated land and millions of dollars to the City and State Parks.

We believe this project will be a great benefit to the City, its resident and the youth sports community, and everyone who uses Bluffs Park. We urge you to support the Crummer Project when it comes before you on August 12, 2015.

Thank you,

Robert and Elizabeth Stephens

Christensen, Deanna@Coastal

From: EDWARD WARREN <edwardwarren@mac.com>
Sent: Friday, August 07, 2015 9:57 AM
To: Christensen, Deanna@Coastal
Cc: Ainsworth, John@Coastal
Subject: Crummer Project

August 6, 2015

California Coastal Commission

South Central Coast Area

89 South California Street

Ventura, CA 93001

Attn: Deanna Christensen

deanna.christensen@coastal.ca.gov

John.ainsworth@coastal.ca.gov

Re: LCP-4-MAL_14-0408-1

SUPPORT of the Crummer Project, City of Malibu

Dear Commissioners:

I have lived in Malibu for seven years and my wife has owned a home in Malibu for over twenty years.

This letter to the California Coastal Commission focuses on the Crummer Project, but let me say at the outset, I favor timely approval of any project that satisfies generally applicable federal, state and local laws, zoning regulations and building codes. It is my understanding that your staff is recommending approval of this project.

Citizen participation in all phases of environmental and related reviews is commendable, as long as it does not lead to endless delays and de facto blockage of specific projects. But what is not acceptable are the objections related to financial interests cloaked as public concerns that attempt to use the regulatory process for commercial financial advantage. This appears to be happening with respect to the Crummer Project.

The Crummer applicant has agreed to dedicate two acres of their property to the City and contribute \$1 million to build new athletic fields. The five homes they have planned for the property would add millions more in future property taxes for the City. Thus, the people of Malibu would greatly benefit from this development and the provision of these resources, particularly our schools, children and grandchildren. The applicant has also proposed to make a voluntary donation of two million dollars to help create lower cost overnight accommodations at lower Topanga State Park. I'm sure the Commission will agree, these are much needed and

valuable public benefits.

Prior to the Crummer Project's hearing before Malibu's Planning Commission, I was prompted to write to the Planning Commission about the project because of a wrong-headed flyer I had received in the mail from Green Acres LLC. Nothing in the flyer disclosed who or what Green Acres LLC was, much less that it was backed by a party with a financial interest in stalling the Crummer Project. The assumption underlying the Green Acres flyer was that self-appointed, albeit unidentified, individuals have the right to usurp indefinitely the prerogative of property owners to develop their property. Appropriate local zoning is one thing, but stopping well-planned development after years of planning, analysis and delays was, in my view, beyond the pale.

Prior to the City Council hearing on the Crummer Project, I received a phone call from a person purporting to do a citizen survey, probing to the extent of public support for the project, by bringing up a concern which I was sure had been thoroughly considered, apparently with the sole intent to create the misleading impression of public opposition to the project. After asking around and doing some investigation, I quickly determined that Green Acres was likely behind both the flyer and phone survey.

Having learned both the Planning Commission and the Malibu City Council had approved the Crummer Project after several years of review (including the preparation of an EIR), I put the Crummer Project out of my mind. However, I was greatly surprised to discover the Coastal Commission did not approve the Crummer Project at its February 2015 hearing. Later, I learned that during the Coastal Commission hearing, a representative of Green Acres LLC, the developer of the hotel project, which I have heard is now going to be a cemetery, testified and submitted documents in opposition to the Crummer Project, again claiming that the Crummer Project would result in significant view impacts to public and private views.

So what was the counter-argument made by Green Acres and its unidentified financial backers? Only that when driving down PCH, one would see the roofs of a couple of new houses against the sky, rather than barren land. But neither Green Acres specifically, nor the public generally, have any right to decree the land in question remains barren forever. Sooner or later the property will be developed, perhaps with multiple condos, rather than a few homes, as has been the case elsewhere along PCH in Malibu.

At the February Coastal Commission hearing, the City's representative testified against the claims made in the Green Acres letter of opposition as follows

“The City takes issue with the view simulations provided in [the letter]...and feels the calculated view blockage percentages indicated...are inaccurate”.

Evidently, Green Acres remains unabashedly committed to a course of conduct that resulted in the following reprimand at the Crummer City Council hearing from Councilperson Rosenthal:

“I really don't like it when people don't fight fair. And I feel at this

point Green Acres has not been fighting fair. I don't like it when people make things up...So I was extremely disappointed in how Green Acres has been acting about this...I'm very much in support of when people disagree. But let's make sure we disagree and use the facts and not make things up.”

Apparently, Green Acres believes that its project and the rates they can charge, whether it is for a hotel, or their now proposed cemetery project, will be higher if the Crummer Project is never built.

In conclusion, what we have here is a classic Trojan Horse. The real interest hiding behind so-called public concerns about impacts to public views is a naked financial aim to hijack the regulatory process for competitive reasons. The Crummer Project, which has gone through eight years of public process and

transparent review, and has thoroughly addressed all issues of public concern, should now be approved

Ed Warren

31500 Board Beach Road

Malibu, CA

August 4, 2015

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen
Deanna.christensen@coastal.ca.gov

Re: LCP-4-MAL-14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Dear Chair Kinsey and Commissioners:

I have lived in Malibu since 1978. I am fortunate enough to have raised 3 children in Malibu who spent a lot of time at Bluffs Park. I was a Charter Member of the Malibu Kiwanis Club who financially supported the creation of Bluffs Park and physically labored on a practice field formerly located on the land that Mr. Gold's group plans to donate to the City.

I am writing to express my strong support for the Crummer Project. It has been well documented that the City of Malibu has a shortage of playing fields for active recreation. The Crummer Project seeks to address this community need and includes a dedication by the property owner of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of the new athletic fields and other improvements including much needed public parking spaces. It also includes a \$2M donation to State Parks to build cabins at lower Topanga State Park.

The project, five homes on a 24-acre property is a far less intense use and development, and therefore more compatible with our scenic and rural surroundings, than any of the previously proposed projects. Past development proposals for the property under previous ownerships have included a large office building, a condo development, and, most recently, a development agreement that would have contemplated up to eight homes.

The property owner has worked with closely and diligently with the local community and has modified the design of project several times to address concerns about potential visual impacts, including most recently reducing the height on all of the homes to 18 feet.

I believe this project will provide a great public benefit to the youth sports community, as well as everyone who uses Bluffs Park. The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act.

I urge you to approve the Crummer Project when it comes before you at your August hearing.

Paul Grisanti

23676 Malibu Road

Christensen, Deanna@Coastal

From: Christine Hameline <christineremaxelitemalibu@gmail.com>
Sent: Friday, August 07, 2015 5:50 PM
To: Christensen, Deanna@Coastal
Subject: Drummer Project Support
Attachments: Crummer Letter of Support Form.pdf

Honorable Chair Kinsey and Commission Members:

I am writing you today in support of the Crummer project coming before you on August 12, 2015. As a Malibu resident, we have been hearing about this proposed project for many years. Although over time, the project has decreased in size immensely, the benefits to our community have not. As it now stands, the Crummer project is five one-story homes on 24 acres. Malibu will receive nearly 2 acres of land and \$1 Million for the construction of either a new multi-purpose sports field and much needed additional parking. Lastly, there will be a \$2 million donation to build lower cost accommodations.

This is a low scale, low impact project with lots of benefits for the local community, and all visitors to the coast. We respectfully ask the California Coastal Commission to approve the Crummer project on August 12!

Thank you,

Christine Hameline
mobile: (310) 456-4709

22917 Pacific Coast Highway Suite # 210
Malibu, CA 90265

Please excuse brevity. Please consider the environment before printing this email.

CONFIDENTIALITY NOTICE: E-mail may contain confidential information that is legally privileged. Do not read this e-mail if you are not the intended recipient. This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to christine@christinehameline.com or by telephone at (310) 456-4709 and destroy the original transmission and its attachments without reading.

Lyn Konheim
163 South Rodeo Drive
Beverly Hills, CA 90212

August 7, 2015

Jack Ainsworth, Senior Deputy Director
Steve Hudson, Deputy Director
Barbara Carey, District Manager
Deanna Christensen, Coastal Program Analyst

CALIFORNIA COASTAL COMMISSION
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Re: City of Malibu LCP Amendment No. LCP-4-MAL-14-0408-1
Malibu Coast Estate/Crummer Trust Property Planned Development
Hearing & Commission Action, August 12, 2015 Commission Meeting, Chula Vista, CA.

Dear Mr. Ainsworth, et.al.

I am the property owner of 24157 Malibu Road (which is the southwest adjacent parcel to the above referenced Crummer Trust Property Planned Development).

In regard to the upcoming referenced Hearing for the LCP Amendment, I would like to state for the record that I have had a productive relationship with Mr. Robert Gold (the representative for the proposed Planned Development) and have been pleased with his responsiveness in meeting the concerns I have expressed in regard to the project's visual impact from my property.

I am supportive of the project as recommended by the Coastal Commission staff for approval in the July 31, 2015 report prepared for the August 12, 2015 Public Hearing.

Sincerely,


Lyn Konheim

Cc Robert Gold

To: Members of the Coastal Commission
From: Malibu Coalition for Slow Growth (MCSG), Malibu Township Council and Preserve Malibu Coalition.
RE: Malibu LCPA Amendment
Hearing date: Wednesday 8-12-15 Item W 12.b.

Honorable Members of the Coastal Commission:

FURTHER MODIFICATION NEEDED TO PROTECT VIEWS

The Malibu Coalition for Slow Growth, Malibu Township Council and Preserve Malibu Coalition respectfully ask the Commission to make any Local Coastal Plan Amendment (LCPA) contingent on implementing the modifications suggested below.

1. **Consistency** - As Commissioner Vargas pointed out there should be consistency in the Commission's decisions. He mentioned the Crummer project is almost the opposite of a recent project before the Commission along Santa Barbara's Gaviota Coast where a developer had around 30 acres of land, and 27 acres went to open space, and three acres of the land was used for two homes. Also, the Commissioner pointed out that this project would set in stone the lowest common denominator of public use possible.

2.) **Commission Direction** - The current redesign configuration fails to address the specific requests of Commissioners enunciated at the February hearing.

a.) The majority of Commissioners who spoke wanted a much larger conservation easement and wanted lots 1 and 2 put into a easement. Putting these lots into conservation would also serve to minimize the negative view impacts of the project from Malibu Canyon Road, PCH (both scenic roads) , Malibu Pier, Surfrider Beach, Legacy Park and other public viewing sites.

b.) Commissioners expressed concern about view obstruction from Bluffs Park and asked for better view protection from the park, including preservation of down coast views to protect the absolutely stunning view of the ocean and coastline (known as the 'Queen's Necklace' view) from Bluffs Park. This can be achieved in order of preference by :

i.) Putting lot 5 into a conservation easement. This easement would be a natural extension of Bluffs Park and would mitigate the most egregious source of view blockage from the Park . In addition it would afford the public the right to walk on the easement to enjoy the downcoast 'queens necklace' view.

ii.) creating a development standard requiring setting Lot 5 development far enough landward from the bluff top to allow for both resident privacy and if allowable, for creating a conservation easement along the bluff top which would be at the minimum be 25 ft. in width , to allow public access directly from Bluffs Park to this lot's bluff top setback . If allowable , this conservation easement would include a 6-10 foot, wide pathway as an extension/continuation of the southern portion of the current Bluffs Park Pathway onto Lot 5's bluff top conservation easement. The path would run parallel along the bluff top of lot 5 so the

public can experience better views of the down coast 'queens necklace' coastline. This allowance for a bluff top pathway is set forth in LIP provisions 12.7.3 included below under the heading 6. Visual Protection Policies *LIP 12.7.3 Bluff top Access* on page 5 below.

iii.) If neither of i. or ii. appeal to the Commission to ensure public views are somewhat protected, we ask a development standard be added to ensure that a slight view of the queens necklace remains unobstructed. This development standard would prohibit constructing or planting anything on lot 5 that obscures the eastern coastline view from the southern portion of the Bluffs Park pathway.

3.) **Landscaping**- here are requested landscaping development criteria.

a.) Because some of the landscaping, including hedges and trees, could grow to a height that exceeds the roofline of the various structures, we request that the Landscaping Plan be revised and a development standard added ensuring the shielding of the structures from public viewing areas but limiting the height of landscaping to a height of a structure's roofline where needed.

b.) In addition, there is a concern that the landscaping will take many years to grow to a height to camouflage the view impact of the various structures and ask that a development standard be added stating mature landscaping be initially planted where needed on the remaining buildable lots to soften the negative impact of the structures.

4.) **Conservation Easement**- A much larger Conservation easement is required than what is currently proposed for several reasons.

a.) The Commissioners asked for a larger conservation to be consistent with a previous decision on the Gaviota Coast. (See 1 above).

b.) The initial Conservation Easement (6.27 acres) dedicated to MRCA on the southern ocean bluff face is a sheer precipice and really doesn't qualify as an easement of any worth. The eastern portion of the easement is on what seems to be a 2:1 slope and doesn't extend onto the bluff top.

c.) The additionally proposed conservation easement (1.42 acres) that does partially extend onto the bluff top really doesn't do anything to protect public views. Setting back swimming pools on lots 2 (10 ft.) and lot 5 (6 ft.) which are on ground level already doesn't give further protection of views. However putting 2 lots in a conservation easement whether it be lots 2 and 5 or lots 1 and 2 will result in both protecting views and the granting of a meaningful conservation easement.

5.) **Structures** - We would have liked the development to have a smaller residences but we are pleased that the structures are all now one story in height. If 2 lots are put into a conservation easement, we will no longer request smaller mansions.

6.) **Subdivision** - The Applicant is fortunate the Commission is considering more than one lot since the surrounding Bluffs Park, Pepperdine University and the proposed cemetery parcels are all *huge* parcels and even if combined with the immediate surrounding Malibu Road lots directly below the parcel it is doubtful that this subdivision would be allowed under LIP 5.35 since the created parcels / lots would be smaller than the average size of the surrounding parcels/lots.

Again, we respectfully request that any LCPA be contingent on implementing the above modifications.

OTHER PERTINANT POINTS

1. **Public Resources Code** - A denial of this LCP amendment is required under the Commission's Regulations since certification of LCP amendment must be based in part on a finding that it meets CEQA requirements in Public Resources Code section 21080.5(d)(2)(A). This section requires the Commission not approve or adopt the LCP '...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse affect which the activity may have on the environment'. (Staff Report page 43)).If the above modifications are made, the project would be more environmentally sensitive than what is currently proposed and would better protect scenic and visual resources meeting the requirements of this provision of the public Resources Code.

3. **Planned Development** - The city approved this project with less stringent development standards than allowed under the LUP. Nowhere does it say that a Planned Development has to allow 5 estates lots. The Planned Development designation was not intended to allow inappropriate development. Any development still must be tailored in the PD designation to protect coastal resource to the greatest extent possible.

4. **Mitigation** - We support lower cost accommodations but will leave it to the Commission to decide if the proposed \$2,000,000 is a sufficient mitigation for the loss of visitor serving use on this parcel and if the mitigation fee should be earmarked for the Cameron Nature Preserve or the Topanga Motel .

VISUAL SCENIC RESOURCES NOT PROTECTED

1. **Views Not Protected**- Views of sky, ocean and mountains are important scenic resources requiring protection. If the view impacts were insignificant we would not still be concerned but the pictures in the staff report still indicate serious view blockages. If the story poles were still in place we could better access the situation. The Applicant is required under the LIP to have story poles for this modified design under LIP 6.3 d "story and stakes shall remain in place during the duration of the approval process."

2. **Parcel Not In Residential Neighborhood**- While staff report states there is a subdivision of 4 residences to the east, its entrance is on the Malibu Road and these residences are almost at sea level, far below the Crummer bluff top site. Since their entrance is on Malibu Rd. and they

are far below the Crummer bluff, they are in entirely different neighborhood from the Crummer property.

3. **Scenic Area Location** - The 24 acre Crummer site is not part of a residential or commercial area. The Crummer site is located in and at the beginning of Western Malibu, the more rural part of Malibu. The site is situated on a bluff high above the Malibu Road properties.

An accurate description of the project area is as follows: This proposed subdivision is situated on a bluff top in an area /neighborhood consisting of very large parcels. Directly to the west is Bluff's Park (consisting of 10 acres active recreation and approximately 90 acres of undeveloped passive recreation ESHA.). To the northwest, across PCH is Pepperdine University (830 acres, of which 500 acres have been set aside for conservation and the campus' Alumni Park is for public use). Immediately to the west of Pepperdine is The Cameron Nature Preserve (703 acres). Directly across PCH is an undeveloped 27.8-acre parcel on which a public cemetery is being proposed. The proposed Crummer property subdivision is most definitely in a highly scenic area and a visitor serving public recreation area.

Pepperdine University and scenic Malibu Canyon Rd. overlook the property. As one travels west out of the Civic Center commercial area along the PCH scenic highway there is currently an unobstructed view of the bluff top and its skyline. To the east from Bluffs Park are views of the ocean, coastline and mountains. Views from all of these areas will be greatly diminished if this LCPA is approved without further modification.

4. **Visitor Serving Area and Destination** - Malibu attracts millions of visitors each year, and many, many thousands to this very area. This proposed subdivision is definitely located in a significant visitor destination area. As mentioned above the site is surrounded by Bluffs Park on the west, On the north west is Pepperdine University, directly to the west of Pepperdine is the recently acquired Cameron Nature Preserve. All are visitor serving recreation areas. Directly across PCH from the Crummer property is a 27 acre vacant parcel where a cemetery is being proposed. When open, it will attract a large number of visitors. Downhill and below the bluff about a 1/4 to 1/2 mile to the east and northeast is the Civic Center commercial shopping area a very popular visitor destination.

Because of its very special location of this incredibly beautiful site and the obliteration of important protected scenic views from public places if the proposed residences are constructed, we firmly believe that the LCPA for this parcel should only be granted if further modifications as suggested above are made.

5. **View Obstructions and Minimization of Impacts to Scenic Resources** - The photographs in the staff report show some visual resources which will be negatively impacted by the residences at the proposed intensity of development. The Applicant could still have 3 mansion estates if 2 lots were put into a conservation easement.

6. **View Protection Policies** - The following Coastal Act Sections are incorporated into the LCP as policies and apparently were not taken into account as the residential standards were being designed and the city's amended definition of Planned Development written.

a.) Coastal Act

Coastal Act Section 30240 (b) - Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of these habitat areas.

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

Coastal Act Section 30253 - New development shall, where appropriate, protect special communities and neighborhoods which because of their unique characteristics are popular visitor destination points for recreational use.

b.) Visual Protection LCP Implementation Policies

LIP 6.5 sets forth required development standards which were clearly not met in designing this project. The most pertinent ones are as follows:

LIP 6.5.A. Development Siting

1. New development shall be sited and designed to minimize adverse impacts on scenic area from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible alternative where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas from scenic highways or public viewing areas through measures including but not limited to siting development on the least visible portion of the site, breaking up the mass of the new structures restricting the buildings maximum size , reducing maximum height standards , clustering development, minimalizing grading, incorporating landscape elements, siting development on the least visible portion of the site, breaking up the mass of new structures , incorporating landscape elements and where appropriate berming.

2. Where there is no feasible alternative that is not visible from scenic highways or public viewing areas, the development shall be restricted to minimize adverse impacts on views from scenic highways or public viewing areas.

3. Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening as a mitigation of visual impacts shall not substitute for project alternatives including resiting or reducing the height and bulk of each structure.

LIP 6.5.B. Development Design 1. The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height shall be 18 feet above existing or finished grade whichever is lower.

LIP 6.5.D. Bluff Development

1. In addition to the blufftop development setback requirement necessary to insure geologic stability new development proposed on bluff tops shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of but no less than the setback necessary to ensure that the risk from geologic hazards are minimized for the life of the structure.

LIP 12.7.3 Bluff top Access

A. Minimum requirements. A condition to require public access to or along a bluff top as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 12.5 of the Malibu LIP shall provide the public with the permanent right of scenic and visual access from the bluff top to the public tidelands.

B. The bluff top access shall be limited to passive recreational use and coastal viewing purposes unless another character of use is specified as a condition of development. In determining the appropriate character of use findings shall be made on the specific factors identified in Section 12.9.1 of the Malibu LIP.

C. Each bluff top accessway shall be described in the conditions of approval of the coastal development permit as an area beginning at the current bluff edge extending 25 feet inland or [greater or lesser] as determined to be necessary for public safety or geologic stability. However, wherever feasible, the accessway should not extend any closer than 10 feet from an occupied residential structure. Due to the potential for erosion of the bluff edge, the condition shall include a mechanism that will cause the accessway to be adjusted inland as the edge recedes. Any permanent improvements should be set back from the accessway by a distance derived by multiplying the annual rate of blufftop retreat by the 100-year life expectancy of the improvements plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet from the bluff edge which may be reduced to 50 feet if recommended by the City Geologist and the 100 year economic life of the structure with the geologic safety factor can be met provided that the setback will result in a minimum distance of 10 feet between the structure and the accessway for the life of the structure.

D. The accessway shall be legally described as required in Section 12.7.7 of the Malibu LIP, with the furthest inland extent of the area possible referenced as a distance from a fixed monument in the following manner:

"Such easement shall be a minimum of 25 feet wide located along the bluff top as measured inland from the daily bluff edge. As the daily bluff top edge may vary and move inland, the location of this right of way will change over time with the then current bluff edge."

c. Visual Protection Land Use Policies

LUP 6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there

is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.

LUP 6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

LUP 6.7 The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.

d. Subdivision Prohibited

LUP 5.35

The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of the surrounding parcels.

CONCLUSION

If you approve this LCPA amendment, the Coastal Development Permits for these 5 mansions will be final. We have pointed out the negative impacts of these residences on visual resources and scenic views and have given you examples of needed modification which substantially lessen the significant adverse effect which this development can have on the environment. For this reason and for all of the other above reasons stated this LCPA should be denied unless substantial modifications are made to the development standards

Thank you for considering our point of view.

Christensen, Deanna@Coastal

From: Carol Moss <greenlotus@earthlink.net>
Sent: Sunday, August 09, 2015 7:31 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

I oppose the staff report .

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

I live a couple of miles from Bluffs Park on a beach which is constantly strolled by walkers coming from Surfrider Beach. They have a peaceful view of nature and a pristine ridgeline that will be destroyed by this development as it stands now. Beautiful Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely

Carol Moss

23708 malibu Colony Road

(310) 456 3591

Addendum
Exhibit 6

Christensen, Deanna@Coastal

From: j brady fogel <jmikebrady@yahoo.com>
Sent: Sunday, August 09, 2015 1:38 PM
To: Christensen, Deanna@Coastal; Patt Healy; Judy Fogel; Jo Ruggles
Subject: Crummer Item W12b

Dear Commissioners:

These residences will block protected scenic public views of the eastern facing coastline and ocean and the now unobstructed mountain view from Bluffs Park.

The residences will also be visible from and destroy the current pristine bluff top view from PCH, the Malibu Pier, Legacy Park and Surfrider Beach . Where you now see a view of a bluff top and the sky , you will now see houses.

Please modify this development to lessen the negative impact on these protected scenic views. Thank you.

Sincerely,

Judy Fogel

Christensen, Deanna@Coastal

From: carlamccloskey@aol.com
Sent: Sunday, August 09, 2015 12:50 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

I oppose the staff recommendation.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed such as putting 2 lots in a conservation easement as the Commissioner directed in February

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind, most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park, with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Sincerely,
Carla and Leigh McCloskey

Christensen, Deanna@Coastal

From: Mary Jane O'Donnell <llennodojm@gmail.com>
Sent: Sunday, August 09, 2015 9:49 AM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners:

I live in West Hollywood, but I am always delighted to "get away" to Malibu. I go because of the beaches, the hiking trails, and the sheer beauty of the place. However, the continual development in Malibu is troubling. Simply stated, too much of this extraordinary landscape--a landscape you have been charged with protecting--has been given over to commercial gain. A case in point: the Crummer scenic bluff.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Mary Jane O'Donnell

1360 North Crescent Heights Blvd., #5B

West Hollywood, CA 90046

Christensen, Deanna@Coastal

From: debbiedex@aol.com
Sent: Sunday, August 09, 2015 8:23 AM
To: Christensen, Deanna@Coastal
Subject: Proposed building site

Dear Commissioners,

I oppose the staff recommendation.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Debbie and Mike Dexter

Sent from my iPad

Christensen, Deanna@Coastal

From: Judi Hutchinson <judihutch@gmail.com>
Sent: Sunday, August 09, 2015 7:51 AM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

I oppose the staff recommendation.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Judi Hutchinson

Christensen, Deanna@Coastal

From: hubsden@aol.com
Sent: Saturday, August 08, 2015 10:06 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

I oppose the staff recommendation.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Maggie Luckerath

Christensen, Deanna@Coastal

From: Alfred Roven <alfredroven@gmail.com>
Sent: Saturday, August 08, 2015 9:00 PM
To: Christensen, Deanna@Coastal

Dear Commissioners,

I oppose the staff recommendation.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Alfred Roven

Christensen, Deanna@Coastal

From: Carole Mathews <carole.mathews1@gmail.com>
Sent: Saturday, August 08, 2015 6:28 PM
To: Christensen, Deanna@Coastal
Subject: The Crummer Project

I am currently living in Atlanta, Georgia. To be near the beautiful Pacific Ocean, I often visit a close friend in Malibu. The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by the Crummer project if built as currently designed.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen

from numerous

public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Carole Mathews

Atlanta, Georgia

Christensen, Deanna@Coastal

From: Beth Treweek <Beth@BLKArtDesign.com>
Sent: Saturday, August 08, 2015 6:04 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu. This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,
Beth Treweek

Christensen, Deanna@Coastal

From: sandy@sandygloverart.com
Sent: Saturday, August 08, 2015 5:36 PM
To: Christensen, Deanna@Coastal
Subject: Crummer property development in Malibu

Dear Commissioners,

I oppose the staff recommendation.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Sandra Glover

Christensen, Deanna@Coastal

From: ryan.annp@gmail.com
Sent: Saturday, August 08, 2015 5:30 PM
To: Christensen, Deanna@Coastal
Subject: Re: Crummer Item W12b

Forgot to add: **We are against the staff recommendation for the Malibu Crummer subdivision - Item W12b.**

Sent from my iPhone

On Aug 8, 2015, at 3:18 PM, Ann Ryan <ryan.annp@gmail.com> wrote:

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Ann Ryan

Ann Ryan
Founder & CEO
beachycream.com
[facebook.com/beachycream](https://www.facebook.com/beachycream)



Check out my memoir at:
[facebook.com/AnnRyanDreamHouseMemoir](https://www.facebook.com/AnnRyanDreamHouseMemoir)

Christensen, Deanna@Coastal

From: octagonart <octagonart@aol.com>
Sent: Saturday, August 08, 2015 5:24 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Sarah and Peter Dixon
PO Box 6235
Malibu, CA 90264-6235

Christensen, Deanna@Coastal

From: Diane Moss <todiane4@yahoo.com>
Sent: Saturday, August 08, 2015 5:12 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

I was born and raised in Malibu about a mile from Bluff's Park, and my family has been at that location since 1964. I still live in Malibu up the coast. Like many, I find Malibu a refuge, an oasis of nature that is unique in coastal Los Angeles.

I am against the staff recommendation for the Malibu Crummer subdivision - Item W12b.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind, most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be diminished also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Diane Moss

Christensen, Deanna@Coastal

From: malibuledoux@verizon.net
Sent: Saturday, August 08, 2015 4:06 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.The public views need to be protected!!!!!!

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.Please tell him to come up with a better plan.

I am against the staff recommendation for the Malibu Crummer subdivision - Item W12b.

Sincerely,

Kimberly Ledoux
6805 Zumirez Dr
Malibu,CA 90265

Christensen, Deanna@Coastal

From: Ann Salisbury Doneen <loislane@headlines.org>
Sent: Saturday, August 08, 2015 3:53 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

Please protect the public's views of and from the Crummer scenic bluff.

This magnificent pristine coastal bluff well may be one of the last views in Southern California that can be seen from numerous public places throughout Malibu. Please, Commissioners! There needs to be ONE PLACE within driving distance of the city, within driving distance of suburbia, within driving distance of the inner city where people can get a sense of how things were BEFORE man started developing everything.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach.

So, as you can see, I am against the staff recommendation for the Malibu Crummer subdivision - Item W12b.

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Breathtaking from Malibu Canyon Rd. and Pepperdine University will be eroded also. When people come over the hill and see the vast expanse of ocean and the horizon, unblocked by man-made structures, they gasp. This is the world. This is inspiration. This is love mankind. This is be good to the world. This is fill my heart with peace.

Human beings deserve this gasp, this beauty, this inspiration.

It is most important to be sure to get any development on this parcel right. PLEASE COMMISSIONERS! We trust you to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make, the public will have to live with forever. If ever there were an important action for this generation and all to come. This is it. It might seem like a small choice: Whether, and how high, and how big, a house should be. But it is not a small decision. There is so much more involved! And there is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Christensen, Deanna@Coastal

From: Jae Flo <jfloatz@verizon.net>
Sent: Saturday, August 08, 2015 3:37 PM
To: Ccc@daynabochco.com; mmccclureccc@co.del-norte.ca.us; wendy@katzmitchell.com; erik@erikhowell.com; Cox, Greg; mvargas@miconstruct.com; cgroom@smcgov.org; effietlaw@yahoo.com; mkshallenberger@gmail.com; lcrosse@marincounty.org; celina.luna@longbeach.gov; roberto.uranga@longbeach.gov; Christensen, Deanna@Coastal
Subject: Crummer Item W12b / Additional comment

Dear CA Coastal Commissioners,

We are not in favor, are against, the staff recommendation for the Malibu Crummer subdivision.

We are deeply concerned over the 5 mega-mansion Crummer subdivision proposed in Malibu. Without visiting the site, it is very difficult to visualize the impacts of it.

That bluff is the most visible, important and famous ridge in all of Malibu for every person driving up the coast on PCH. Millions of yearly visitors, 15,000,000.

That bluff is visible all the way down, many miles, to the Malibu Pier.

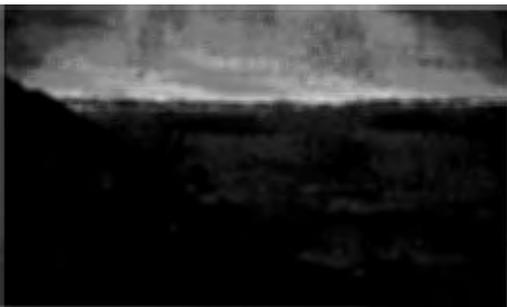
It is the hallmark natural announcement of entering the center of Malibu.

The views from the top of the bluff are jaw-dropping. Stunning, beyond words. The view goes all the way down across the ocean to Queen's Necklace in Santa Monica and curves out to Palos Verdes. The other view goes all the way up the coast past Point Dume facing Ventura. On the backside of the property are the Santa Monica Mountains.

The natural views are a 380 degree panoramic. No photos can do them justice. One of the most glorious sights in California, and certainly LA County.



Crummer subdivision story poles.



Crummer property is a full continuation of public Bluffs Park, Conservation Easement, situation on the same ridge. Bluffs Park and Crummer are separated from all the land around it. Malibu Canyon Rd dead ends into this property.

In all the truth, the State of California should've had the wisdom to purchase this site and save it for all to enjoy and marvel over, not just 5 homeowners. 5 who are the wealthiest on this globe who can afford prices for enormous estates in the tens of millions \$ range, who in all likelihood will be part time residents. It is a travesty to the public that this land was not preserved.

These new mansions will be seen by visitors all across Bluffs Park from the furthest end of the grass playing fields. Any size trees will block vital views from not only the parkland but up the mountains to Pepperdine and Malibu Canyon Road.



The public's only hope now to minimize these severe impacts is you, this Commission. We sincerely beg of you to fulfill your mission of protection and saving these miracles of nature for every generation to love and enjoy. They should have that right.

We are confident that you will uphold visitor serving protections this Wednesday, and make all of California's residents proud.

Our very best,

Jeff and Jae Katz
Malibu, CA

Christensen, Deanna@Coastal

From: Ann Ryan <ryan.annp@gmail.com>
Sent: Saturday, August 08, 2015 3:18 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Ann Ryan

Ann Ryan
Founder & CEO
beachycream.com
facebook.com/beachycream

Check out my memoir at:
facebook.com/AnnRyanDreamHouseMemoir

Christensen, Deanna@Coastal

From: brenda martinez <bhmclass1@gmail.com>
Sent: Saturday, August 08, 2015 2:50 PM
To: Christensen, Deanna@Coastal
Subject: Item W12b crummer 8-12-15

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Brenda Martinez

Malibu CA

Christensen, Deanna@Coastal

From: Jae Flora-Katz <jfloatz@icloud.com>
Sent: Saturday, August 08, 2015 2:40 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

PLEASE PROTECT THE PUBLIC'S RIGHT TO OCEAN AND VIEWS OF NATURE!

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Dolores Walsch
Malibu, CA

Christensen, Deanna@Coastal

From: Sarah Noddings <yeh99999@gmail.com>
Sent: Saturday, August 08, 2015 2:31 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

I am from Torrance, CA and often visit Malibu to hike and see good friends.

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Sarah Noddings

Christensen, Deanna@Coastal

From: LynchLawCorp <jimlynchlaw@me.com>
Sent: Saturday, August 08, 2015 1:54 PM
To: Christensen, Deanna@Coastal
Cc: Healypatt
Subject: Crummer Item W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Jim Lynch

James T. Lynch, Esq.
Lynch Law Corp.,
A professional law corporation
PO Box 986
Haiku, Hi 96708
808 344-4048

www.LynchLawCorp.com

jimlynchlaw@me.com

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Christensen, Deanna@Coastal

From: Elizabeth Lynch <lizclynch@gmail.com>
Sent: Saturday, August 08, 2015 12:17 PM
To: Christensen, Deanna@Coastal; Elizabeth Lynch
Subject: Crummer Item W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Elizabeth C. Lynch

In addition to the above commentary, I would like to add that it is my belief that one of the foremost reasons the California Coastal Commission was created was to protect the coasts of California for everyone. Anything that deviates from this goal, which obstructing the view of the coast would do, is necessarily an unjustified act.

(name)

Christensen, Deanna@Coastal

From: Dawn N. Ericson <mantapublications@earthlink.net>
Sent: Saturday, August 08, 2015 9:20 AM
To: Christensen, Deanna@Coastal
Subject: Malibu Crummer Item W12b

Dear Commissioners,

May we please request, the views of and from Crummer's scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

These bluff are fragile and important as wildlife zones for native birds and animals.It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Sincerely,

Dawn Navarro Ericson
40 year resident of Malibu
30069 Harvester Road, Malibu 90265

Christensen, Deanna@Coastal

From: Richard Lawrence <rlawrence@reptalent.com>
Sent: Saturday, August 08, 2015 9:07 AM
To: Christensen, Deanna@Coastal
Subject: Crummer W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also. It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

**Richard Lawrence, President
Malibu Township Council**

Christensen, Deanna@Coastal

From: Joel Schulman <jnschulman@gmail.com>
Sent: Saturday, August 08, 2015 8:51 AM
To: Christensen, Deanna@Coastal
Subject: August 12, 2015 Coastal Commission meeting #W12b Malibu Bluffs

Dear Coastal Commissioners,

As several of you have stated in previous meetings, it is a real shame that the beautiful, special property next to Malibu Bluffs Park is zoned for development. The coast and beach in Malibu are so completely covered with buildings, the public can barely detect the presence of the ocean. Thankfully the Park is there as one of the few places where people can enjoy a relatively pristine large area with beautiful views and the rare coastal bluff flora and fauna.

The zoning change that is required for residential development gives you much discretion in limiting the extent of the impact on the park. You have no responsibility to the real estate developer to maximize their profit. Their financial gamble is part of the game they play and it is their problem. Please limit the number and size of the houses to the absolute minimum possible and do what you can to save the rare public resource represented by that beautiful location.

Joel Schulman
1832 Lookout Road
Malibu, CA 90265

Christensen, Deanna@Coastal

From: MalibuKaos <malibukaos@gmail.com>
Sent: Saturday, August 08, 2015 8:20 AM
To: Christensen, Deanna@Coastal
Subject: August 12, 2015 Coastal Commission meeting #W12b Malibu Bluffs

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected. It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind, most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Kian Schulman

1832 Lookout Road

Malibu, CA 90265

Christensen, Deanna@Coastal

From: Betty Glass <betty.glass@pepperdine.edu>
Sent: Saturday, August 08, 2015 7:27 AM
To: Christensen, Deanna@Coastal
Subject: Crummer Item W12b

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Betty Gkass, Malibu resident

Christensen, Deanna@Coastal

From: steve rucker <steverucker@yahoo.com>
Sent: Saturday, August 08, 2015 12:03 AM
To: Christensen, Deanna@Coastal
Subject: Crummer scenic bluff

Dear Commissioners,

The views of and from the Crummer scenic bluff must be protected . It may be one of the last pristine coastal bluff views in Southern California that can be seen from numerous public places throughout Malibu.

This site is one of a kind , most special and must be developed with great care. Every person who drives west on Pacific Coast Highway views this fabulous pristine bluff as do visitors to the Malibu Pier, Legacy Park and world famous Surfrider Beach .

The scenic views from Bluffs Park , with its constant stream of visitors from all over the world, will be seriously harmed by this project if built as currently designed .

Views from Malibu Canyon Rd. and Pepperdine University will be eroded also.

It is most important to be sure to get any development on this parcel right and to approve only a project that protects public scenic views to the greatest extent possible.

Whatever decision you make the public will have to live with forever. There is much more that can be done to protect scenic views than what the applicant has proposed.

Sincerely,

Steve Rucker
310 589-2141
<http://www.steveruckermusic.com>

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG*
REBECCA A. THOMPSON*
NANCI SESSIONS-STACEY
KIMBERLY A. RIBLE
ALICIA B. BARTLEY

* a professional corporation

LAW OFFICES OF
GAINES & STACEY LLP
16633 VENTURA BOULEVARD, SUITE 1220
ENCINO, CA 91436-1872

TELEPHONE (818) 933-0200
FACSIMILE (818) 933-0222
INTERNET: WWW.GAINESLAW.COM

August 7, 2015

ORIGINAL VIA FEDERAL EXPRESS

VIA EMAIL Skinsey@marincounty.org

Steve Kinsey, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Agenda Item No.: W 12b

Application No.:
LCP-4-MAL-14-0408-1

Green Acres, LLC in Opposition

Re: Malibu Coast Estates/Crummer Trust Property Planned Development
LCP Amendment No. LCP-4-MAL-14-0408-1
Commission Hearing Date: Wednesday, August 12, 2015
Opposition to Malibu Coast Estate/Crummer Trust Property Planned Development

Dear Chair Kinsey and Honorable Commissioners,

This law office represents Green Acres, LLC with regard to its ownership and future development of 4000 Malibu Canyon Road (the "Green Acres Site"). The Green Acres Site is the largest remaining undeveloped commercial visitor-serving property in the City of Malibu (the "City") and is situated immediately to the north of the Crummer Trust Property Planned Development (the "Project"). The Staff Report for the Project, which consists of a Local Coastal Program ("LCP") Amendment to permit the development of five gated multi-million dollar homes, concedes numerous inconsistencies with the Coastal Act's commercial visitor-serving prioritization, and scenic and visual resource protection policies among others, then leaps to the conclusion that such inconsistencies are justified because the applicant has agreed to pay \$2,000,000 for off-site mitigation. But there is no escaping the fact that the Project will have severe and long-lasting impacts on the Green Acres Site, the City of Malibu, and surrounding environment. In fact, this Project sends a precedential message statewide that exclusive, private residential development can win the Commission's approval for the right price. **For the reasons outlined below, Green Acres requests that the Coastal Commission deny the Project.**¹

¹ It should be noted that the arguments and evidence presented herein are in addition to any other arguments or evidence which the City of Malibu and/or Coastal Commission has received or may receive from our client, including the May 20, 2013 Letter from Gaines & Stacey to Ha Ly; January 3, 2014 Letter from Gaines & Stacey to Malibu Planning Commission; February 20, 2014 Letter from Gaines & Stacey to Malibu City Council; May 16, 2014 Letter from Gaines & Stacey to Malibu Planning Commission; and February 4, 2015 Letter from Gaines & Stacey to the California Coastal Commission.

A. THE STAFF REPORT FAILS TO ADDRESS NUMEROUS ISSUES RAISED BY COMMISSIONERS AT THE FEBRUARY COMMISSION HEARING.

The Staff Report recommends approval of the same five 10,000 sq.ft. mansions rejected by the Commission at its February 12, 2015 meeting, with only two significant changes: 1) the houses are now single story, and 2) the \$2 million now goes to the Cameron Nature Preserve. The Staff Report fails to recommend any changes to the Project to address the specific concerns raised by numerous Commissioners that:

- There should be fewer mansions.
Commissioners specifically recommended eliminating the houses on Lots 1 and 2, and reducing the total number of homes to two or three, not five as is still proposed.
- The mansions should be smaller.
Commissioners specifically recommended that the square footage should be 5,000-6,000 sq.ft., not 9,000 to 11,000 sq.ft., as is still proposed.
- The houses should be clustered.
Commissioners specifically requested clustering the homes to minimize lot coverage and view blockage. The proposed 10,000 sq.ft. mansions are still spread across the property, blocking public blue water views from Bluffs Park, PCH and Malibu Canyon.
- The landscaping should be limited in height.
Limiting the houses to one story, but allowing large trees and hedges to grow to unlimited heights, will completely defeat the Commission's stated intent to protect public views.
- The \$2 million should be justified.
Commissioners' questions regarding the lack of details and justification for both the amount of the in-lieu fee and how the funds would be spent remain largely unanswered.

A project which addresses the Commissions concerns is clearly feasible. Attached hereto as Exhibit "A" is a Site Plan showing how the project can be modified to three 5,000-6,000 sq.ft. homes. Such a plan would significantly limit lot coverage, minimize view blockage, allow for additional public access and still provide the property owner with multi-million dollar profits. Based upon recent comparable sales (J. Weintraub view house 6.1 acres \$41 million, J. Iovine view house 3.6 acres \$61 million), three 5,000-6,000 sq.ft. mansions on large view lots would conservatively sell for \$20-25

million each (\$60 million-\$75 million total). We respectfully request that, if the Commission does not deny the Project, any approval be limited to no more than three mansions along the lines of the modified Site Plan attached as Exhibit "A."

B. THE PROJECT BLOCKS PROMINENT PUBLIC BLUEWATER VIEWS AND SCENIC VISTAS.

The 24 acre Project site is prominently situated on a blufftop along Pacific Coast Highway ("PCH") to the north and Malibu Road to the south, adjacent to the Civic Center and commercial core of Malibu. The Project is inconsistent with Land Use Plan Policies 6.1, 6.2, 6.4, and 6.5 and Implementation Plan Sections 6.5(A)(1) and (A)(2-4) as it is visible from many important viewing areas, including PCH, Malibu's Civic Center, Malibu Colony Beach, Surfrider Beach, Malibu Pier, Malibu Bluffs Park, Malibu Road, Malibu Canyon Road, and others. Although the Project was modified slightly during the City's approval process, visual and scenic resources from these public viewing areas, including the Green Acres Site, are greatly impacted. In fact, the Staff Report concedes that the project will be "unavoidably visible" from identified public viewing areas. [Staff Report, page 39.]

Green Acres previously presented visual graphics to the City showing the unavoidable aesthetic impacts of the Project. Substantial evidence shows that the Project will negatively impact bluewater views of the Pacific Ocean and scenic resources, including public rights of way and vista points. The proposed five 10,000 sq.ft. mansions on a prominent blufftop, adjacent to Malibu's City center, are inconsistent with the City's General Plan, LCP, and Coastal Act, and the City failed to include mitigation measures to alleviate the significant impacts resulting from those inconsistencies. Approving the LCP Amendment would authorize development inconsistent with the protection of valuable scenic resources.

C. THE PROJECT PRIORITIZES GATED MANSIONS OVER COMMERCIAL VISITOR-SERVING LAND AND USES.

Visitor-serving commercial property and uses have long been given priority under the Coastal Act and the Malibu LCP, which states: "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." This Project, which consists of the development of five gated 10,000 sq.ft. mansions, not only is counter to that priority, but is exactly the type of project the Commission has discouraged (and denied) for decades. Specifically, the Project is inconsistent with Coastal Act Policies Section 30213, 30222, 30223, 30250(a), and 30252 and City of Malibu Land Use Plan Policies 2.33, 2.34, 2.36, 2.37, 2.78, 5.35, and 5.36. By completely altering the Planned Development language in the

City's LCP, approval of the Project would result in the elimination of one of the last remaining properties in the City that was envisioned and planned for commercial visitor-serving uses.²

Staff states that "[t]he City and property owner believe that a Commercial Visitor-Serving use is not viable at this site..." [Staff Report, page 29.] and that "it is not likely a visitor-serving commercial retail use would be feasible in this location" [Staff Report, page 32]. Only the applicant's self serving statements are provided to support that required finding. The truth is that the Project site is viable for commercial visitor-serving uses, but such a project does not suit the desire of the applicant who has agreed to mitigate the loss of visitor-serving land with payment of a dubious "in lieu mitigation fee," as discussed further below.³

D. THE \$2,000,000 "IN LIEU MITIGATION FEE" IS ILLEGAL.

Commission staff claims that the applicant's agreement to pay a \$2,000,000 "in lieu mitigation fee" will compensate for approval of the Project. In sum, Project approval means that 24 acres of land once designated for commercial visitor-serving uses is permanently converted to property reserved for five wealthy future homeowners, gated off from the public. Staff explains that the applicant's payment would be paid to the California Department of Parks and Recreation, through an escrow account, for use in developing lower cost visitor accommodations now at the Cameron Nature Preserve, to be released upon the owner securing Project entitlements.

The subject \$2,000,000 agreement is in conflict with, and in fact, circumvents the requirements of California's Mitigation Fee Act ("MFA") and substantial case law that requires there to be a reasonable relationship between impacts of a project and the fee imposed, as well as a rough proportionality between project impacts and the exaction. Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994); Ehrlich v. City of Culver City, 12 Cal.4th 854 (1996); Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013). The Staff Report states that the City is "not interested" in dedicating time and funds to conduct a study pursuant to the MFA in order to determine the nexus and rough proportionality requirements. The Staff Report admits the third party agreement is a "mechanism" to circumvent the MFA but, tellingly, does not offer any legal justification for doing so.

² The Project Environmental Impact Report ("EIR") completely fails to analyze the impacts of this dramatic shift.

³ Substantial evidence of the economic viability of visitor serving uses at the Project site was submitted to the City of Malibu, but ignored. [See Gaines & Stacey presentation to the City of Malibu, February 24, 2014.]

E. DENIAL OF THE PROPOSED LCPA WILL NOT RESULT IN A TAKING.

The applicant has threatened to bring a lawsuit against the Commission if the proposed LCPA is revised or denied. Such a suit would be baseless. The Coastal Commission has the authority to modify LCPA language so long as it is consistent with the Coastal Act. Should the Commission approve modified LCPA language, the City of Malibu is required to take action to accept or reject the changes proposed by the Coastal Commission. An acceptance of the Commission's changes by the City of Malibu would permit the project to go forward, following any required formal administrative action by the City. A rejection of the Commission's changes by the City of Malibu would not allow the project to go forward, requiring additional consideration and approval by the City and the Commission for a revised project at a future date. Nothing is being "taken" by the Commission's action.

The mere assertion of regulatory jurisdiction by a governmental body does not constitute a taking and the requirement that a person obtain a permit before engaging in a certain use of the property does not itself take the property; the very existence of a permit system implies that permission may be granted to allow the owner to use the property as desired.

Even if the Project is denied, there may be other viable uses available to the owner. Only when a permit is denied and the effect of the denial is to prevent all economically viable use of the land in question will a taking have occurred. Dolan v. City of Tigard, *supra*, [land use regulation does not effect a taking if it substantially advances legitimate state interests or does not deny owner all economically viable use of the land]; Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003, 1015-1016 [Fifth Amendment violated only when land use regulation denies owner economically viable use of land].)

One possible outcome is that the Commission will modify the LCPA language, resulting in a reduced project. A takings claim under a reduced project scenario would be unsuccessful because the owner would still be entitled to an economically viable use of the property. Case law is clear that diminished economic value is not a taking. Kaiser Dev. Co. v. City & County of Honolulu (9th Circ. 1990) 913 F.2d 573. In addition, the denial of the highest and best use is not a taking. Ramona Convent of the Holy Names v. City of Alhambra (1993) 21 Cal.App.4th 10. [Cases have also held that a zoning ordinance requiring tree trimming to protect neighbor's views is not an unconstitutional taking. Echevarrieta v. City of Rancho Palos Verdes (2001) 86 Cal.App.4th 472.]

Even an outright denial of the LCPA by the Commission would not provide the applicant with a valid takings claim. Without a final determination as to the future use of the property, such a claim would be unsuccessful because the Commission's denial of this LCPA does not mean that any other future use of the property would be denied as well.

Steve Kinsey, Chair
August 7, 2015
Page 6

In applying the "final determination" requirement, the agency must be given an opportunity to review reasonable alternative developments. A takings claim is not ripe until several proposals have been submitted and rejected. Determining the feasibility of a less intensive development is required. The plaintiff must be able to show that the agency has clearly and emphatically drawn the line as to the sole use to which the property may be put. Hoehne v. County of San Benito (9th Circ. 1989) 870 F.2d 529, 533. Therefore, if the Commission indicates that it is willing to consider a redesigned project at the time it rejects the LCPA, the applicant's takings claim will not be ripe. Reddell v. California Coastal Commission (2009) 180 Cal.App.4th 956.

F. CONCLUSION.

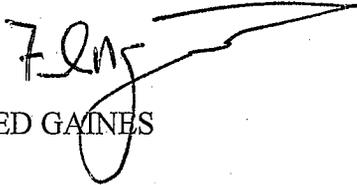
The Commission's approval of the Project would set a dangerous precedent by sending the statewide message that exclusive, gated housing developments on prime commercial visitor-serving property can gain Coastal Commission approval for the right price.

We respectfully request that the Commission deny the Project. Thank you for your consideration. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

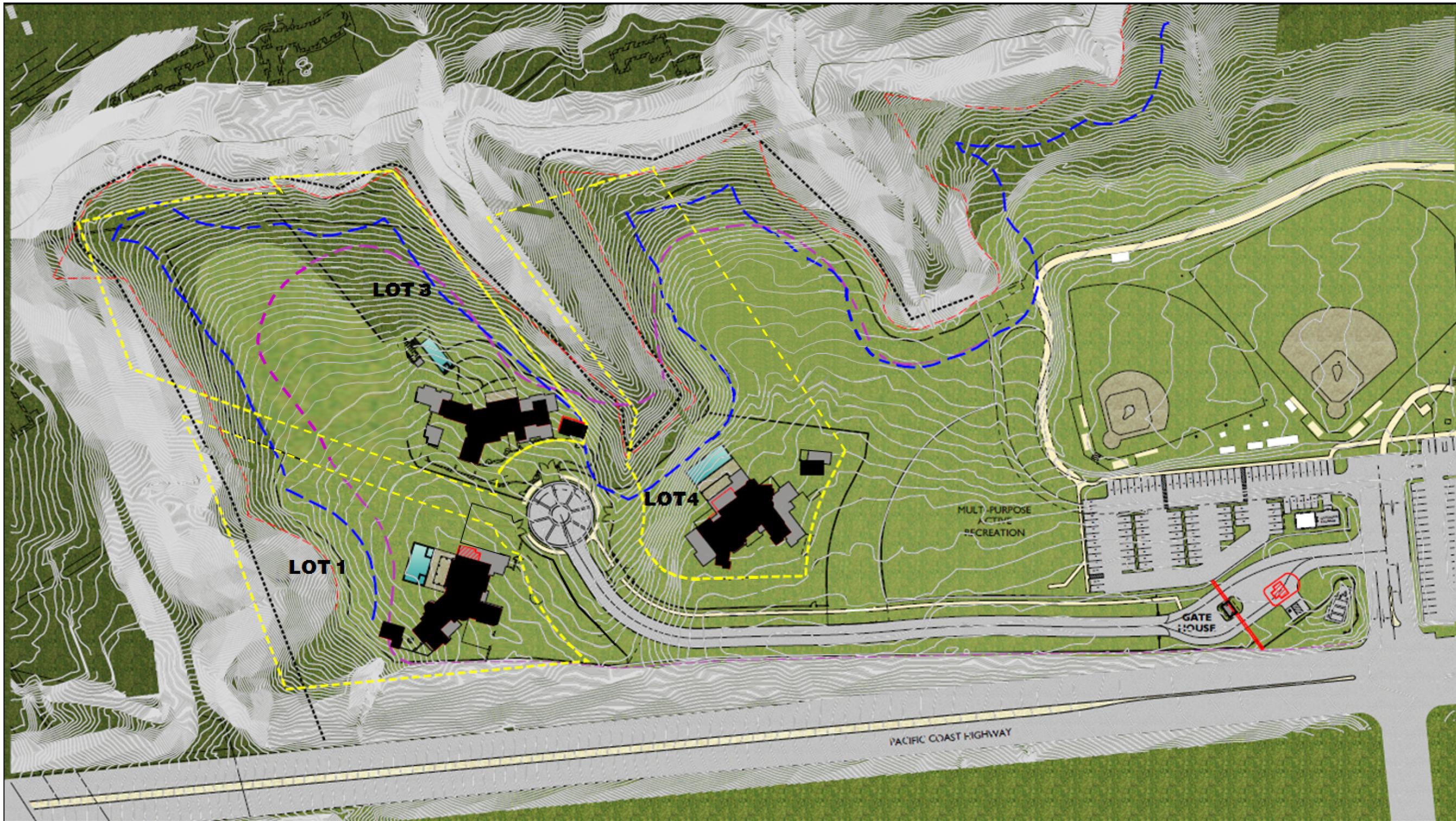
GAINES & STACEY LLP

By


FRED GAINES

Enclosure

cc: All Coastal Commission Members (Via Email)
Charles Lester, Executive Director (Via Email)
Jack Ainsworth (Via Email)



REVISED ESTATE SIZES

| | | |
|------------|-------------|----------|
| LOT NO. 1: | First Floor | 5,150 SF |
| | Second Unit | 520 SF |
| | Total | 5,670 SF |

| | | |
|------------|-------------|----------|
| LOT NO. 3: | First Floor | 4,870 SF |
| | Second Unit | 510 SF |
| | Total | 5,380 SF |

| | | |
|------------|-------------|----------|
| LOT NO. 4: | First Floor | 4,960 SF |
| | Second Unit | 440 SF |
| | Total | 5,400 SF |

GRAND TOTAL of: 16,450 SF

LEGEND

- PROPOSED SINGLE STORY BUILDING FOOT PRINT
- TWO STORY BUILDING FOOT PRINT
- BUILDING SETBACK
- 50' BLUFF SETBACK
- SAFETY SETBACK
- REVISED CONSERVATION EASEMENT
- REDUCED SINGLE STY FOOTPRINT

MASTER SITE PLAN

SCALE: 1:50

Received

AUG 07 2015

California Coastal Commission
South Central Coast District

EX-PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: GREG COX

Name or description of the project: Wed. 12b , City of Malibu LCP Amendment LCP-4-MAL-14-0408-1

Time/Date of communication: 2:45pm, August 5, 2015

Location of communication: phone

Person(s) initiating communication: Fred Gaines

Identity of person(s) on whose behalf communication was made: Rancho Malibu

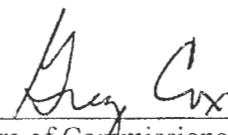
Person(s) receiving communication: Greg Murphy, for Greg Cox

Type of communication: phone call

Fred Gaines shared his client's opposition to the proposed LCP Amendment and made the following comments:

- 1) He would prefer to see fewer units, reduced size of each unit and concentrated development in order to protect public visual access from his client's property.
- 2) His client's property looks over the subject property of this LCPA, but does not yet have an existing public park developed. His client's property is zoned for visitor serving.
- 3) He would like some additional specificity in the proposed in-lieu fee for lower-cost visitor serving accommodations.

Date: 8/6/15



Signature of Commissioner

Addendum
Exhibit 8

Christensen, Deanna@Coastal

From: Hudson, Steve@Coastal
Sent: Friday, August 07, 2015 1:59 PM
To: Christensen, Deanna@Coastal
Subject: ex parte for crummer for addendum
Attachments: 2015.07.28 Crummer Site - ReducedFloor Plates of 3 Estates all at Culde....pdf

From: Miller, Vanessa@Coastal
Sent: Friday, August 07, 2015 1:29 PM
To: Hudson, Steve@Coastal
Subject: FW: RE: Coastal Commission-Request for Short Meeting or Phone Call re August Item W 12b

Would this go to your office or Long Beach?

From: Richard Bac [<mailto:rbac@smcgov.org>]
Sent: Friday, August 07, 2015 1:07 PM
To: Staben, Jeff@Coastal; Miller, Vanessa@Coastal
Subject: Fwd: RE: Coastal Commission-Request for Short Meeting or Phone Call re August Item W 12b

Hi Jeff and Vanessa,

This should be the last one. For a different Ex Parte (on the Crummer property).

Thanks,
Ricky

>>> Fred Gaines <fgaines@gaineslaw.com> 8/7/2015 8:38 AM >>>

Hello Richard – For this morning’s call with Commissioner Groom, attached please find an exhibit that I would like to discuss with her. I would greatly appreciate if you could forward it to her for our 9:00am call. Thanks.

Fred Gaines, Esq.
Gaines & Stacey LLP
16633 Ventura Boulevard, Suite 1220
Encino, CA 91436
Telephone: (818) 933-0200 ext. 201
Fax: (818) 933-0222
Email: fgaines@gaineslaw.com

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From: Richard Bac [<mailto:rbac@smcgov.org>]
Sent: Wednesday, August 05, 2015 3:37 PM

Redwood City, CA 94063

650.363.4314

rbac@smcgov.org

>>> "Carole Groom" <cgroom@smcgov.org> 8/4/2015 5:07 PM >>>

We'll do our best, we are close to running out of spaces in the calendar.

Carole

Sent from my iPhone

On Aug 4, 2015, at 4:19 PM, Fred Gaines <fgaines@gaineslaw.com> wrote:

Dear Commissioner Groom – I hope you are having a nice summer. I represent Green Acres LLC, the owners of the Rancho Malibu property. My clients have serious concerns regarding public access and view blockage issues related to the Crummer mansions project which is Item W 12b on your upcoming August 12th agenda. I would greatly appreciate the opportunity to speak with you about this matter. I kindly request 5 to 10 minutes of your time. Please let me know what day and time would be convenient for you. Thank you.

Fred Gaines, Esq.

Gaines & Stacey LLP

16633 Ventura Boulevard, Suite 1220

Encino, CA 91436

Telephone: (818) 933-0200 ext. 201

Fax: (818) 933-0222

Email: fgaines@gaineslaw.com

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CALIFORNIA COASTAL COMMISSION

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

W12b

DATE: July 31, 2015

TO: Commissioners and Interested Persons

FROM: Jack Ainsworth, Senior Deputy Director
Steve Hudson, Deputy Director
Barbara Carey, District Manager
Deanna Christensen, Coastal Program Analyst

SUBJECT: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer Trust Property Planned Development) for Public Hearing and Commission Action at the August 12, 2015 Commission Meeting in Chula Vista.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu is requesting an amendment to two sections of the Land Use Plan (LUP) portion of its certified Local Coastal Program (LCP) and one section of the Implementation Plan (LIP) portion of the LCP, all of which would affect only one parcel within the City. The LUP changes would delete LUP Policy 2.78, which is specific to the site at issue, and modify the requirements of the Planned Development (PD) land use designation, which is only applied on the subject site, to make that PD designation clearly and unconditionally allow for a mix of residential and recreational uses instead of commercial visitor-serving use. The other change would modify the Planned Development (PD) zone district to establish a specific set of development standards for the allowed mix of residential and recreational use. The Planned Development land use designation and zoning is currently applied to only one parcel in the City – a vacant 24-acre parcel adjacent to Malibu Bluffs Park, formerly known as the “Crummer Trust” parcel (APNs 4458-018-018, 019, 002), and now commonly called “Malibu Coast Estates.”

SUMMARY OF STAFF RECOMMENDATION

The major issues raised by this amendment request are the protection of scenic resources and adequate provision of visitor-serving commercial development and public recreational opportunities.

Commission staff recommends that the Commission **deny** the proposed City of Malibu LCP Amendment LCP-4-MAL-14-0408-1 as submitted and **approve** the amendment subject to three suggested modifications that begin on Page 10 of this staff report. The motions to accomplish this are found on Pages 7-9 of this staff report. The standard of review for the changes to the Land Use Plan is whether the LUP, as amended, would still meet the requirements of and be 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 LIP, as amended, would still

conform with and be adequate to carry out the provisions of the Land Use Plan (LUP) portion of the certified City of Malibu Local Coastal Program, as amended.

The proposed amendment would have an adverse effect on priority visitor-serving opportunities in the area. Residential development is not a priority use within the Coastal Zone. Recognizing that the abandonment of the potential for a high-priority Commercial Visitor-Serving use of the property would reduce the potential for visitor-serving and affordable overnight accommodation use in this area and result in a lower priority land use under the Coastal Act, the property owner has offered to pay the in-lieu mitigation fee of \$2,000,000 to assist in funding affordable overnight accommodations in the Malibu area. In order to implement such a mitigation fee offer in the context of an LCP amendment, the specific fee amount would typically be added to the LCP as a condition of the land use change along with the provisions for payment and use of the fee. However, in this case, the City of Malibu has expressed concern about a specific visitor-serving in-lieu mitigation fee amount being specified in the LCP, which is one of the reasons why the City never accepted the Commission's suggested modifications the last time the City proposed these changes to the LCP related to the subject site (LCP Amendment No. MAL-MAJ-2-09-A). The City has indicated that they would have to conduct a mitigation in-lieu fee study if the fee were to be a part of the LCP amendment.

To address the City's concerns and provide an effective alternative mechanism for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission to provide a \$2,000,000 in-lieu fee to the Mountains Recreation and Conservation Authority (MRCA), through an escrow account, for use in developing low-cost visitor serving overnight accommodations (campground facilities, including tent camps and tent cabins, to serve the public and MRCA's programs for disadvantaged and foster youth) at MRCA's Cameron Nature Preserve in Puerco Canyon, to be released once the owner secures entitlements to subdivide and to develop the site with a mix of residential and recreational uses and those entitlements are no longer subject to challenge. The agreement also provides for the delivery into escrow of a Declaration of Covenants by the current property owner, to be recorded upon effective certification of the LCP amendment. If the conditions for recordation of the Declaration of Covenants are met, the obligation for payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners. This provision thus provides extra assurances that the loss of visitor-serving opportunity will be mitigated even if the current property owner decides not to pursue the project. As such, the agreement is structured to provide the Commission with assurance of payment of the fee, which is necessary to mitigate for the loss of a higher priority use and represents an excellent opportunity to provide lower cost visitor-serving accommodations near the project site, just outside the Malibu City limits, in the unincorporated Santa Monica Mountains. And using an escrow arrangement provides the property owner assurance that the required fee will only be transferred upon securing final entitlements for the planned development.

Despite the conditional nature of the allowance for residential use on this site in the current land use designation, such use was nevertheless clearly contemplated for the "Crummer Trust"

property when Malibu's LCP was certified, under the right conditions. With the adoption of the suggested modifications, which include a provision for dedication of a portion of the subject parcel to recreational use, and the execution of the escrow agreement and declaration of covenants, which include provisions to compensate for the loss of the potential for visitor-serving use of the land, the proposed redefinitions of the Planned Development land use and zoning designations would not have an adverse effect on priority visitor-serving opportunities in the area and can be made fully consistent with Chapter 3 policies.

The amendment proposes to add a specific set of development standards for the planned development on the subject site that detail how the site will be subdivided and developed with a mix of residential and recreational use. Further, the coastal development permits for the subdivision and specific planned development at the subject site have already been conditionally approved by the City of Malibu, conditioned to not be effective until certification of the subject LCP amendment. As such, Commission staff has conducted a project-level review of the specific development proposed for the planned development and recommend adoption of suggested modifications to the proposed Planned Development standards in order to protect scenic public views from public viewing areas and to ensure internal consistency among the provisions of the LCP.

The subject LCP amendment had its first public hearing before the Commission at the February 12, 2015 meeting in Pismo Beach. After hearing all of the testimony regarding the amendment and the specific planned development, the Commission continued the hearing and directed Commission staff, the applicant (the City of Malibu), and the property owner to work together to address the Commission's comments and suggestions. Concerns raised by Commissioners at the February 12, 2015 hearing related to the adequacy and use of the proposed \$2,000,000 mitigation fee and the visual impacts of the planned development from public viewing areas. Specifically, Commissioners suggested limiting the height of the residences to 18 feet, reducing the size and scale of the residences, further clustering the residences, potentially eliminating the residences on Lots 1 and 2, expanding the open space conservation easement area, and changing or eliminating the guarded entry gate to the development. Commissioners also expressed interest in increasing the amount of the mitigation fee and requested more details and certainty regarding use of the proposed mitigation fee and timeline for implementation of the lower-cost visitor serving overnight accommodations.

In response to comments made by Commissioners at the February 12, 2015 hearing, the property owner submitted a revised plan for the planned development to: (1) reduce the height of the residences on Lots 1, 2, 4, and 5 to 18 feet (Lot 2 would maintain an 18 foot maximum height as previously proposed); (2) relocate the entry gate and guardhouse farther away from the public park and reduce the size of the guardhouse; (3) increase the size of the open space conservation easement area by approximately 64,000 sq. ft.; and (4) modify the landscaping plan to reduce the maximum height of proposed site landscaping. Even with these changes, Commission staff remained concerned regarding the visibility of the residences on Lots 1 and 2 from public viewing areas downcoast. Based upon direction from Commission staff, the property owner submitted another revised plan for the planned development that: (1) incorporates a four foot high berm along the eastern edge of Lots 1 and 2 that will give the appearance of a natural-

looking extension of the bluff slopes and help further minimize views of the structures from downcoast public viewing areas; (2) reduces the height of the easternmost approximately 2,500 sq. ft. of the residence on Lot 2 by 3 feet (from 18 to 15 feet) and shifts the pool and patio on Lot 2 approximately 12 feet closer to the residence; (3) reduces the height of the southwest corner of the residence on Lot 5 by 3 feet (from 18 to 15 feet) and shifts the pool, patio, and cabana on Lot 5 approximately 10 feet to the east and 6 feet closer to the residence, and (4) shifts the guest house on Lot 1 closer to the residence. Commission staff believes that all of these changes made by the property owner are responsive to Commissioner concerns expressed at the February 12, 2015 hearing and will serve to minimize views of the planned development from public viewing locations. The applicant continues to propose dedication of 1.74 acres of the site for public recreational use and \$2,000,000 to mitigate for the loss of potential visitor serving opportunity on the site.

Staff recommends adoption of the suggested modifications to the proposed Planned Development standards in order to ensure the design changes are carried out to protect scenic public views and to ensure internal consistency among the provisions of the LCP.

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.

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EXHIBITS

[Exhibit 1: City of Malibu Proposed LCP Amendment Text](#)

[Exhibit 2: Aerial View of the Malibu Coast Estate/Crummer Trust Property](#)

[Exhibit 3: Malibu Coast Estate Planned Development Map 1](#)

[Exhibit 4: Proposed Residential Elevations for Planned Development Lots 1-5](#)

[Exhibit 5: Tentative Tract Map with Previously Proposed Development Configuration and Elevations](#)

[Exhibit 6a: “Study of Lower Cost Overnight Accommodations Serving the City of Malibu and its Vicinity,” by AZ Winter Mesa LLC, dated September 2008](#)

[Exhibit 6b: “Feasibility Analysis” of a Potential Hotel Development, by PKF Consulting, dated April 28, 2015](#)

[Exhibit 7: Visual Simulation Photos](#)

[Exhibit 8: MRCA Conceptual Proposal for Low-Cost Visitor-Serving Overnight Accommodations at Cameron Nature Preserve in Puerco Canyon](#)

[Exhibit 9: Correspondence Received since the February 12, 2015 Commission Hearing](#)

[Exhibit 10: Transcript of Proceedings of Commission Agenda Item Th20b on February 12, 2015](#)

[Exhibit 11: Escrow Agreement and Declaration of Covenants](#)

APPENDICES

[Appendix A Substantive File Documents](#)

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

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

The Coastal Act further provides:

The Commission may only reject zoning 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 proposed amendment affects the Land Use Plan and Implementation Plan components of the certified City of Malibu LCP. The standard of review that the Commission uses in reviewing the proposed Land Use Plan amendment is whether the Land Use Plan, as proposed to be amended, would remain consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the Implementation Plan of the certified LCP, pursuant to Section 30513 of the Coastal Act, is whether the Implementation Plan, as proposed to be amended, would remain in conformance with, and adequate to carry out, the provisions of the Land Use Plan (including the proposed amendments) portion of the certified City of Malibu LCP. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified Land Use Plan.

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 on October 2, 2008, June 7, 2012, May 6, 2013, January 6, 2014, February 24, 2014, and May 19, 2014. The hearings were noticed to the public consistent with Sections 13551 and 13552 of Title 14 of the California Code of

Regulations. The City received written or oral comments regarding the proposed amendment from interested parties or members of the public. After the City submitted its proposed LCP amendment to the Commission, the Commission held a public hearing on February 12, 2015 and received oral and written comments regarding the proposed amendment before voting to continue the public hearing. Notice of the subject amendment 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 after Commission certification. However, in this case, if the Commission approves this Amendment with suggested modifications, either as recommended by staff or otherwise, the City will have to act to accept the certified suggested modifications within six months from the date of Commission action in order for the Amendment to become effective (California Code of Regulations, Title 14, Section 13544; Section 13537 by reference). Pursuant to Section 13544, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City.

II. STAFF 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 LCP-4-MAL-14-0408-1 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 LCP-4-MAL-14-0408-1 to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan amendment 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 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 land use plan amendment as submitted.

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

MOTION II: *I move that the Commission CERTIFY Amendment LCP-4-MAL-14-0408-1 to the City of Malibu Land Use Plan, if modified as suggested by staff.*

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan amendment 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 LCP-4-MAL-14-0408-1 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 amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan 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 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 amendment if modified.

C. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED

MOTION I: *I move that the Commission reject the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-14-0408-1 as submitted.*

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 LCP-4-MAL-14-0408-1 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 City of Malibu Local Implementation Plan Amendment LCP-4-MAL-14-0408-1 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 LCP-4-MAL-14-0408-1 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.

III. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified Land Use Plan is shown in straight type. Language proposed by the City to be deleted is shown in ~~line-out~~. Language proposed by the City to be added is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~double line-out~~. Language recommended by Commission staff to be inserted is shown double underline. 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

Land Use Plan Chapter 5, Section C.2 (Land Use Designations):

PLANNED DEVELOPMENT (PD): The PD designation is a specially tailored land use designation with a corresponding zoning district ~~which that~~ establishes zoning regulations and sets specific development standards for a specific planned development. The PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs, provides for a mix of residential and recreational development on the approximately 24-acre Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway (APNs 4458-018-019, 4458-018-002, and 4458-018-018). ~~in the event of permanent relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed of the park in accordance with Policy 2.78 of the Land Use Plan.~~

NOTE: The owner of the Crummer Trust Site as of the date of the Coastal Commission's action on LCP Amendment No. LCP-4-MAL-14-0408-1 ("Applicant") has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay an in-lieu fee to the Mountains Recreation and Conservation Authority for use in developing lower cost visitor accommodations, to be released upon Applicant's securing of entitlements to subdivide and to develop the site consistent with this revised definition of the PD designation above.

IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified Implementation Plan is shown in straight type. Language proposed by the City to be deleted is shown in ~~line-out~~. Language proposed by the City to be added is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~double line-out~~. Language recommended by Commission staff to be inserted is shown

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

SUGGESTED MODIFICATION NO. 2

Local Implementation Plan Section 3.3(Q) “Planned Development (PD) Zone”:

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development, consistent with the PD Land Use Designation in Chapter 5 (Section C.2) of the Land Use Plan, on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development consisting of five single-family residences and 1.744 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD District consists of the land designated as Assessor Parcel Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018, known as Malibu Coast Estate, and formerly known as the “Crummer Trust” parcel.

2. Permitted uses

~~The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.~~

The following uses and structures permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on the “Malibu Coast Estate Planned Development Vesting Tract Map 1” of this LIP.

a. Lot Nos. 1-5

- i. One single-family residence per lot
- ii. Accessory uses (one second residential units or guest house units per lot pursuant to Government Code Section 65852.2), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director) or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
- iii. Domestic animals, kept as pets

- iv. Landscaping
 - b. Lot No. 6
 - i. Uses and structures maintained by either the owners of Lots 1-5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guardhouse, private access road, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.
 - c. Lot No. 7
 - i. Parks and public open space, excluding community centers
 - ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and reasonably similar uses as determined by the Planning Director ~~or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.~~ Night lighting of recreational facilities shall be prohibited, except for the minimum lighting necessary for public safety.
 - iii. Onsite wastewater treatment facilities
3. Lot development criteria

~~In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development. All new lots created in Malibu Coast Estate shall comply with the following criteria:~~

- a. Lots No. 1-5
 - i. Minimum lot area: 113,600 square feet (2.60 acres)
 - ii. Minimum lot width: 115 feet
 - iii. Minimum lot depth: 480 feet
- b. Lot No. 6
 - i. Minimum lot area: 125,700 square feet (2.88 acres)
 - ii. Minimum lot width: 625 feet
 - iii. Minimum lot depth: 100 feet
- c. Lot No. 7

- i. Minimum lot area: 75,640 square feet (1.74 acres)
- ii. Minimum lot width: 460 feet
- iii. Minimum lot depth: 100 feet

4. Property development and design standards

Development in Malibu Coast Estate shall be subject to all applicable standards of the Malibu LIP, unless otherwise indicated in this LIP Section 3.3(Q). The following development standards shall replace the corresponding development standards otherwise contained in each noted LIP Section 3.6 for those lots in Malibu Coast Estate. All requirements of the LCP, including LIP Section 3.5, that are not inconsistent with the criteria listed below shall remain in effect for those lots in Malibu Coast Estate.

a. Lot Nos. 1-5

i. Development Footprint and Structure Size (Replaces corresponding standards in LIP Section 3.6(K))

- a) The total development square footage (TDSF) on each of Lot Nos. 1-5 shall not exceed ~~eleven thousand one hundred seventy-two (11,172) square feet~~ the following square footage per lot:;

Lot 1 – 10,052 sq. ft.

Lot 2 – 9,642 sq. ft.

Lot 3 – 9,434 sq. ft.

Lot 4 – 9,513 sq. ft.

Lot 5 – 10,990 sq. ft.

- b) ~~Structures Greater than Eighteen (18) Feet in Height. Notwithstanding any other provision of this chapter, the TDSF for a structure greater than eighteen (18) feet in height shall not be greater than permitted for single story construction. The second floor area plus the area of vaulted ceilings above eighteen (18) feet in height shall not exceed two thirds of the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.~~
- c) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
- d) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot

- projection) shall be included in TDSF.
- e) The development footprint on each lot (Lot Nos. 1-5) shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Structures on Lot 5 shall be setback a minimum of 190 feet from the edge of the bluff as identified on “Malibu Coast Estate Planned Development Map 1” in order to ensure that impacts to public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are minimized. The structural setback on Lot 5 does not apply to at grade improvements or low profile above-grade improvements for accessory uses not to exceed 10 feet in height.
- ii. Setbacks (Replaces corresponding standards in LIP Section 3.6(F))
 - a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less. However, the front yard setback for Lot 5 shall be at least forty-three (43) feet.
 - b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.
 - c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.
 - d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.
 - iii. Structure Height (Replaces corresponding standards in LIP Section 3.6(E))
 - a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet unless height increases up to twenty-four (24) feet flat roof and twenty-eight (28) feet pitched roof are approved subject to LIP Section 13.27 (Site Plan Review), except on Lot 2, structures shall not be higher than eighteen (18) feet, except the easternmost approximately 2,500 sq. ft. of the residence on Lot 2 and the southwestern corner of the residence on Lot 5 shall not be higher than 15 feet, as indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Height is measured from natural or finished grade, whichever is lower. ~~A pitched roof is a roof with a slope of 3:12 or steeper.~~
 - b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened. ~~Mechanical equipment behind a mansard roof may exceed twenty-four (24) feet in height but in no case shall it exceed the height of the mansard roof.~~

- c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.
- iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))
 - a) Notwithstanding other provisions of this Code, all grading associated with the berm, ingress, egress, including safety access, shall be considered exempt grading.
 - b) Non-exempt grading shall be limited to 2,000 cubic yards per lot.
 - c) Net export shall be limited to 3,500 cubic yards per lot.
- v. Impermeable Coverage, Landscaping, and Berm
 - a) The impermeable coverage requirement in LIP Section 3.6(I) shall apply.
 - b) In addition to the requirements of LIP Section 3.10, site landscaping shall be designed to minimize views of the approved structures as seen from public viewing areas, including the use of native trees to screen approved structures.
 - c) A natural-looking earthen berm that is 4 feet in height (except for the northernmost approximately 30 foot long portion on Lot 1 that shall be no less than 2 feet in height) above finished grade shall be constructed along the east side of all approved structures on Lots 1 and 2 to minimize views of the development from downcoast public viewing locations. The location and height of the berm shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. The berm shall be vegetated with native species that blend with the natural bluff landscape.
- vi. Parking (In addition to the parking standards of LIP Section 3.14)
 - a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
 - b) One enclosed or unenclosed parking space for a guest unit or second unit.
- vii. Colors and Lighting (In addition to the standards of LIP Section 6.5(B))
 - a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check

and must be approved by the Planning Director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.

b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4. To insure the protection of scenic and visual resources in accordance with the provisions of the LCP, any future improvements to structures or significant changes to landscaping beyond that authorized by the Coastal Development Permit (CDP) for each residential lot (Lots 1-5), which would ordinarily be exempt from a CDP pursuant to LIP Section 13.4.1, shall be subject to a new CDP or permit amendment.

b. Lot No. 6

i. Structure Size

The total development square footage of all structures shall not exceed 2180 square feet. The development footprint (gate and guardhouse) shall substantially conform to that indicated on "Malibu Coast Estate Planned Development Map 1" of this LIP.

ii. Setbacks

a) Buildings, not including projections permitted in Section 3.5 of the Malibu LIP shall maintain a minimum setback of fifty (50) feet from all property lines.

b) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.

iii. Structure Height

a) Structure height shall not exceed ~~16.5~~ 12 feet, as measured from natural or finished grade, whichever is lower.

b) In no event shall the maximum number of stories above grade be greater than one.

c) A basement, cellar or subterranean garage shall not be permitted.

iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))

a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.

b) Non-exempt grading shall be limited to 1,000 cubic yards.

c) Net export shall be limited to 2,500 cubic yards.

v. Impermeable Coverage (Replaces corresponding standard in LIP Section 3.6(I))

The impermeable coverage requirement in LIP Section 3.6(I) shall not apply. Up to 44,000 square feet of impermeable coverage shall be permitted.

vi. Parking (In addition to the parking standards of LIP Section 3.14)

The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking. Parking within the property boundaries shall not be located on or obstruct fire department access.

vii. Colors and Lighting

a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.

b) Lighting must comply with LIP Section 6.5(G).

c. Lot No. 7

i. Site Design

Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations. The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

ii. Parking (In addition to the parking standards of LIP Section 3.14)

Adequate parking shall be provided to serve the proposed recreational uses. Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses.

The Planning Director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement as long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided.

iii. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with LIP Section 13.4.9 and the temporary use permit process contained within Malibu Municipal Code Chapter 17.68.

~~5. Permit Required.~~

~~All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.~~

SUGGESTED MODIFICATION NO. 3

Add “Malibu Coast Estate Planned Development Map 1” (attached as Exhibit 3 of this staff report) as a map in Appendix 2 of the Local Implementation Plan.

**V. FINDINGS FOR DENIAL OF THE CITY OF MALIBU
LUP/LIP AMENDMENT, AS SUBMITTED, AND FINDINGS
FOR APPROVAL OF THE CITY OF MALIBU LUP/IP
AMENDMENT, IF MODIFIED AS SUGGESTED**

The proposed amendment affects the Land Use Plan (LUP) and Local Implementation Plan (LIP) components of the certified Malibu LCP. The standard of review that the Commission uses in reviewing the adequacy of the LUP amendment is whether the LUP, as amended, would continue to meet the requirements of and be consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the LIP, pursuant to Sections 30513 and 30514 of the Coastal Act, is whether the LIP, as amended, would remain in conformance with, and adequate to carry out, the provisions of the LUP portion of the certified City of Malibu LCP,

as amended.

The following findings support the Commission's approval of the LCP amendment only if modified as suggested. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION AND BACKGROUND

The Planned Development (PD) land use and zoning designation is currently applied to only one parcel – a vacant 24-acre parcel adjacent to Malibu Bluffs Park, formerly known as the “Crummer Trust” parcel (APNs 4458-018-018, 019, 002) (**Exhibit 2**). The Planned Development land use designation is defined in Chapter 5, section C.2, of the LUP as providing for a “mix of residential and recreational development” but only in the event that an agreement is reached with State Parks to permanently relocate the Bluffs Park athletic fields out of the prime viewshed of the park and onto the Crummer Trust property. Policy 2.78 of the LUP further specifies that if such an agreement is reached, a maximum of eight residential units could be permitted on the remainder of the Crummer Trust property. However, that agreement was never reached, and Land Use Plan Policy 2.78 states that in that circumstance, the land use designation of the site “shall remain CV-2 (Commercial visitor-serving).”

The City of Malibu is requesting an amendment to the Land Use Plan (LUP) portion of its certified LCP to modify the requirements of the Planned Development land use designation to make the allowance for a mix of residential and recreational use unconditional and immediately applicable, and to eliminate policy 2.78 and, along with it, the reference to commercial visitor-serving use of the site. The amendment further proposes to modify the Planned Development zone district of the Local Implementation Plan (LIP) portion of its LCP to add specific development standards for the planned development (**Exhibit 1**).

The City of Malibu submitted the subject LCP amendment on April 2, 2014. The amendment submittal was deemed complete by Commission staff and filed on June 6, 2014. At its August 2014 Commission meeting, the Commission extended the 90-day time limit to act on the LCP amendment for a period not to exceed one year. The Commission held a public hearing on the subject LCP amendment on February 12, 2015 and received oral and written comments. At that hearing, the Commission voted to continue the public hearing and directed staff to work with the applicant and property owner to address the concerns raised by the Commission. The transcript from that hearing is attached as **Exhibit 10**.

Background

The subject “Crummer Trust” property is an approximately 24-acre vacant parcel situated on a coastal bluff between Pacific Coast Highway (PCH) to the north and Malibu Road and the Pacific Ocean to the south. Single-family residences are situated on both the landward and seaward side of Malibu Road to the south of the subject property (**Exhibit 2**). The Pacific Ocean is approximately 300 feet away to the south of the subject site. West of the subject parcel is the City-owned Malibu Bluffs Park, which includes two baseball fields, a soccer field, a playground, parking, a walking path with an overlook, and a visitor center. To the west of the City park is the

Malibu Bluffs State Recreation Area, public parkland that is owned by the Santa Monica Mountains Conservancy. On an approximately five-acre parcel to the east of the subject property, the City of Malibu has approved a coastal development permit to demolish existing non-residential structures and re-develop the site with four new single-family residences.

Prior to incorporation of the City of Malibu in 1991, the subject property was primarily designated “Commercial/Office”, with a small portion of the site on the bluff designated Rural Land II (1du/5 acres), in the Commission-certified 1986 Los Angeles County Malibu-Santa Monica Mountains Land Use Plan (1986 LUP). The property was not specifically designated for visitor-serving use in the 1986 LUP. This designation persisted until the City incorporated in 1991, and the portion of the 1986 LUP covering Malibu became ineffective. While the property was still in County of Los Angeles jurisdiction, there was only one proposal seriously advanced for the site – a “think tank” facility for General Motors. This proposal also was abandoned. The site has never been proposed for a hotel or resort, either when under the jurisdiction of the County of Los Angeles or of the City. The site has no direct connection to the beach.

From the time of Malibu’s incorporation in 1991 until 2002, there was no Commission-certified LUP or IP for the City, and thus, there was no Commission-certified land use designation or zoning for the Crummer property. At the time the Commission was preparing the Malibu Local Coastal Program in 2002, the site was determined to be appropriate for visitor-serving uses, which are higher priority under the Coastal Act, due to its size and proximity to the Civic Center area, Pepperdine University, and Pacific Coast Highway, even though such a designation had not applied to this site in the 1986 LUP.

However, at the same time, the City of Malibu and the California Department of Parks and Recreation (State Parks) had been negotiating a proposal for State Parks to fund the transfer of the existing, temporary athletic fields in the adjacent Bluffs Park (State parkland) onto the subject “Crummer Trust” property. The goal of this negotiation was to preserve State parkland for regional park uses and to also preserve the athletic fields for local use. Because such a deal would occupy much of the Crummer property, in the Malibu LCP, the Commission assigned that property a place-holder zone designation of “Planned Development” that would allow the remainder of the site to be developed with a mix of residential and recreational use, with up the eight residential units permitted, but only once the deal was completed. The LCP also included an additional policy (2.78), specific to this site, which clarified that if no agreement was reached with State Parks to move the Bluffs Park athletic fields to the property, the site would “remain CV-2 (Commercial visitor-serving).”

However, after the LCP was certified by the Commission, a different agreement was reached between State Parks and the City of Malibu. State Parks transferred ownership of Bluffs Park to the Santa Monica Mountains Conservancy and the City of Malibu purchased a portion of Bluffs Park (10 acres) that included the athletic fields and the visitor center facility from the Conservancy. The “Crummer Trust” property was not a part of the transaction. Therefore, pursuant to Policy 2.78 of the certified LUP, the Crummer Trust property was to be for Commercial Visitor-Serving use. However, the certified Land Use and Zoning Maps simply designate the “Crummer” site Planned Development (PD), with no mention of the Commercial

Visitor-Serving (CV-2) designation. Therefore, there is an internal inconsistency in the LCP that must be resolved.

Prior LCP Amendment

The Commission previously approved an LCP amendment regarding the “Crummer” property that was very similar to the subject one. At the February 11, 2010 Commission hearing, the Commission approved City of Malibu LCP Amendment No. MAL-MAJ-2-09-A, with suggested modifications to allow for a mix of residential and recreational use instead of commercial visitor-serving use at the site. Although a specific project had not been approved by the City at that point and was not proposed as part of the LCP amendment, the amendment (LCP Amendment No. MAL-MAJ-2-09-A) involved conceptual approval of a residential density at the site allowing seven new lots: five lots containing five new single-family residences, one homeowners association lot that would contain a private road in the eastern portion of the site and ancillary facilities to serve the new residences, and one lot consisting of approximately 1.74 acres to be dedicated to the City of Malibu to expand the adjacent City-owned park with an additional baseball field and 35 parking stalls. In addition, an open space conservation easement area was to be dedicated to the Mountains Recreation and Conservation Authority (MRCA) across a 7-acre area of the 24-acre parcel for the purpose of habitat protection. In order to mitigate for the loss of visitor serving land (since 10 acres of Bluffs Park had gone to the City for local uses and most of the Crummer site would be designated for residential development), the suggested modifications approved by the Commission included a provision for payment of an in lieu fee. At the February 11, 2010 Commission hearing, the property owner offered to increase the proposed in-lieu mitigation fee from \$750,000 to \$2,000,000 to assist in funding affordable overnight accommodations elsewhere on the coast in the general area. At the hearing, the Commission determined that the mitigation fee of \$2,000,000 was more appropriate and proportional in this case given the large size of the parcel and substantial loss of visitor-serving opportunity. The Commission-approved suggested modifications reflected this increase in the in-lieu mitigation fee. The Commission also determined that the fee should be used locally to provide funding to California Department of Parks and Recreation for lower cost overnight visitor accommodations at the former Topanga Ranch Motel site within Lower Topanga State Park. The Commission found that the fee should be expended within two (2) years, unless this time limit was extended for good cause by the Coastal Commission. The Commission also included flexibility to allow Commission re-allocation of the funds for another low cost overnight accommodation project if the funds were not expended within the two-year time period.

At the February 2010 hearing, the Commission also determined that the proposed active recreational use contemplated for the site (baseball field or other active use) would primarily serve the local public rather than the members of the public from a regional or statewide area, and thus, would not maximize public access to the coast. Therefore, the Commission found that the approximately 1.74-acre recreational area of the site would have to be limited to passive public recreational use in order to increase its public benefit. Further, the Commission found a gated residential community in this location would be inconsistent with the character of the area and would create the perception of an exclusive community. Therefore, the Commission determined that entry gates would not be allowed along the access road to the proposed

residential properties of the site. Revised findings reflecting the Commission's action on LCP Amendment No. MAL-MAJ-2-09-A were approved by the Commission at the April 16, 2010 Commission meeting.

However, the City of Malibu never took formal action to accept the Commission's suggested modifications on the LCP amendment. Therefore, at the expiration of the 6-month timeframe from Commission action established by Section 13544 of the Commission's regulations, the Commission's approval of LCP Amendment No. MAL-MAJ-2-09-A expired and was never certified. The City of Malibu expressed concern about several aspects of the Commission's required suggested modifications. The City objected to the requirement that the approximately 1.74-acre recreation lot for City use was limited to passive public recreational use instead of active recreational use. The City was also concerned about a specific visitor-serving in-lieu mitigation fee amount being specified in the LCP, rather than just a general concept.

Proposed LCP Amendment and the Planned Development

The owner of the subject "Crummer" property proposes a specific planned development that involves subdividing the parcel into seven new lots, to be developed as follows: five lots containing five new single-family residences (Lot Nos. 1-5), one lot which will contain a private road, gatehouse, and ancillary facilities to serve the new residences (Lot No. 6), and one lot consisting of approximately 1.74 acres to be dedicated to the City of Malibu to expand the adjacent City-owned park for active recreation use (Lot No. 7) (**Exhibit 3**). An EIR was prepared and adopted for the project by the City pursuant to CEQA. The City has also approved the individual coastal development permits for subdivision of the property and residential and accessory development on the created lots (**Exhibit 5**). However, the coastal development permits were conditioned by the City to not be effective until after certification of the subject LCP amendment. Notwithstanding the requirements of Malibu LIP Section 13.16 that a Final Local Action Notice be submitted to the Commission within seven days of City action, the Final Local Action Notices in this case have never been submitted to the Commission, and therefore, the approved CDP's related to this site are not final.

Specifically, the City approved the following:

- On January 6, 2014, the City approved CDP No. 07-144 and Vesting Tentative Tract Map No. 07-033 for subdivision of the site into 7 individual parcels, dedication of 1.74 acres to the City of Malibu for active and passive recreational uses (created Lot 7), and dedication of a conservation easement totaling approximately 6.23 acres to the Mountains Recreation and Conservation Authority. The approval also included extension of a water line to service the created lots, development of an access road, 280 sq. ft. guard house, hardscaping and landscaping, and an onsite wastewater treatment system (OWTS) package plant on created Lot 6, and the development of seepage pits on created Lot 7. The OWTS package plant would treat wastewater generated from each of the residences and the gatehouse. Clean effluent from the OWTS package plant would be discharged to seepage pits in the southernmost portion of Lot 7 along Winter Mesa Drive. The OWTS would be designed with a stubout box and purple pipe to allow for connection to a

municipal wastewater treatment in the Civic Center area in the future to process wastewater produced on the project site. Pursuant to Special Condition 18 of the CDP, approval of the permit is contingent upon certification of the subject LCP amendment.

- On February 24, 2014, the City approved the subject LCP amendment to modify the requirements of the Planned Development land use designation to allow for a mix of residential and recreational use at the subject site, with a specific set of development standards, instead of commercial visitor-serving use. The City also certified the Final EIR and adopted the Mitigation Monitoring and Report Program for the project.
- On May 19, 2014, the City approved CDP No. 07-145, 07-146, 07-147, 07-148, and 07-149 for residential development on each of the created residential parcels (Lots 1-5). Pursuant to Special Condition 11 of each CDP, the approved permit is not effective until certification of the subject LCP amendment.
 - On Lot 1, the City approved 8,039 square foot, two-story, 28 feet high, single-family residence with a 1,000 square foot basement, 891 square foot garage, detached 615 square foot second unit, 507 square feet of covered loggia space that projects more than six feet; outdoor barbeque area with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,972 cu. yds. grading (1,288 cu. yds. cut, 684 cu. yds. fill), motor court, septic tank and landscaping.
 - On Lot 2, the City approved a 7,951 square foot, 18 feet high single-story single-family residence with a 1,579 square foot basement and subterranean garage, 458 square foot gym, 480 square foot second unit, 733 square feet of covered loggia space that projects more than six feet; outdoor fireplace with trellis, swimming pool, and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,994 cu. yds. grading (56 cu. yds. cut, 1,938 cu. yds. fill), motor court, septic tank, and landscaping.
 - On Lot 3, the City approved a 7,720 square foot, two-story, 28 feet high single-family residence with a 1,000 square foot basement, 435 square foot detached second unit, 716 square foot garage, 84 square foot cabana, 479 square feet of covered loggia space that projects more than six feet; trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,976 cu. yds. grading (716 cu. yds. cut, 1,260 cu. yds. fill), motor court, septic tank, and landscaping.
 - On Lot 4, the City approved a 7,852 square foot, two-story, 28 feet high single-family residence with a 994 square foot basement, 881 square foot garage, 149 square foot cabana, 631 square feet of covered loggia space that projects more than six feet; outdoor fireplace with trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,831 cu. yds. grading (79 cu. yds. cut, 1,752 cu. yds. fill), motor court,

septic tank, and landscaping.

- On Lot 5, the City approved a 8,738 square foot, two-story, 28 feet high single-family residence with a 1,752 square foot basement, 885 square foot garage, 479 square foot second unit, 188 square foot cabana, 700 square feet of covered loggia space that projects more than six feet; trellis, swimming pool, spa and pool equipment, decking, hardscape, roof-top mechanical equipment, water features, fencing, 1,458 cu. yds. grading (453 cu. yds. cut, 1,005 cu. yds. fill), motor court, septic tank, and landscaping.

The City and property owner believe that a Commercial Visitor-Serving use is not viable at this site and that a mix of residential and recreational uses would be appropriate and consistent with the intent of a previous agreement contemplated for the site. Recognizing that the resultant conversion of the property from Commercial Visitor-Serving to Residential/Recreational (Planned Development) would reduce the potential for visitor-serving and affordable overnight accommodation use in this area and result in a lower priority land use under the Coastal Act, the property owner has offered to pay the in-lieu mitigation fee of \$2,000,000 that the Commission had previously required to assist in funding affordable overnight accommodations elsewhere in the coastal zone.

However, this proposed fee is not reflected in the proposed LCP amendment request given the City's concerns regarding a specific in-lieu mitigation fee amount being specified in the LCP. To address the City's concerns and provide an effective alternative mechanism for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay a \$2,000,000 in-lieu fee to the Mountains Recreation and Conservation Authority (MRCA) for use in developing low-cost visitor serving overnight accommodations (campground facilities, including tent camps and tent cabins, to serve the public and MRCA's foster and disadvantaged youth programs) at MRCA's Cameron Nature Preserve in Puerco Canyon, to be released once the existing CDPs become final, including having survived any challenge or otherwise being beyond the point where they can be challenged (**Exhibit 11**). The agreement also provides for the delivery into escrow of a Declaration of Covenants by the current property owner, to be recorded upon effective certification of this LCP amendment. Once the Declaration of Covenants is recorded, the obligation for payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners. As a result, even if the existing permits never become final, and the money in the escrow account is not released to MRCA, once the LCP amendment is final and beyond challenge, so the eventual residential development of the site is possible, the in-lieu fee payment obligation is in place and must be implemented by whoever owns the property and secures entitlements to subdivide and to develop the site with a mix of residential and recreational uses, thereby providing a high degree of assurance that the land use impacts resulting from the re-designation of the site from CV-2 to PD will be mitigated even if the current property owner decides not to pursue the project (**Exhibit 11**). This issue is discussed in more detail in the section to follow.

The subject LCP amendment had its first public hearing before the Commission at the February 12, 2015 meeting in Pismo Beach (Transcript is attached as **Exhibit 10**). After hearing all of the testimony regarding the amendment and the specific planned development, the Commission continued the hearing and directed Commission staff, the applicant (the City of Malibu), and the property owner to work together to address the Commission's comments and suggestions. Concerns raised by Commissioners at the February 12, 2015 hearing related to the adequacy and use of the proposed \$2,000,000 mitigation fee and the visual impacts of the planned development from public viewing areas. Specifically, Commissioners suggested limiting the height of the residences to 18 feet, reducing the size and scale of the residences, further clustering the residences, potentially eliminating the residences on Lots 1 and 2, expanding the open space conservation easement area, and changing or eliminating the guarded entry gate to the development. Commissioners also expressed interest in increasing the amount of the mitigation fee and requested more details and certainty regarding use of the proposed mitigation fee and timeline for implementation of the lower-cost visitor serving overnight accommodations.

In response to comments made by Commissioners at the February 12, 2015 hearing, the property owner submitted a revised plan for the planned development to: (1) reduce in the height of the residences on Lots 1, 2, 4, and 5 to 18 feet (Lot 2 would maintain an 18 foot maximum height as previously proposed); (2) relocate the entry gate and guardhouse further away from the public park and reduce the size of the guardhouse; (3) increase the size of the open space conservation easement area by approximately 64,000 sq. ft.; and (4) modify the landscaping plan to reduce the maximum height of proposed site landscaping. Even with these changes, Commission staff remained concerned regarding the visibility of the residences on Lots 1 and 2 from public viewing areas downcoast. Based upon direction from Commission staff, the property owner submitted another revised plan for the planned development that: (1) incorporates a four foot high berm along the eastern edge of Lots 1 and 2 that will give the appearance of a natural-looking extension of the bluff slopes and help further screen views of the structures from downcoast public viewing areas; (2) reduces the height of the easternmost approximately 2,500 sq. ft. of the residence on Lot 2 by 3 feet (from 18 to 15 feet) and shifts the pool and patio on Lot 2 approximately 12 feet closer to the residence; (3) reduces the height of the southwest corner of the residence on Lot 5 by 3 feet (from 18 to 15 feet) and shifts the pool, patio, and cabana on Lot 5 approximately 10 feet to the east and 6 feet closer to the residence, and (4) shifts the guest house on Lot 1 closer to the residence. (**Exhibits 3-4**) As discussed in more detail in the following consistency analysis, the Commission finds these changes made by the property owner are responsive to Commissioner concerns expressed at the February 12, 2015 hearing and finds that they will serve to minimize views of the planned development from public viewing locations. The applicant continues to propose dedication of 1.74 acres of the site for public recreational use and \$2,000,000 to mitigate for the loss of visitor serving opportunity on the site.

Correspondence from the public received since the Commission's February 12, 2015 hearing is attached as **Exhibit 9**. The correspondence received express support for the proposed planned development.

B. CONSISTENCY ANALYSIS

1. Visitor-Serving Lands and New Development

The Coastal Act and the Malibu LCP place a high priority on providing for visitor-serving and recreational land uses in the coastal zone. The Coastal Act and Malibu LCP encourage the provision of lower cost visitor and recreational facilities and prioritize visitor-serving commercial development over residential development. Without the mitigation proposed by the property owner, the proposed LUP amendment would not be in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development.

As noted above, the standard of review for the proposed LIP changes is the LUP, as amended. The following two lists first list Coastal Act policies that have been incorporated in their entirety into the certified City of Malibu Land Use Plan as policies and then list additional LUP policies that are relevant in assessing the proposed LIP changes.

Relevant Coastal Act Policies

Section 30213 of the Coastal Act states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 of the Coastal Act states:

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.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30250(a) of the Coastal Act states that:

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

Section 30252 of the Coastal Act states:

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.

Other Applicable City of Malibu Land Use Plan Policies

- 2.33 *Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.*
- 2.34 *Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.*
- 2.36 *Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities; shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.*
- 2.37 *Priority shall be given to the development of visitor-serving commercial and/or recreational uses that complement public recreation areas or supply recreational opportunities not currently available in public parks or beaches. Visitor-serving commercial and/or recreational uses may be located near public park and recreation areas only if the scale and intensity of the visitor-serving commercial recreational uses is compatible with the character of the nearby parkland and all applicable provisions of the LCP.*
- 2.78 *If an agreement is reached by the State Department of Parks and Recreation to relocate the existing athletic fields at Malibu Bluffs State Park out of the prime view shed of the park onto the 24.9 acre Crummer Family Trust parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway up to 8 residential units shall be permitted on the remainder of the (Crummer Trust) site. Said agreement shall cause the redesignation of the subject site to Residential in the LCP. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP. If no agreement is reached to relocate the*

existing athletic fields the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving).

- 5.35 *The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of surrounding parcels.*
- 5.36 *Land divisions shall be designed to minimize impacts to coastal resources and public access. A land division shall not be approved if it creates a parcel that would not contain an identified building site that could be developed consistent with all of the policies of the LCP.*

Chapter 5, Section C.2

PLANNED DEVELOPMENT (PD): The PD designation provides for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway in the event of permanent relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed of the park in accordance with Policy 2.78 of the Land Use Plan.

Finally, the current version of the LIP section that the City is proposing to change is as follows:

Applicable City of Malibu Implementation Plan Provisions

Chapter 3, Section Q

Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development of the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway, and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned developments in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development.

2. Permitted Uses

The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.

3. Development Criteria

In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development.

Discussion

Visitor-serving commercial development is considered a priority use under the Coastal Act and the Malibu LCP. The public access policies of the Coastal Act and Malibu LCP require that a range of affordable facilities, including overnight accommodations, be provided in new development along the coast.

From the time of Malibu's incorporation in 1991 until 2002, there was no Commission-certified LUP or IP for the City, and thus, there was no Commission-certified land use designation or zoning for the Crummer property. At the time the Commission was preparing the Malibu Local Coastal Program in 2002, the site was determined to be appropriate for visitor-serving uses, which are higher priority under the Coastal Act, due to its size and proximity to the Civic Center area, Pepperdine University, and Pacific Coast Highway, even though such a designation had not applied to this site in the 1986 LUP.

However, at the same time, the City of Malibu and the California Department of Parks and Recreation (State Parks) had been negotiating a proposal for State Parks to fund the transfer of the existing, temporary athletic fields in the adjacent Bluffs Park (State parkland) onto the subject "Crummer Trust" property. The goal of this negotiation was to preserve State parkland for regional park uses and to also preserve the athletic fields for local use. Because such a deal would occupy much of the Crummer property, in the Malibu LCP, the Commission assigned that property a place-holder zone designation of "Planned Development" that would allow the remainder of the site to be developed with a mix of residential and recreational use, with up the eight residential units permitted, but only once the deal was completed. The LCP also included an additional policy (2.78), specific to this site, which clarified that if no agreement was reached with State Parks to move the Bluffs Park athletic fields to the property, the site would "remain CV-2 (Commercial visitor-serving)."

However, after the LCP was certified by the Commission, a different agreement was reached between State Parks and the City of Malibu. State Parks transferred ownership of Bluffs Park to the Santa Monica Mountains Conservancy and the City of Malibu purchased a portion of Bluffs Park (10 acres) that included the athletic fields and the visitor center facility from the Conservancy. The "Crummer Trust" property was not a part of the transaction. Therefore, pursuant to Policy 2.78 of the certified LUP, the Crummer Trust property was to be for Commercial Visitor-Serving use. However, the certified Land Use and Zoning Maps simply designate the "Crummer" site Planned Development (PD), with no mention of the Commercial Visitor-Serving (CV-2) designation. Therefore, there is an internal inconsistency in the LCP that must be resolved.

The City and property owner believe that a Commercial Visitor-Serving use is not viable at this site and that a mix of residential and recreational uses would be appropriate and consistent with the intent of a previous agreement contemplated for the site pursuant to LUP Policy 2.78. Recognizing that the resultant conversion of the land at this property from commercial visitor-serving to residential/recreational would reduce visitor-serving commercial opportunities, the

property owner, in consultation with Commission staff, has offered to pay an in-lieu mitigation fee of \$2,000,000 to assist in funding affordable overnight accommodations elsewhere in the coastal zone.

The property owner has submitted a study to Commission staff that inventories and analyzes lower cost overnight accommodations serving the City of Malibu and its vicinity (**Exhibit 6a**). The study asserts that commercial offerings in Malibu generally cater to more affluent visitors/consumers rather than visitors seeking lower cost overnight accommodations, due in part to the high cost of land in Malibu, which is a major obstacle in constructing new lower-cost overnight accommodations. The subject property, in particular, is considered prime real estate given its bluff-top location adjacent to Pacific Coast Highway and overlooking the ocean. Adjacent land to the west is a City park and State public parkland. Adjacent land to the east and south is residential, at a maximum density of four dwelling units per acre. Adjacent land to the north and northeast is considered Malibu's Civic Center area and is zoned for Commercial and Commercial Visitor-Serving uses. Based on the foregoing considerations, the study concludes that the proposed conversion of the subject property is appropriate and would not represent a significant loss of visitor-serving opportunity because the site is not well-suited or economically viable for such a use. However, the study does demonstrate that a high-end, "boutique" hotel-type of visitor serving use appears potentially viable on the site. However, an additional analysis provided by the applicant concludes that even a high-end hotel development on the site would not be economically feasible given the physical and operational constraints of the property such as the lack of beach access, height restrictions, constraints regarding sewage disposal and access from Pacific Coast Highway (**Exhibit 6b**).

The study also asserts that there is ample inventory of lower-cost overnight accommodations in the greater Malibu vicinity, particularly in the nearby cities of Agoura Hills, Calabasas, Santa Monica, Venice, and Los Angeles. In addition, the study notes that State Parks and the Santa Monica Mountains Conservancy are developing plans to bring more lower-cost overnight accommodation opportunities to the coastal areas of Malibu and the Santa Monica Mountains. Under the City of Malibu's LCP, certified by the Commission in 2002, there are approximately twelve (12) parcels, totaling approximately 80 acres, zoned Commercial Visitor-Serving (excluding the subject property that is zoned "Planned Development"). Several of these parcels contain existing hotels, motels, or B & B's. There are currently six (6) existing overnight accommodation facilities in the City of Malibu, with a total of 117 rooms. Moreover, given the general development configuration being considered by the property owner and the City of Malibu for the subject site (although not a part of the proposed LCP amendment request), the contemplated mix of residential and recreational uses is consistent with the character of the area and is consistent with the adjacent land uses. The Commission thus finds that if properly mitigated, the proposed conversion can be found consistent with the Coastal Act. In addition, the conversion would not adversely impact coastal access along the coast or coastal resources, and would allow the clustering of development within or near an existing developed area able to accommodate it, consistent with Section 30250 of the Coastal Act.

Commercial visitor-serving uses allowed in the CV-2 zone include hotels/motels and a wide variety of retail uses, general services uses, office and health care related uses, dining, drinking

and entertainment uses and a variety of public, quasi-public or non-profit uses. Camping is specifically prohibited use on CV-2 zoned property. Although the site is located in a visible, well-traveled location near State-owned park lands and could potentially support some form of commercial and/or recreational development, there are a number of constraints that would limit the range and amount of visitor-serving uses that could be accommodated on the site. Given the bluff top location of the “Crummer” site adjacent to Pacific Coast Highway, an LCP designated scenic highway, any development on the site would have to consist of very low-profile type structures. In addition, with required bluff top setbacks per the LCP, the area of the property available for development is significantly reduced (approximately 8 acres). Further, there are operational constraints related to sewage disposal, access from Pacific Coast Highway, and the lack of beach access from the site. The landowner’s consultant (PKF Consulting) has indicated that given the constraints of the property, even a very high-end luxury boutique-type hotel of approximately 100 units would not be economically feasible (**Exhibit 6b**).

In the event a property owner proposes to build new overnight luxury accommodations, LUP Policy 2.35 and LIP Section 12.10 allows for the payment of an in lieu fee of \$10,419 applied to 15% of the total new luxury accommodations built on a property as a mechanism to ensure compliance with the objectives of Sections 30213 and 30222 of the Coastal Act and Polices 2.33, 2.34, 2.36 and 2.37 of the Malibu LCP. This amount is to be adjusted for inflation beginning in the year 2000. Given the development constraints on the Crummer Trust property, the property owner anticipates a hotel of approximately 100 rooms at most could be established, with associated facilities. Assuming these would be luxury accommodations, 15% of the rooms would be assessed the fee which adjusted for inflation would be \$196,336.50, significantly less than the \$2,000,000 fee proposed by the property owner. Commission staff has identified potential public projects in the area that are in need of funding to implement affordable visitor-serving accommodations: new camping cabins and potential rehabilitation of the former Topanga Ranch Motel within Lower Topanga State Park that is contemplated by State Parks for development; and new campground facilities, including tent camps and tent cabins, that is contemplated by MRCA to serve the general public as well as underserved and foster youth programs at MRCA’s newly acquired Cameron Nature Preserve in Puerco Canyon.

Commission staff, in consultation with State Parks, had originally identified the Lower Topanga State Park site (approximately 6 miles downcoast from the subject “Crummer” site) as the public project in the area to direct the \$2,000,000 fee to in order to implement affordable visitor-serving accommodations (i.e. approximately 12 new cabins for lower-cost camping) that are contemplated by State Parks. However, while that remains an excellent public project that should be targeted for future funding opportunities, Commission staff have identified an alternative public project in which to direct the \$2,000,000 fee in this case (new low-cost camping at Cameron Nature Preserve) that is in closer proximity to the subject site and will provide a greater range of low-cost camping experiences for a more diverse ability range of the public. In 2014, MRCA acquired the 703-acre Cameron Nature Preserve property in Puerco Canyon for a mix of habitat protection and public access purposes. The property is located about 1.5 miles northwest of the subject “Crummer” site, within the coastal zone of unincorporated Los Angeles County and just outside Malibu’s city limits. In particular, MRCA’s goal is, in part, to develop no-cost or low-cost campground facilities on portions of the property, including tent camps and tent cabins,

to serve the public and underserved and foster youth programs of MRCA (**Exhibit 8**). The use of these funds in this manner is consistent with LUP Policies 2.33, 2.34, 2.36, and 2.37 to create or protect visitor serving and recreational uses.

Other visitor-serving commercial development such as visitor-serving retail uses would also be constrained on the “Crummer” site. Again, given the limited development area due to setback requirements, height requirements, and potential parking and traffic circulation conflicts with the adjacent athletic field uses, it is not likely a visitor-serving commercial retail use would be feasible in this location. The athletic fields generate a significant amount of traffic and parking demand during peak use periods which would present significant conflicts with any visitor-serving commercial retail use. It is not likely an economically feasible commercial visitor serving retail use, other than a luxury hotel, would be feasible in this location. Since 1993 no retail visitor serving commercial development proposals have been proposed on the subject site. It should also be noted that the nearby Civic Center area is clearly in a more appropriate location for visitor serving commercial retail and restaurant type uses.

However, re-defining the PD land use designation of the site as unconditionally allowing for residential development would result in the potential loss of visitor serving commercial uses, even if that use may be limited to a luxury hotel use. As such, the proposed amendment request will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is not a priority use within the Coastal Zone.

The loss of visitor-serving commercial recreational opportunities is in contradiction to the public access and recreation policies of the Coastal Act. Specifically, the request is inconsistent Coastal Act Section 30213 that is incorporated as a policy into the Malibu LCP, which require lower cost visitor-serving and recreational facilities be protected, encouraged, and, where feasible, provided. The proposed amendment will also have an adverse effect on the provision of priority visitor-serving commercial recreational facilities pursuant to LUP Policy 2.33 and Section 30222 of the Coastal Act, as incorporated as a policy into the Malibu LCP. Therefore, the amendment must be denied, as submitted.

In order for the proposed land use conversion from Commercial Visitor-Serving to Residential/Recreational to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property and preclude future visitor-serving uses, resulting in a non-priority use within the Coastal Zone.

Ideally, the loss of area designated for commercial visitor-serving uses should be offset by re-designating some other equivalent or superior area within the City that is designated with a low priority land use, to a visitor-serving use. The City did not identify any other equivalent area that would be designated for visitor serving use as a part of the subject amendment request. As an alternative, the property owner has offered to pay an in-lieu mitigation fee of \$2,000,000 to assist in funding affordable overnight accommodations. The Commission has accepted in-lieu fees tied to the development of lower cost accommodations at public parks as a feasible mitigation measure for the loss of a higher priority use. The proposed fee, in part, was calculated based upon

the Crown Pointe Estates Project, an LCP Amendment in Ventura County that the Commission had considered and approved at the April 2008 Commission hearing. In Ventura County LCP Amendment No. MAJ-1-07 (Crown Pointe Estates) and related Coastal Development Permit Appeal No. A-4-VNT-07-009, the Commission approved the conversion of 2.9 acres of vacant land designated for commercial use to residential use (four new residential lots). However, as a condition of approval of the amendment and permit to ensure consistency with the Coastal Act's visitor serving commercial requirements, the Commission required payment of a mitigation fee by the project proponent, in the amount of \$557,084, for the construction of eleven new cabins at Leo Carrillo State Beach Park in order to provide low-cost, visitor-serving, overnight accommodations. In consultation with State Parks, the Commission found that this mitigation fee would be adequate to fund the construction of eleven new overnight cabins at the State park.

Given that the subject "Crummer Trust" parcel is substantially larger than the Crown Pointe Estates parcel, and therefore represents a greater loss of visitor-serving opportunity, the Commission finds that a mitigation fee of \$2,000,000 is proportional and appropriate in this case. However, the property owner did not propose the mitigation fee as part of this project-driven LCP amendment or the coastal development permit applications to the City, and so this proposed fee is not reflected in the proposed LCP amendment request. Further, the City has expressed concern about a specific visitor-serving in-lieu mitigation fee amount being specified in the LCP, which is one of the reasons why the City never accepted the Commission's suggested modifications on the prior LCP amendment related to the subject site (LCP Amendment No. MAL-MAJ-2-09-A). The City has indicated that it would have to conduct a mitigation in-lieu fee nexus study if the fee was a part of the LCP amendment. The Mitigation Fee Act (MFA), contained in California Government Code Sections 66000 et seq., guides the adoption and collection of development impact fees by local agencies. The MFA requires local agencies adopting impact fees to show that there is a reasonable relationship ("nexus") between the type of impacts, the use of fee revenue, and the development projects upon which the fee is imposed. The MFA also requires local agencies to show that the amount of the fee is roughly proportional to the impact of development projects and the estimated reasonable cost of plan activities that would be required to mitigate those impacts. In this case, the City is not interested in dedicating time and funds to conduct such a study.

To address the City's concerns and provide an effective alternative method for the project proponent to mitigate for the loss of visitor serving opportunity, the property owner, the City, and Commission staff have worked cooperatively to reach agreement on a mechanism whereby the property owner has entered into an agreement with the Coastal Commission and funded an associated escrow account, thereby committing to pay a \$2,000,000 in-lieu fee for use in developing lower cost visitor accommodations, to be released once the owner secures entitlements to subdivide and to develop the site with a mix of residential and recreational uses and those entitlements are no longer subject to challenge (**Exhibit 11**). Commission staff, in consultation with MCRA, have identified a public project to which to direct the \$2,000,000 fee in this case (new low-cost camping at Cameron Nature Preserve) that is in closer proximity to the subject site and will provide a greater range of low-cost camping experiences for a more diverse ability range of the public. In 2014, MRCA acquired the 703-acre Cameron Nature Preserve property in Puerco Canyon for a mix of habitat protection and public access purposes. The

property is located about 1.5 miles northwest of the subject “Crummer” site, within the coastal zone of unincorporated Los Angeles County and just outside Malibu’s city limits. In particular, MRCA’s goal is, in part, to develop no-cost or low-cost campground facilities on portions of the property, including tent camps and tent cabins, to serve the public and the underserved and foster youth programs of MRCA.

The escrow agreement also provides for the delivery into escrow of a Declaration of Covenants by the current property owner, to be recorded upon effective certification of the LCP amendment. If the conditions for recordation of the Declaration of Covenants are met, the obligation for payment of the \$2,000,000 in-lieu fee runs with the land and is binding on any future owners, so that the mitigation will be secured whenever a residential project eventually proceeds, even if the specific project covered by the City’s existing CDPs does not ultimately come to fruition and the escrow funds are returned. This provision thus provides extra assurances that the loss of visitor-serving opportunity from the change in land use designation will be mitigated even if the current property owner decides not to pursue the project (**Exhibit 11**). As such, the agreement is structured to provide the Commission with assurance of payment of the fee, which is necessary to mitigate for the loss of a higher priority use. Using an escrow arrangement provides the property owner assurance that the required fee will only be transferred upon securing final entitlements for the planned development that are beyond legal challenge. In order to ensure that the proposed amendment will not result in the loss of visitor-serving and recreational opportunities in the Coastal Zone, the Commission is requiring a suggested modification to note the agreement between the Coastal Commission and the property owner regarding payment of the fee (while respecting the City’s desire to not include a specific fee amount in the LCP) as a condition of the land use change from commercial visitor-serving to a mix of residential and recreational use in order to mitigate for the loss of visitor-serving land (**Suggested Modification No. 1**). The purpose of the fee would be to fund new lower cost overnight visitor accommodations at the MRCA’s Cameron Nature Preserve property in Puerco Canyon by MRCA discussed above. The suggested modification also makes minor modifications to the City’s proposed language for the definition of the Planned Development land use designation for clarity and to make it consistent with the structure of the LUP.

Furthermore, in the context of the original Malibu LCP, the Commission found, through the certification of Land Use Plan Policy 2.78, that a residential use was appropriate for the “Crummer” site provided the athletic fields were transferred to the site from the adjacent State Park. The proposed amendment, as modified, would authorize up to a maximum of five (5) residential units and require the applicant to dedicate a 1.74-acre park to the City of Malibu. The park dedication coupled with the recommended suggested modification to compensate for lower cost overnight accommodations would provide substantially more visitor serving opportunities than required under the existing LUP Policy 2.78, which authorized up to eight residential units on the property with the transfer of the athletic fields. The subject parcel is located contiguous with an existing developed area with adequate public services. Single-family residential development on the subject parcel would allow the clustering of development within or near an existing development area able to accommodate it, consistent with Section 30250 of the Coastal Act, which is incorporated as a policy into the Malibu LCP. In addition, subdivision of the subject parcel as a result of the LCP amendment would not create additional parcels significantly

smaller than the average size of surrounding parcels, or that would significantly impact traffic or public access in the area, or that would require a shoreline protection structure to protect development at any time during the full 100 year life of the development. Incorporation of a public recreational use element at the site would enhance public access to the coast, consistent with Sections 30223 and 30252 of the Coastal Act, which are incorporated policies in the Malibu LCP.

2. Planned Development Standards and the Protection of Scenic Resources

The subject parcel is the only parcel in the City currently with the Planned Development (PD) land use and zoning designation. The terms of the PD Zone are clear in providing that a “planned development” for a specific project would require the approval of an LCP amendment that would specify the permitted type, density, and intensity of development. In this case, the City proposes to add a set of development standards to the Local Implementation Plan (LIP) portion of its certified LCP, including the permitted type, density, and intensity of development that may be permitted on the site. The standards address permitted uses on each of the seven created lots, with minimum lot dimensions, structure size and total development square footage, setbacks, structure height, grading, impermeable coverage, parking, structure color and lighting, and fencing. Many of the proposed standards reflect the requirements that are otherwise currently contained in the certified LIP, however, some proposed standards are different from those of the certified LIP to reflect the specific planned development proposal at the site.

As discussed previously, the City has already approved the coastal development permits for the planned development, which are conditioned to not be effective until certification of the subject LCP amendment. Therefore, Commission staff has had the opportunity to analyze the specifics of the approved development in relation to the development standards proposed in the LCP amendment. Although the individual coastal development permits that were approved by the City are not a part of this LCP amendment, the Commission must analyze whether the specific development standards proposed in the LIP for the planned development zone designation are adequate to ensure the development is consistent with the policies and provisions of the LUP related to the protection of coastal resources.

As discussed previously, the Commission finds that the proposed density of residential development on the property, combined with dedication of a portion of the property to the City of Malibu for recreational use, is consistent with both the character of the area and with the adjacent development and land uses. The proposed clustering of residential development and dedication of a portion of the parcel to the City for recreational use would result in the residential parcels being smaller in size than if the whole parcel acreage were devoted to residential use. Such smaller parcels would result in a reduced allowable total development square footage (TDSF) pursuant to Section 3.6(K) of the LIP.

Section 3.6(K) of the LIP limits the allowable square footage for residential properties based on the size of the parcel. As part of the proposed development standards for the residential lots (Lots 1-5) of the planned development, the City has proposed a larger TDSF for each lot than would otherwise be allowed by strict application of Section 3.6(K) of the LIP. The proposed

standard would allow a maximum of 11,172 sq. ft. for each residential lot, which is the maximum that is contained in the LIP Section 3.6(K) for lots equal to or greater than 5 acres in size. Lots 1-5 are proposed to range in size from 2.61 acres (Lot 3) to 5.95 acres (Lot 5). The specific development approved by the City on Lots 1-5 actually comply with the existing standard of LIP Section 3.6(K), with the exception of Lot 3, which was approved to be approximately 400 square feet greater than the existing LCP standard. However, the TDSF standard proposed in the subject LCP amendment request would allow an increase in TDSF up to a maximum of 11,172. Since the approved development would also need to comply with all other resource protection provisions of the LCP, such as the protection of scenic resources and bluff setbacks, the proposed increase in the maximum TDSF standard would not result in any adverse impacts to coastal resources. However, since submittal of the subject amendment request, the City has requested that Commission staff include a suggested modification to their amendment in order to limit each residential lot to the specific TDSF that is contemplated for each residence, which range from 9,434 to 10,990 sq. ft. (well below the 11,172 sq. ft. maximum specific in the proposed amendment). As such, Commission finds that the reduction in the allowed TDSF standard that is part of Suggested Modification 2 is appropriate.

Section 8.3(B) of the LIP limits grading on a residential lot to a 1,000 cu. yd. total, unless otherwise permitted by a variance. As part of the proposed development standards for the residential lots (Lots 1-5) of the planned development, the City proposes to allow an increase in the amount of grading that may be allowed on each lot without the need for a variance (up to 2,000 cu. yds.). The proposed standards would also allow grading for ingress and egress to be considered exempt grading and would establish a limit on the amount of export that may be permitted for exempt or non-exempt grading. However, while these proposed deviations from the existing standard of the LCP would increase maximum allowable grading thresholds, any proposed development would also have to comply with all other policies and provisions of the LCP that require minimizing the visual and resource impacts of grading and landform alteration. Therefore, the proposed standards would not result in any adverse impacts to coastal resources when applied in conjunction with all other policies of the LCP.

Since many of the proposed development standards for the PD zone reflect the requirements that are otherwise currently contained in the LCP, but do not reflect all of them, it is important to provide clarification regarding the applicability of standards in order to ensure internal consistency and adequacy in carrying out the policies of the Land Use Plan. Therefore, **Suggested Modification 2** to proposed LIP Section 3.3(Q)(4) is required to clarify which LCP standard a proposed PD development standard is intended to replace or supplement, as applicable. All other applicable standards in the certified LCP would apply, such as those related to hazards and geologic stability, bluff setbacks, land divisions, water quality, and scenic resources.

The LCP contains policies that require that new development be sited and designed to minimize adverse impacts on scenic areas from scenic roads or public viewing areas to the maximum extent feasible. Coastal Act Section 30251, which is incorporated into the Malibu LUP, requires that “permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually

compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.” In addition, the following LCP policies and provisions are applicable in this case:

Land Use Plan Policy 6.1

The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.

Land Use Plan Policy 6.2

Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.

Land Use Plan Policy 6.4

Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.

Land Use Plan Policy 6.5 and Implementation Plan Section 6.5(A)(1)

New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.

Implementation Plan Section 6.5(A)(2-4)

2. Where there is no feasible alternative that is not visible from scenic highways or public viewing areas, the development area shall be restricted to minimize adverse impacts on views from scenic highways or public viewing areas.

3. Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

4. New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be

more protective of visual resources or ESHA.

The subject 24-acre site is a prominent blufftop property that is situated adjacent to Pacific Coast Highway (PCH) to the north and Malibu Road to the south. The project site is visible from a number of public viewing areas, such as portions of Pacific Coast Highway, Malibu's Civic Center area to the east (downcoast), Malibu Colony Beach, Surfrider Beach and the Malibu Pier to the east (downcoast), Malibu Bluffs Park immediately to the west (upcoast), a small portion of the SMMC's Bluffs Park to the west (upcoast), a portion of Malibu Road to the southwest, portions of Malibu Canyon Road to the north (inland), and several locations at much higher elevations to the north (inland). However, several of these public areas are a substantial distance away from the site.

Given the visibility of the site from multiple vantages in the vicinity, the City analyzed potential impacts to visual resources from the planned development as part of the CDP and CEQA review (EIR) process for the project and approved a specific development configuration and landscaping plan intended to minimize impacts to visual resources to the maximum extent feasible. In response to identified visual impacts during processing of the subject permit applications for residential development of the site, the property owner (in coordination with the City), made several revisions to the siting, square footage, and height of the residences and site landscaping in order to reduce visibility. Story poles were placed for two different alternative residential configurations and views from both public and private viewing areas were assessed. Visual simulations were also prepared for multiple residential configuration alternatives.

Since development on Lots 1 and 2 of the planned development on the eastern portion of the property would be visible from several public viewing areas to the east (downcoast), on Lot 1 the City approved a reduction in the square footage of the structure's second floor at up to 28 ft. high from 3,344 sq. ft. to 2,565 sq. ft. and a modification to the structure's siting configuration, and on Lot 2 the City approved a reduction in the structure's height (not to exceed 18 feet in height) and a reduction in the square footage of the structure from 11,068 sq. ft. to 9,434 sq. ft. Since development on Lots 3 and 4 of the planned development in the central portion of the property would be visible from portions of Pacific Coast Highway and Malibu Canyon Road to the north (inland), the City had approved modifications to the structures on Lots 3 and 4; particularly, a reduction in the square footage of the structures on Lots 3 and 4, and a reduction in the square footage of the second floor on Lot 4. Since development on Lot 5 in the southwest portion of the property is visible from public viewing areas within Malibu Bluffs Park, particularly downcoast views from portions of the public walking path along the bluff edge and the scenic view overlook area at the park, Commission staff had previously recommended that the residential structure on Lot 5 be shifted landward (away from the bluff edge) an additional 30 feet from the location approved by the City in order to protect scenic views of the downcoast coastline/shoreline from the public walking path at the park.

At the Commission's February 12, 2015 public hearing regarding the subject LCP amendment, Commissioners raised concerns regarding the visual impacts of the planned development from the identified public viewing areas. Specifically, Commissioners suggested limiting the height of the residences to 18 feet, reducing the size and scale of the residences, further clustering the

residences, potentially eliminating the residences on Lots 1 and 2, expanding the open space conservation easement area, and changing or eliminating the guarded entry gate to the development.

In response to comments made by Commissioners at the February 12, 2015 hearing, the property owner submitted a revised plan for the planned development to: (1) reduce in the height of the residences on Lots 1, 2, 4, and 5 to 18 feet (Lot 2 would maintain an 18 foot maximum height as previously proposed); (2) relocate the entry gate and guardhouse further away from the public park and reduce the size of the guardhouse; (3) increase the size of the open space conservation easement area by approximately 64,000 sq. ft.; and (4) modify the landscaping plan to reduce the maximum height of proposed site landscaping. Visual simulations from public viewing areas were also prepared and submitted to Commission staff to depict these changes to the proposed residential configuration (**Exhibit 7**).

Even with these improvements, Commission staff remained concerned regarding the visibility of the residences on Lots 1 and 2 from public viewing areas downcoast. Based upon direction from Commission staff, the property owner submitted another revised plan for the planned development that: (1) incorporates a four foot high berm along the eastern edge of Lots 1 and 2 that will give the appearance of a natural-looking extension of the bluff slopes and help further minimize views of the structures from downcoast public viewing areas; (2) reduced the height of the easternmost approximately 2,500 sq. ft. of the residence on Lot 2 by 3 feet (from 18 to 15 feet) and shifted the pool and patio approximately 12 feet closer to the residence; (3) reduced the height of the southwest corner of the residence on Lot 5 by 3 feet (from 18 to 15 feet) and shifted the pool, patio, and cabana approximately 10 feet to the east and 6 feet closer to the residence, and (4) shifted the guest house on Lot 1 closer to the residence. A visual simulation from Malibu's Civic Center area was prepared and submitted to Commission staff to depict the change (Last page of Exhibit 7).

The reduction in structure height for all five residences (from 24 to 18 feet), with the further reduction in structure height for portions of the residences on Lots 2 and 5 (from 18 to 15 feet), and combined with the further clustering of accessory development on Lots 1, 2, and 5 will serve to significantly reduce the overall profile of the residential development and minimize views of the development from public viewing locations. While the revised single-story, 18 ft. residential designs accommodate the same overall square footage as previously proposed in the two-story, 24 ft. high designs, which increases the footprint of the residences on Lots 1, 3, 4, and 5 somewhat, the revised design on those lots are distributed in a manner that will not significantly increase the perceived mass or bulk of the development as seen from the identified public viewing areas.

Any structures on Lots 3 and 4 would be unavoidably visible from portions of Malibu Canyon Road given the topography of the area. However, given that those portions of Malibu Canyon Road are a substantial distance away and much higher in elevation, views of the ocean from that viewing area would not be significantly impacted by the development. Similarly, views from Pacific Coast Highway are limited. At the northwest corner of the property, the property is at the same grade as PCH. However, the grade of PCH drops significantly below the grade of the

project site (up to about 60 feet) when traveling southbound toward Malibu's Civic Center along the site's northern property line. Therefore, the development would not significantly impact any ocean, coastline, or mountains views from Pacific Coast Highway given the unique topography.

The structures on Lots 1-5 would also be unavoidably visible from the Malibu Bluffs Park to the immediate west (upcoast) of the site. However, the proposed residences with the siting and design changes proposed by the property owner since the Commission's February 12, 2015 hearing will serve to minimize adverse impacts to public views and will not interfere with any ocean, coastline, or significant mountain views from the public viewing areas within Bluffs Park. Further, given the intervening topography and elevation differences between the Conservancy's Bluffs Park further to the west (upcoast) and the project site, the structures will not interfere with any significant public views of the coast or mountains from the vantage points within the SMMC's Bluffs Park.

Given the topography of the site and surrounding area, the residences will also be visible from public viewing areas to the east (downcoast). The more prominent residences that are visible from downcoast public viewing areas are Lots 1 and 2. As discussed previously, the height of the residences on Lots 1 and 2 were reduced to 18 feet, and a portion of the residence on Lot 2 was reduced to 15 feet. Accessory development on Lots 1 and 2 were also further clustered. These changes to Lots 1 and 2 will serve to significantly minimize views of the development from the downcoast public viewing locations. Any further reductions in the height or bulk of the structures would not serve to avoid or significantly reduce visibility. However, the four foot high berm proposed along the eastern edge of Lots 1 and 2 will give the appearance of a natural-looking extension of the bluff slopes and help further minimize views of the structures from downcoast public viewing areas. Further, site landscaping using primarily native plant species will serve to substantially screen public views of the structures. The combination of the siting, design, and landscape techniques proposed will minimize adverse impacts to public views and protect the scenic quality of the area, consistent with the policies of the Malibu LCP.

To ensure that the PD development standards proposed in the LIP portion of the subject LCP amendment reflect the siting, design, and landscape techniques proposed and required to adequately carry out the scenic resource protection provisions of the certified LCP, the Commission finds that **Suggested Modification 2** to proposed LIP subsection 3.3(Q) is necessary. Suggested Modification 2 specifies the height, footprint, and other site design specifications for the residential development on Lot Nos. 1-5.

In recognition that future development normally associated with a single-family residence, that might otherwise be exempt, has the potential to impact scenic and visual resources of the area, it is important that any future improvements (other than repair and maintenance) on Lots 1-5 shall be reviewed by the City for consistency with the resource protection policies of the LCP through a new coastal development permit or permit amendment. This is also a requirement of the certified LCP (LIP Section 6.6). To clarify this requirement in the PD development standards proposed in the LIP portion of the subject LCP amendment, the Commission finds that **Suggested Modification 2** to proposed LIP subsection 3.3(Q)(4)(a)(viii) is necessary.

Other relatively minor clarifications and corrections to the PD development standards are required, pursuant to **Suggested Modification 2**, in order to ensure consistency among provisions of the LCP in order to minimize impacts to scenic resources, protect existing public parking, and omit references to City municipal code sections that are not a part of the LCP. Further, **Suggested Modification 3** is necessary to depict the approved planned development configuration in the LIP by adding “Malibu Coast Estate Planned Development Map 1” (attached as **Exhibit 6** of this staff report) as a map in Appendix 2 of the Local Implementation Plan.

As suggested to be modified, the planned development standards will ensure consistency with and be adequate to carry out the scenic resource protection policies of the LUP.

3. Public Access and Recreation

The certified LCP contains many policies to ensure the protection and provision of public access in new development along with the consideration of public safety needs, private property rights, and the protection of natural resources, where applicable. Several policies provide specifically for the requirement of an offer to dedicate a lateral or vertical public access easement as a special condition in new development projects where a nexus is demonstrated between the proposed development and its impact on public access. The LCP policies also provide the physical standards for locating public access easements (LUP Policies 2.66 – 2.68). Other policies provide for the opening, construction and maintenance of new accessways or the ongoing operation of existing accessways as well as for the acceptance, operation and maintenance of offers to dedicate beach or trail access easements (LUP Policies 2.40 – 2.41, 2.69 – 2.71, 2.83 – 2.85). Additional policies provide for the consideration of public safety, minimizing impacts on private property and adjacent private uses such as residential dwellings, and for the protection and enhancement of sensitive natural resources in providing and regulating public access (LUP Policies 2.73 – 2.75).

LUP Policy 2.25 requires that new development 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 2.26 requires that adequate parking should be provided to serve coastal access and recreation uses to the extent feasible. Existing parking areas serving recreational uses shall not be displaced unless a comparable replacement area is provided. And LUP Policy 2.27 states that the implementation of restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of "no parking" signs, red curbing, physical barriers, imposition of maximum parking time periods, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.

The subject site is private property with no existing public access. However, the site is adjacent to City-owned Malibu Bluffs Park and the SMMC-owned Bluffs Park where there is both active and passive public recreational opportunities such as trails, walking path, scenic overlook, two ball fields, soccer/multipurpose field, playground, benches and picnic tables, public parking lot,

and the Michael Landon Community Center. As discussed previously, the planned development includes dedication of Lot 7 (an approximately 1.74 acre lot adjacent to Malibu Bluffs Park as shown in Exhibit 5) to the City of Malibu to expand the adjacent City-owned park for active and passive recreation use. The applicant would also provide the City with \$1,000,000 in funding in order to develop the site with a public recreational use (Condition 28 of City CDP No. 07-144). No specific development has been approved by the City on Lot 7 yet. The proposed PD standards specify that the following uses would be permitted on Lot 7: parks and public open space (excluding community centers), active and passive public recreational facilities such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport fencing, parking lots, and similar uses. Onsite wastewater treatment facilities are also specified as a permitted use to allow for the siting of the seepage pits for the package septic system proposed as part of the planned development. The Commission finds these are appropriate uses that would be natural extensions of Malibu Bluffs Park and serve to enhance public recreational opportunities, consistent with the public access and recreation policies of the LCP.

The PD standards also address parking for Lot 7 and indicate that the amount of parking required at the site would be determined based on a parking study, and that off-site parking may be used to satisfy the on-site parking requirements that are determined to be appropriate for the use. However, in order to ensure that existing public parking and access to existing recreational uses are not adversely impacted by any additional recreational uses that may be allowed on Lot 7, the changes to subsections 4.a.vi., 4.b.vi., and 4.c.ii of LIP section 3.3(Q), as enumerated in **Suggested Modification 2**, are required to clarify that adequate parking shall be provided to serve the proposed recreational uses and off-site parking may be counted towards satisfying the on-site parking requirement as long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided. As suggested to be modified, the parking standards for Lot 7 will ensure consistency with and be adequate to carry out the public access policies of the LUP.

LUP Policy 2.28 states that gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted within private street easements where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands where there is substantial evidence that prescriptive rights exist. In this case, the City approved a 280 sq. ft. guard house and an access gate on the proposed private street that leads to the proposed residences of the planned development. However, to address Commissioner concerns expressed at the February 12, 2015 hearing regarding this component of the planned development, the property owner relocated the proposed gate and guardhouse further away from the public entrance to Malibu Bluffs Park, and reduced the size (from 280 to 180 sq. ft.) of the proposed guardhouse. Given the configuration of the planned development and revised location of the gate and guard house in relation to Malibu Bluffs Park and the proposed recreational lot (Lot 7), the gated access will not deter public access or adversely impact public access. The gate is also necessary to prevent conflicts between future residents and park users.

4. Conclusion

For the reasons stated above, the Commission finds that, if modified by the City as suggested, the

proposed LUP portion of the LCP amendment is consistent with the applicable policies of the Coastal Act. The Commission further finds that only if modified as suggested, will the LIP amendment conform with and be adequate to carry out the applicable policies of the certified Land Use Plan.

C. CONSISTENCY WITH THE 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 its review of and action on LCP provisions. 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 Chapter 3 policies of the Coastal Act. To resolve the concerns identified, suggested modifications have been made to the proposed amendment. With incorporation of the suggested modifications, the Land Use Plan amendment is in conformity with the Coastal Act. The Implementation Plan amendment has been found not to be in conformance with and inadequate to carry out the Land Use Plan as amended. With incorporation of the suggested modifications, the Implementation Plan amendment is in conformity with the Land Use Plan as amended. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment. If modified as suggested, 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Malibu Resolution No. 14-13 approving LCP Land Use Plan Amendment 12-001; City of Malibu Ordinance No. 379 approving LCP Implementation Plan Amendment 12-001; City of Malibu Resolution No. 14-02 approving CDP No. 07-144 (Crummer Site Subdivision); City of Malibu Resolution No. 14-03 approving CDP No. 07-145 (Lot 1 Development); City of Malibu Resolution No. 14-04 approving CDP No. 07-146 (Lot 2 Development); City of Malibu Resolution No. 14-05 approving CDP No. 07-147 (Lot 3 Development); City of Malibu Resolution No. 14-06 approving CDP No. 07-148 (Lot 4 Development); City of Malibu Resolution No. 14-07 approving CDP No. 07-149 (Lot 5 Development); Final Environmental Impact Report for the Crummer Site Subdivision Project, by The Planning Center DC&E, dated December 2013; City of Malibu LCP Amendment MAL-MAJ-2-09-A; “Study of Lower Cost Overnight Accommodations Serving the City of Malibu and its Vicinity,” by AZ Winter Mesa LLC, dated September 2008; Hotel Use Feasibility Analysis by PKF Consulting, dated April 28, 2015; County of Ventura LCP Amendment No. 1-07 and Appeal No. A-4-VNT-07-009 (Crown Point Estates); certified City of Malibu Local Coastal Program; January 22, 2015 Staff Report and February 9, 2015 Addendum regarding City of Malibu LCP Amendment No. LCP-4-MAL-14-0408-1; Transcript of Proceedings of Commission Agenda Item Th20b on February 12, 2015.

APR 02 2014

California
Coastal Commission

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

March 19, 2014

LCPA No. 12-001

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 inserted is shown underlined. The language proposed by the City of Malibu to be removed in this amendment is shown as ~~struck out~~.

Amend LUP Chapter 2 (Public Access and Recreation), Section C (Land Use Plan Policies) to delete LUP No. 2.78 as follows:

~~2.78 If an agreement is reached by the State Department of Parks and Recreation to relocate the existing athletic fields at Malibu Bluffs State Park out of the prime view shed of the park onto the 24.9 acre Crummer Family Trust parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway up to 8 residential units shall be permitted on the remainder of the (Crummer Trust) site. Said agreement shall cause the redesignation of the subject site to Residential in the LCP. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP. If no agreement is reached to relocate the existing athletic fields the permitted use on the Crummer Trust parcel shall remain CV-2 (Commercial Visitor Serving).~~

2.78 [RESERVED]

- Amend LUP Chapter 5 (New Development) Section C (Land Use Plan Policies) No. 2 (Land Use Designations) as follows:

PLANNED DEVELOPMENT (PD): The PD designation is a specially tailored zoning district which establishes zoning regulations and sets specific development standards for a planned development. The PD designation is intended as a unique zoning tool to encourage innovation in development concepts, land use mixes and site designs provides for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway. in the event of permanent relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed of the park in accordance with Policy 2.78 of the Land Use Plan.

- Amend LIP Chapter 3 (Zoning Designations) to include permitted uses, lot development criteria and development standards for the Planned Development Zoning District.

| |
|---|
| Exhibit 1 |
| LCP-4-MAL-14-0408-1 |
| City of Malibu Proposed LCP Amendment Text |

Amendments to LIP Section 3.3(Q) "Planned Development (PD) Zone" are hereby to read as follows:

Q. Planned Development (PD) Zone

1. Purpose

~~The PD District is intended to provide for a mix of residential and recreational development on the Crummer Trust property located east of Malibu Bluffs State Park and south of Pacific Coast Highway and other commercial areas in order to encourage innovation in development concepts, land use mixes, and site design. Any planned development in such commercial areas would require an amendment to the Malibu Local Coastal Program in order to specify the permitted type, density, and intensity of development consisting of five single-family residences and 1.71 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD consists of the land designated as Assessor Parcels Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018 known as Malibu Coast Estate.~~

2. Permitted uses

The uses and structures permitted and conditionally permitted in the PD District shall be as indicated in the associated approved Planned Development.

The following uses and structure permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on Malibu Coast Estate Vesting Tract Map.

a. Lot Nos. 1-5

- i. One single-family residence per lot
- ii. Accessory uses (second residential units or guest units pursuant to Government Code Section 65852.2), garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studio, home offices, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
- iii. Domestic animals, kept as pets
- iv. Landscaping

- b. Lot No. 6
 - i. Uses and structures maintained by either the owners of Lots 1-5 or the homeowners' association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access roads, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.
- c. Lot No. 7
 - i. Parks and public open space, excluding community centers
 - ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and similar uses as determined by the Planning Director or Planning Commission pursuant to Malibu Municipal Code Section 17.04.050.
 - iii. Onsite wastewater treatment facilities

3. Lot development criteria

In addition to the regulations contained in this Chapter, all uses in the PD District shall be subject to the applicable standards located in the Malibu LIP, unless indicated otherwise in the approved Planned Development. All new lots created in Malibu Coast Estate shall comply with the following criteria:

- a. Lots No. 1-5
 - i. Minimum lot area: 113,600 square feet (2.60 acres)
 - ii. Minimum lot width: 115 feet
 - iii. Minimum lot depth: 480 feet
- b. Lot No. 6
 - i. Minimum lot area: 125,700 square feet (2.88 acres)
 - ii. Minimum lot width: 625 feet
 - iii. Minimum lot depth: 100 feet
- c. Lot No. 7
 - i. Minimum lot area: 75,640 square feet (1.74 acres)
 - ii. Minimum lot width: 460 feet
 - iii. Minimum lot depth: 100 feet

4. Property development and design standards

The following development standards shall replace the corresponding development standards otherwise contained in LIP Sections 3.6 for those lots in Malibu Coast Estate. All requirements of the LCP, including LIP Section 3.5, that are not inconsistent with the criteria listed below shall remain in effect for those lots in Malibu Coast Estate.

a. Lot Nos. 1-5

i. Structure Size

- a) The total development square footage on each of Lot Nos. 1-5 shall not exceed eleven thousand one hundred seventy-two (11,172) square feet per lot.
- b) Structures Greater than Eighteen (18) Feet in Height. Notwithstanding any other provision of this chapter, the total development square footage for a structure greater than eighteen (18) feet in height shall not be greater than permitted for single-story construction. The second floor area plus the area of vaulted ceilings above eighteen (18) feet in height shall not exceed two-thirds of the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.
- c) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
- d) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.

ii. Setbacks

- a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less.
- b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a

single side yard setback be less than ten (10) percent of the width of the lot.

- c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth
- d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply

iii. Structure Height

- a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet unless height increases up to twenty-four (24) feet flat roof and twenty-eight (28) feet pitched roof are approved subject to LIP Section 13.27 (Site Plan Review), except on Lot 2, structures shall not be higher than eighteen (18) feet. Height is measured from natural or finished grade, whichever is lower. A pitched roof is a roof with a slope of 3:12 or steeper.
- b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened. Mechanical equipment behind a mansard roof may exceed twenty-four (24) feet in height but in no case shall it exceed the height of the mansard roof.
- c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.

iv. Grading

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 2,000 cubic yards per lot
- c) Net export shall be limited to 3,500 cubic yards per lot

v. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(I) shall apply.

vi. Parking

- a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
- b) One enclosed or unenclosed parking space for a guest unit or second unit.

vii. Colors and Lighting

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.

b. Lot No. 6

i. Structure Size

The total development square footage of all structures shall not exceed 280 square feet.

ii. Setbacks

- a) Buildings, not including projections permitted in Section 3.5 of the Malibu LIP shall maintain a minimum setback of fifty (50) feet from all property lines.
- b) Parkland setbacks in Local Coastal Program Local Implementation Plan (LIP) Section 3.6(F)(6) shall not apply.

iii. Structure Height

- a) Structure height shall not exceed 16.5 feet, as measured from natural or finished grade, whichever is lower.
- b) In no event shall the maximum number of stories above grade be greater than one.
- c) A basement, cellar or subterranean garage shall not be permitted.

iv. Grading

- a) Notwithstanding other provisions of this Code, all grading associated with ingress, egress, including safety access, shall be considered exempt grading.
- b) Non-exempt grading shall be limited to 1,000 cubic yards.
- c) Net export shall be limited to 2,500 cubic yards.

v. Impermeable Coverage

The impermeable coverage requirement in LIP Section 3.6(I) shall not apply. Up to 44,000 square feet of impermeable coverage shall be permitted.

vi. Parking

The guardhouse shall not have more than two parking spaces to be used for on duty guards and one additional parking space for service parking. Parking within the property boundaries shall not be located on or obstruct fire department access.

vii. Colors and Lighting

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit.
- b) Lighting must comply with LIP Section 6.5(G).

c. Lot No. 7

i. Site Design

Grading, setbacks, and facility siting shall be designed to meet the operational programs of the park as defined in the City of Malibu Parks Master Plan. Notwithstanding any other provision of this chapter, grading in all new parks shall be limited to not more than one thousand (1,000) cubic yards per acre, except that grading required for sports fields and skate parks designed to accommodate commonly accepted facility dimensions shall be exempt from these limitations. The facility shall be designed to minimize noise, lighting impacts and disruption to nearby residents.

ii. Parking

Parking shall be determined by a parking study prepared by a registered traffic engineer and based upon the proposed recreational uses. The Planning Director shall have the authority to determine the appropriateness of studies or other information used in determining the parking to be required. Where appropriate, off-site parking may be provided and may be counted towards satisfying the on-site parking requirement.

iii. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with the temporary use permit process contained within Malibu Municipal Code Chapter 17.68.

5. Permit Required.

All development within Malibu Coast Estate requires a coastal development permit, unless exempt in LIP Section 13.4.



Exhibit 2: Aerial Ciew of the Malibu Coast Estate/Crummer Trust Property

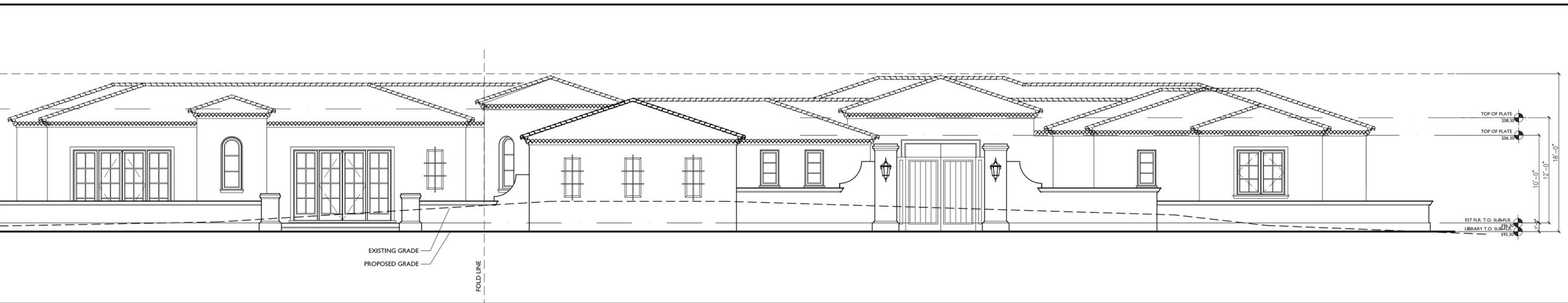
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MALIBU, CA 90065

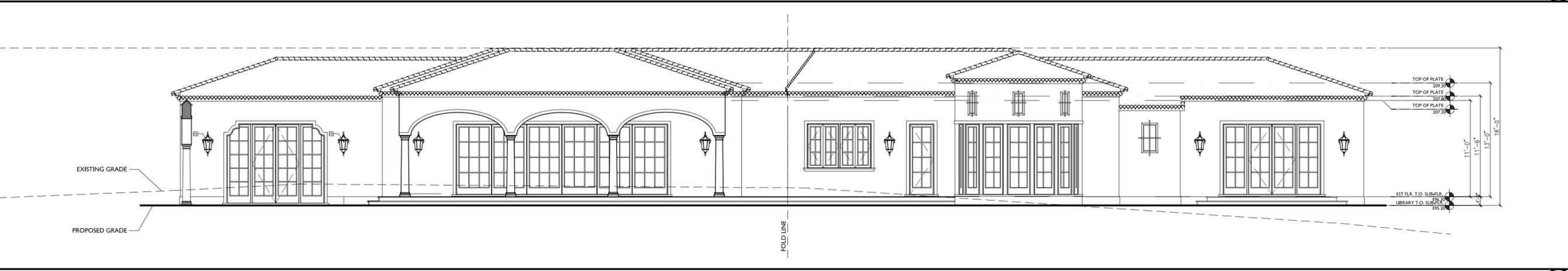
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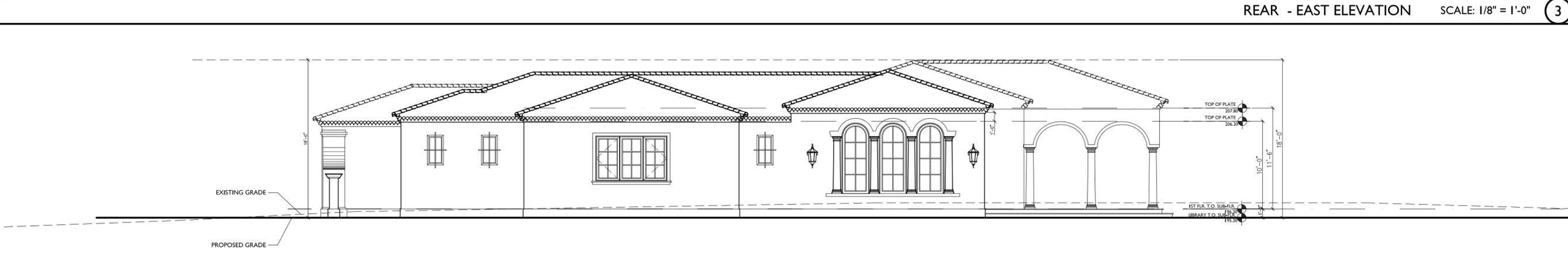
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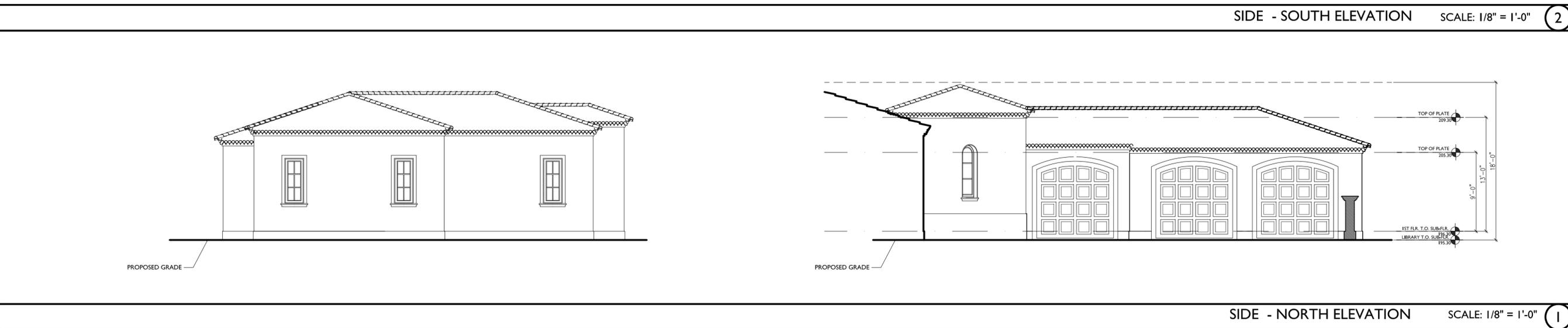
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REAR - EAST ELEVATION SCALE: 1/8" = 1'-0" **3**



SIDE - SOUTH ELEVATION SCALE: 1/8" = 1'-0" **2**



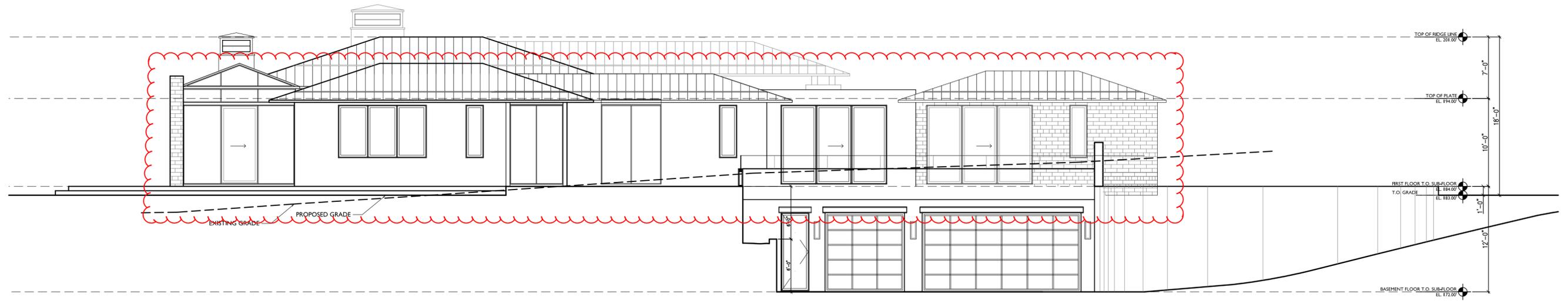
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SIDE - SOUTH ELEVATION SCALE: 1/8" = 1'-0" 2



SIDE - NORTH ELEVATION SCALE: 1/8" = 1'-0" 1

LOT 2 - ELEVATIONS

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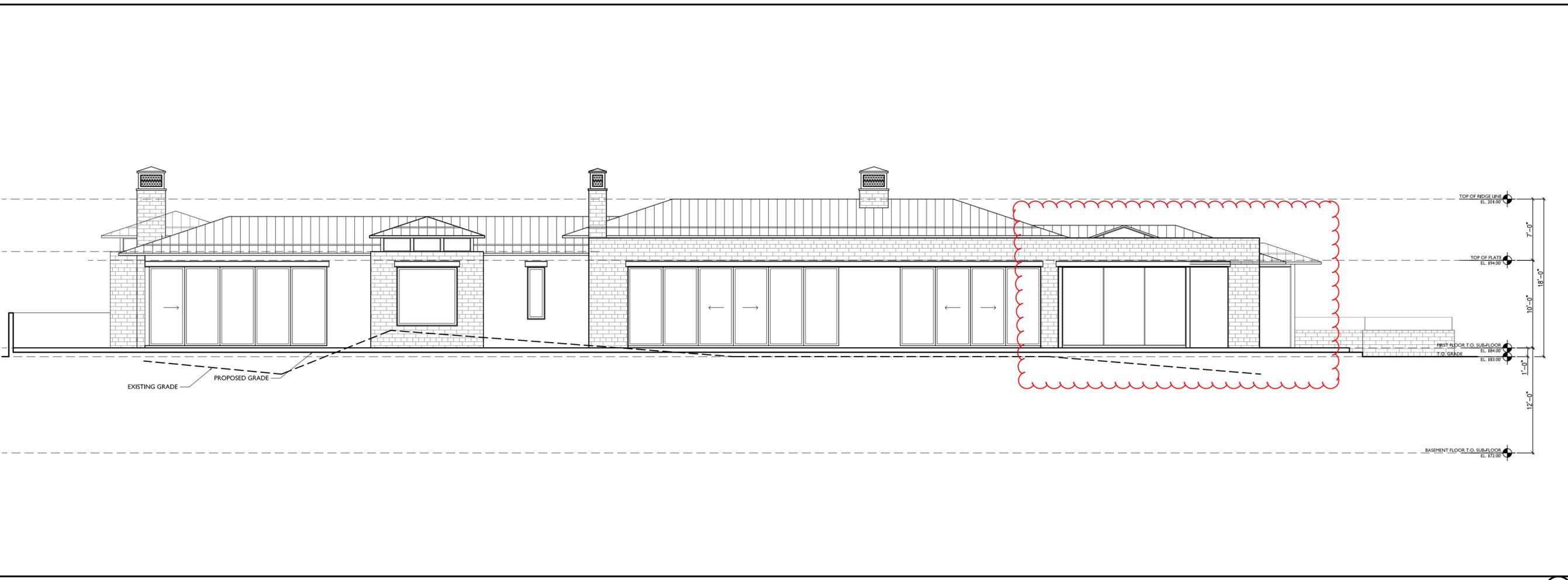
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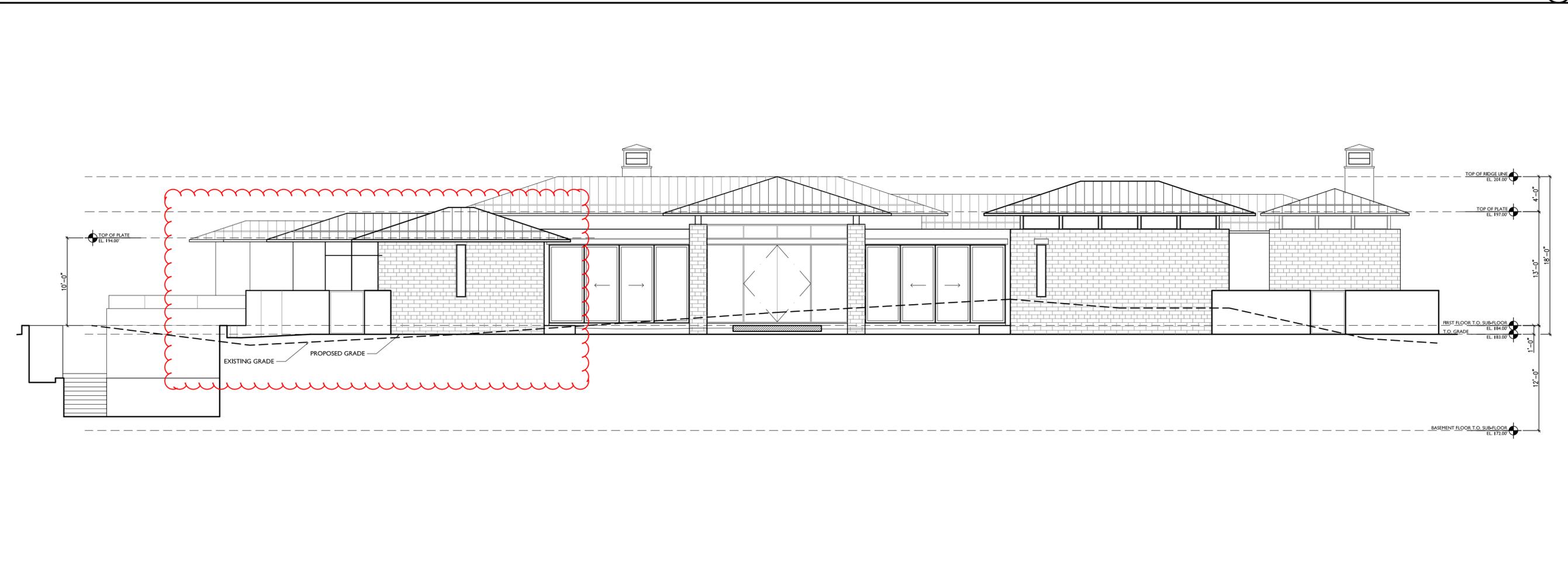
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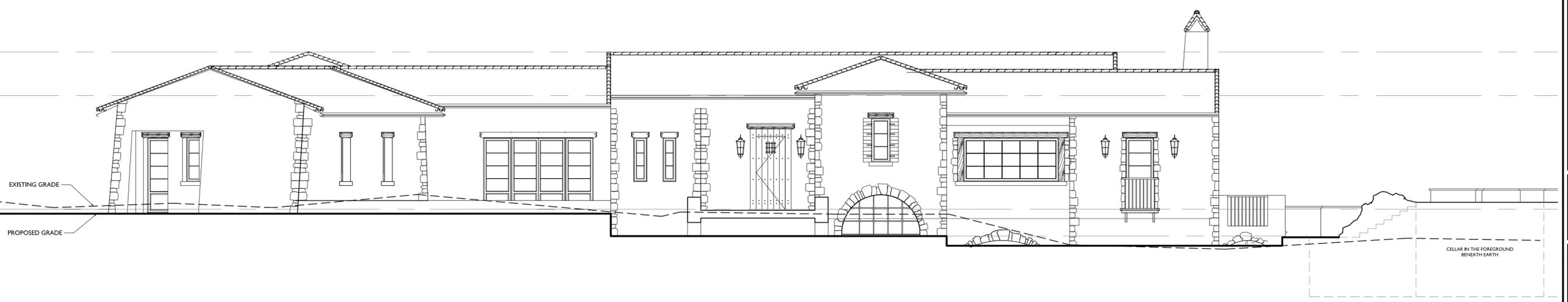
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REAR - SOUTH ELEVATION SCALE: 1/8" = 1'-0" 2



FRONT - NORTH ELEVATION SCALE: 1/8" = 1'-0" 1

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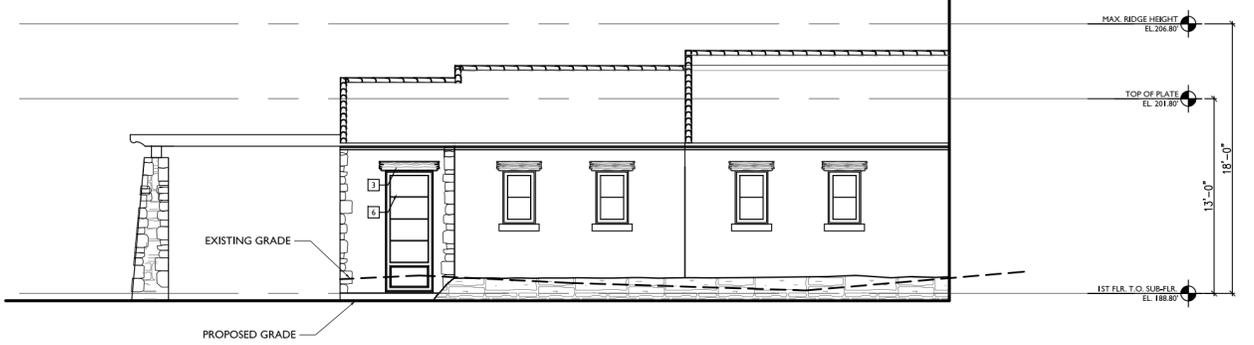
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 MALIBU, CA 90065

LOT 3 - ELEVATIONS

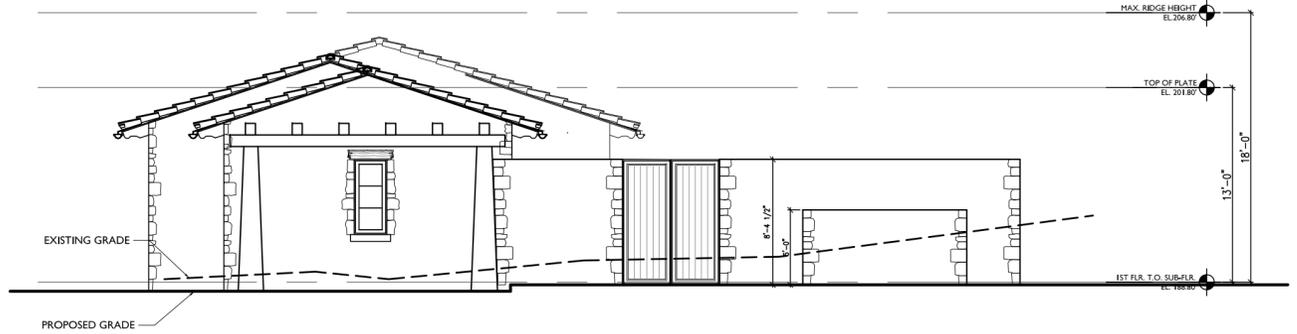
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| SHEET NO. | A-6.1 |



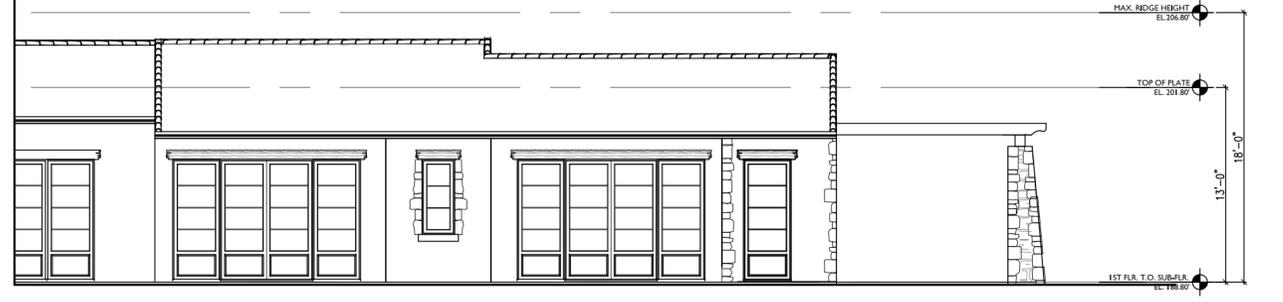
GARAGE - EAST ELEVATION SCALE: 1/8" = 1'-0" **4**



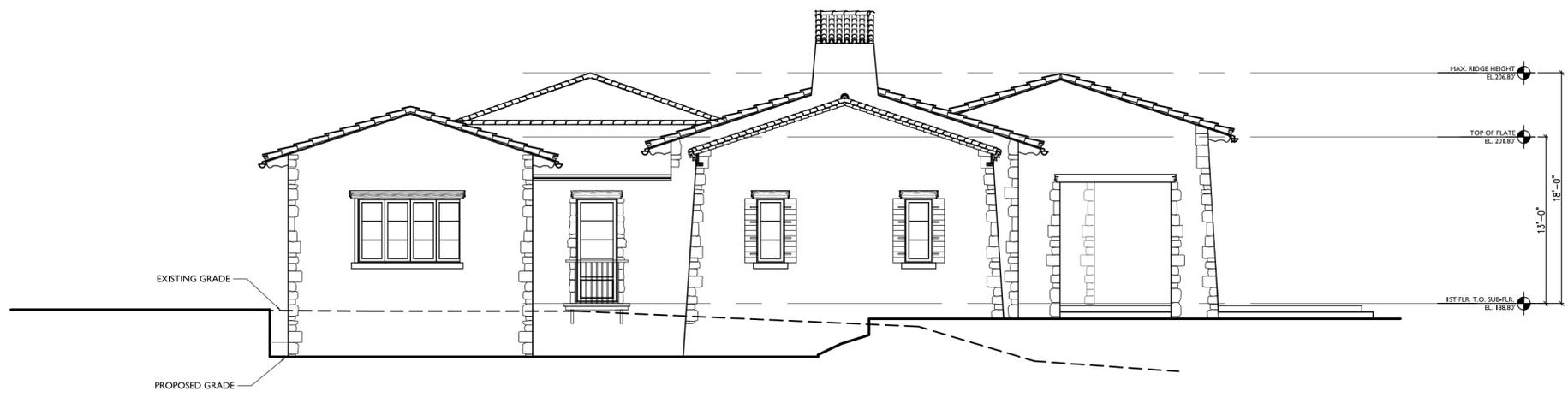
FRONT - NORTH ELEVATION SCALE: 1/8" = 1'-0" **3**



SIDE - EAST ELEVATION SCALE: 1/8" = 1'-0" **5**



REAR - SOUTH ELEVATION SCALE: 1/8" = 1'-0" **2**



SIDE - WEST ELEVATION SCALE: 1/8" = 1'-0" **1**

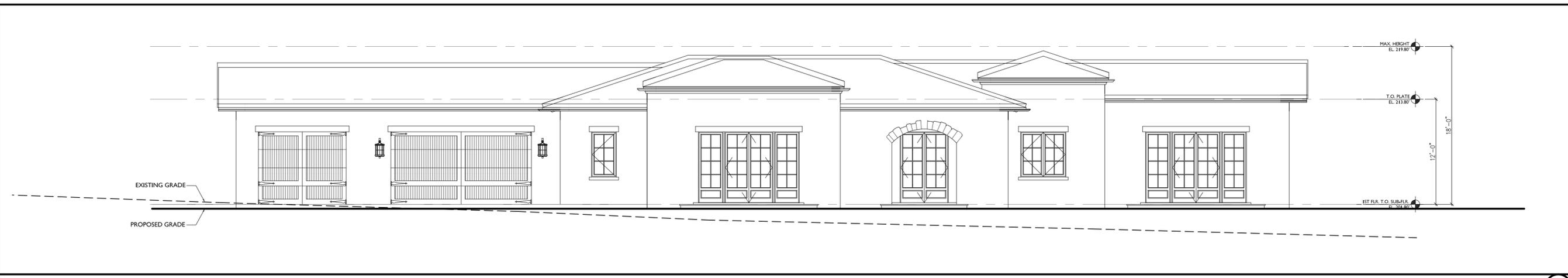
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|--------------|-------------|
| DATE | DESCRIPTION |
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WINTER MESA CRUMMER
 24108/ 24120/ 24134/ 24150/ 24174
 MALIBU, CA 90065

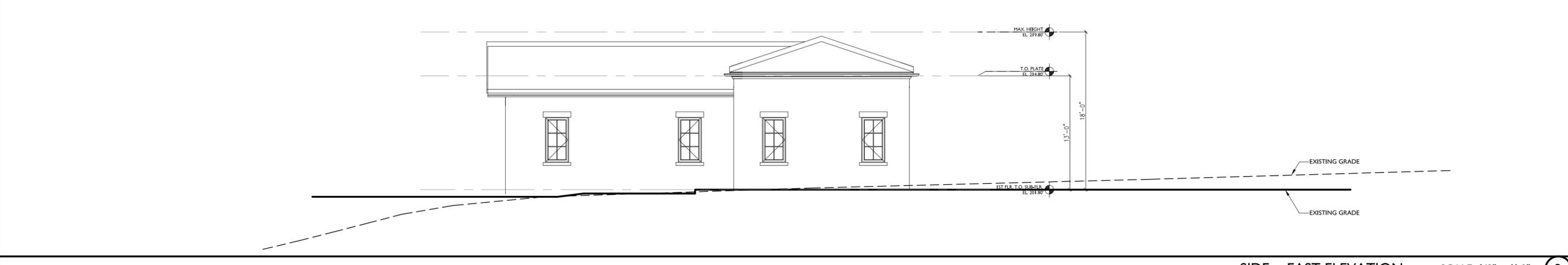
LOT 4 - ELEVATIONS

| | |
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| DRAWN | |
| JOB # | 1507.00 |

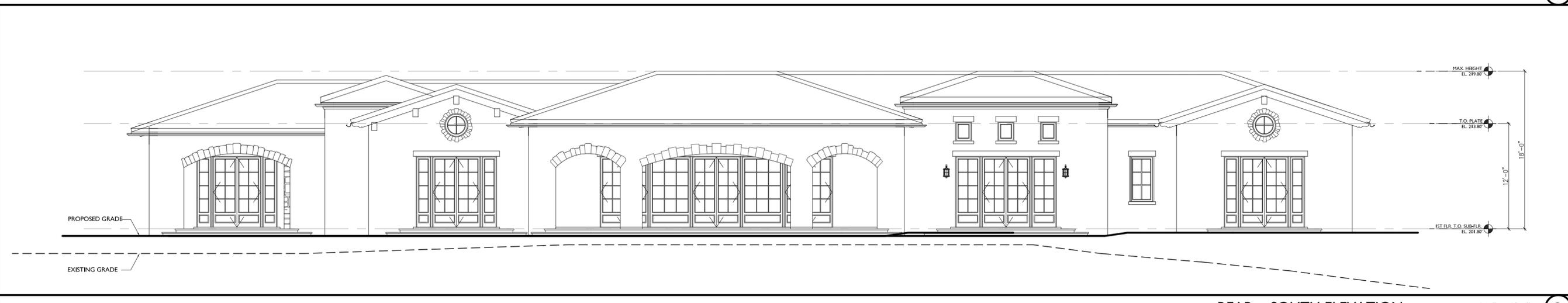
SHEET NO.
A-6.0
 ELEVATIONS



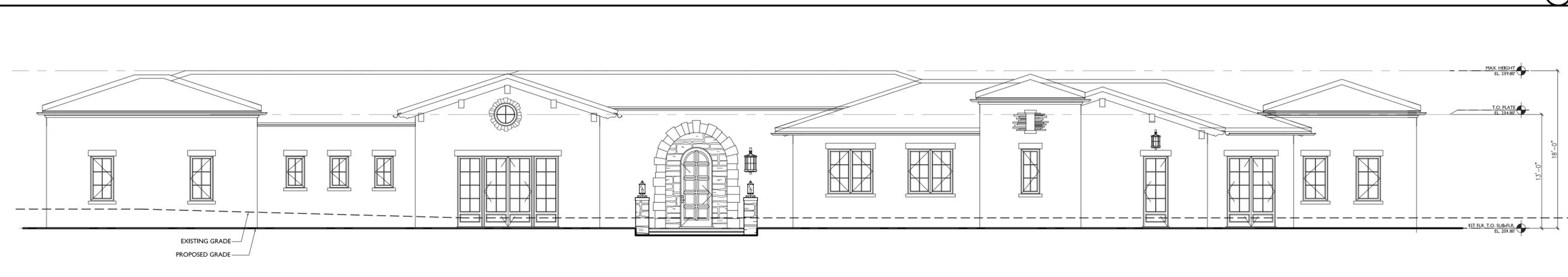
SIDE - WEST ELEVATION SCALE: 1/8" = 1'-0" **4**



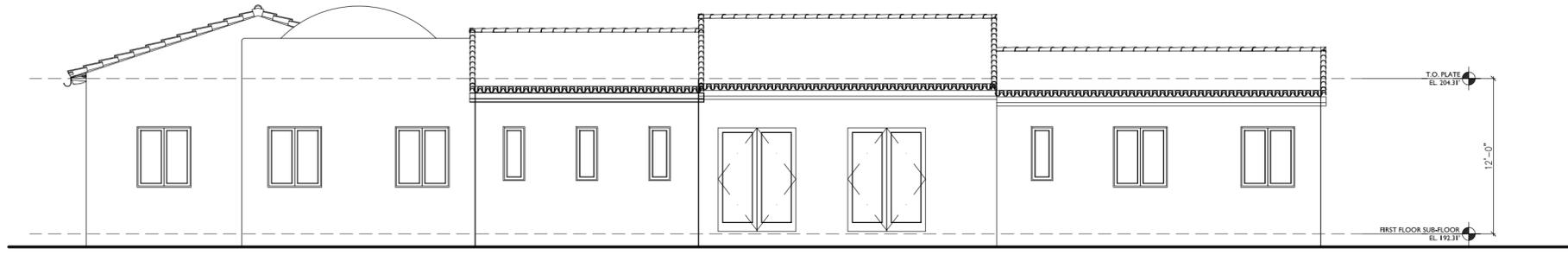
SIDE - EAST ELEVATION SCALE: 1/8" = 1'-0" **3**



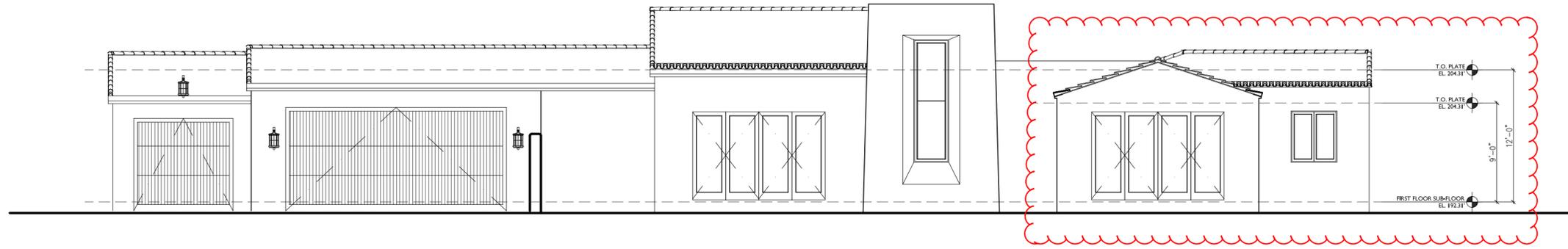
REAR - SOUTH ELEVATION SCALE: 1/8" = 1'-0" **2**



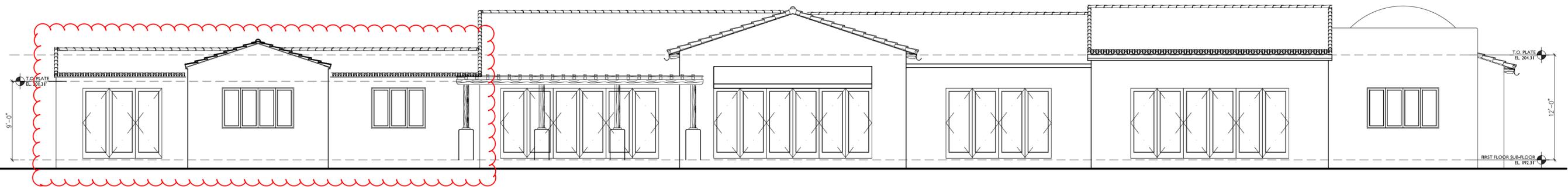
FRONT - NORTH ELEVATION SCALE: 1/8" = 1'-0" **1**



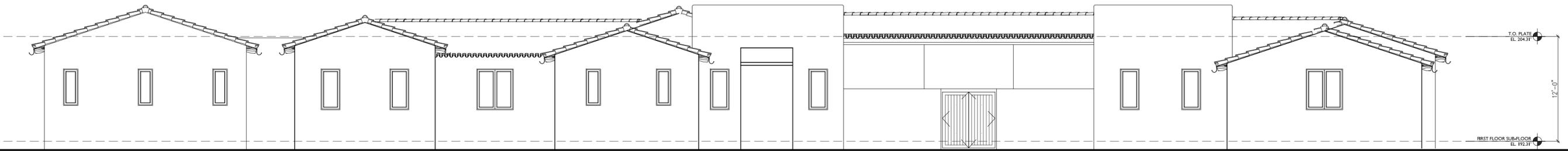
SIDE - WEST ELEVATION SCALE: 1/8" = 1'-0" 4



SIDE - EAST ELEVATION SCALE: 1/8" = 1'-0" 3



REAR - NORTH ELEVATION SCALE: 1/8" = 1'-0" 2



FRONT - SOUTH ELEVATION SCALE: 1/8" = 1'-0" 1



LANDRY
DESIGN
GROUP

888 S. SERRILVEDA BLVD.
LOS ANGELES, CA 90025
PHONE: 310.444.1804
FAX: 310.444.1805
www.landrydesigngroup.com
contact@landrydesign.com

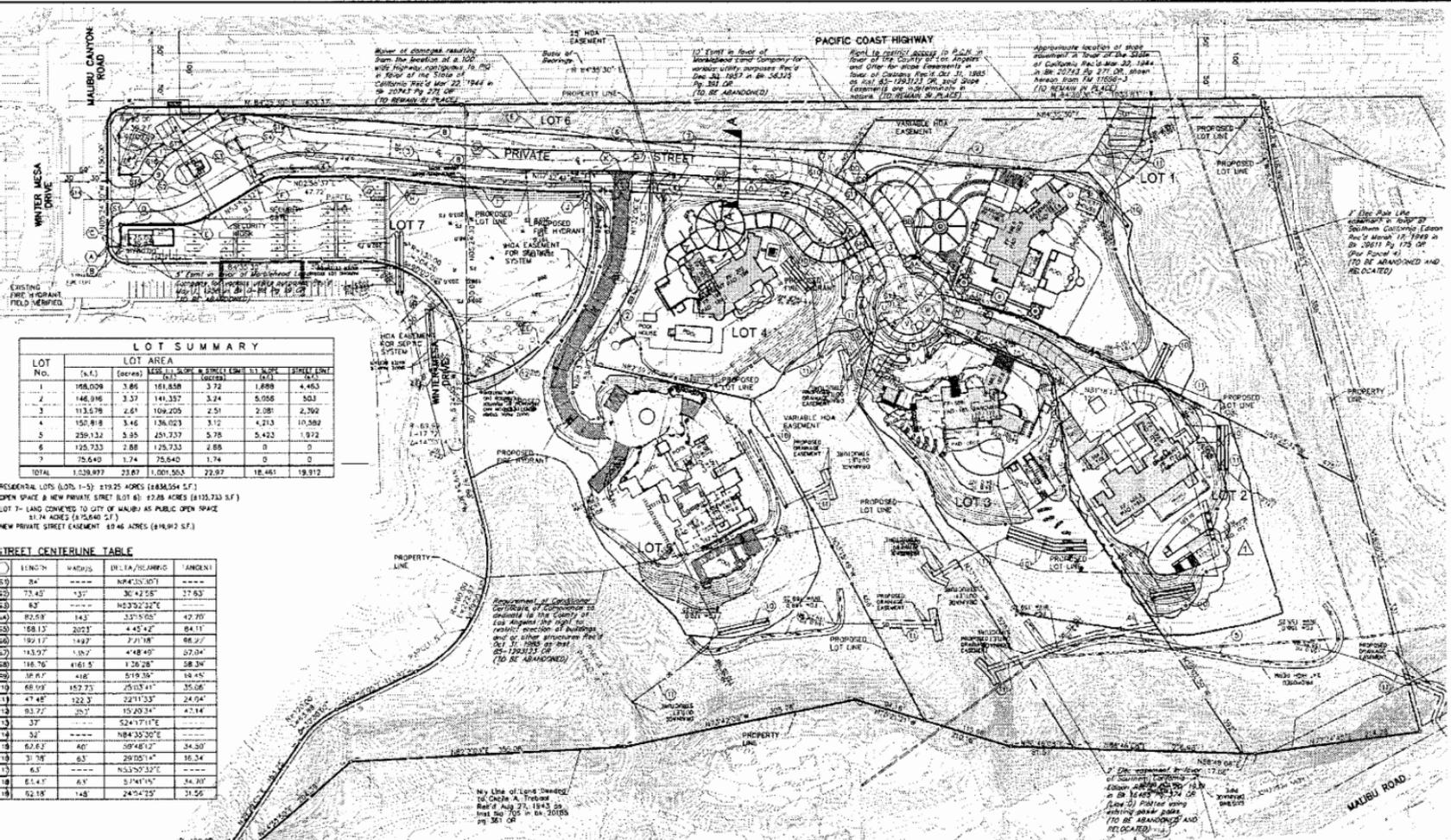
| REVISION LOG | DATE |
|--------------|------|
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| | |

WINTER MESA CRUMMER
24108/ 24120/ 24134/ 24150/ 24174
MALIBU, CA 90065

LOT 5 - ELEVATIONS

| | |
|-----------|--------------|
| DATE | 07.30.2015 |
| SCALE | 1/8" = 1'-0" |
| DRAWN | |
| JOB # | 1507.00 |
| SHEET NO. | |

A-6.0
ELEVATIONS



LOT SUMMARY

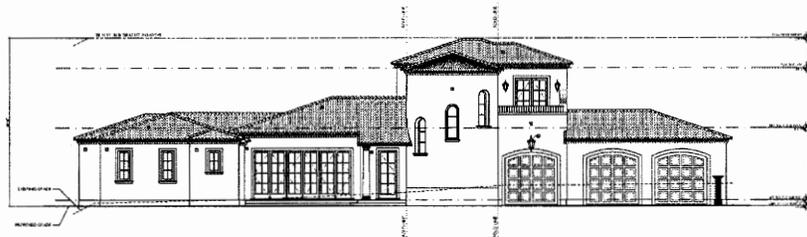
| LOT NO. | LOT AREA | | LESS (L) SHIP & RENTAL LAG | | NET AREA | SQUARE FEET |
|---------|-----------|---------|----------------------------|---------|----------|-------------|
| | (% AC) | (ACRES) | (SQ. FEET) | (ACRES) | | |
| 1 | 158,029 | 3.86 | 161,858 | 3.72 | 1,898 | 4,463 |
| 2 | 146,916 | 3.37 | 141,357 | 3.24 | 5,056 | 50.3 |
| 3 | 113,679 | 2.61 | 109,205 | 2.51 | 2,081 | 2,792 |
| 4 | 150,918 | 3.46 | 136,023 | 3.12 | 4,213 | 10,582 |
| 5 | 239,132 | 5.39 | 251,737 | 5.78 | 5,422 | 1,912 |
| 6 | 128,733 | 2.88 | 128,733 | 2.88 | 0 | 0 |
| 7 | 75,640 | 1.74 | 75,640 | 1.74 | 0 | 0 |
| TOTAL | 1,029,977 | 23.87 | 1,001,503 | 22.97 | 18,461 | 19,912 |

RESIDENTIAL LOTS (LOTS 1-5) 479.25 ACRES (4883554 S.F.)
 OPEN SPACE & NEW PRIVATE STREET (LOT 6) 47.28 ACRES (4115733 S.F.)
 LOT 7 - LAND CONVEYED TO CITY OF MALIBU AS PUBLIC OPEN SPACE
 11.14 ACRES (476466 S.F.)
 NEW PRIVATE STREET EASEMENT 42.46 ACRES (418392 S.F.)

STREET CENTERLINE TABLE

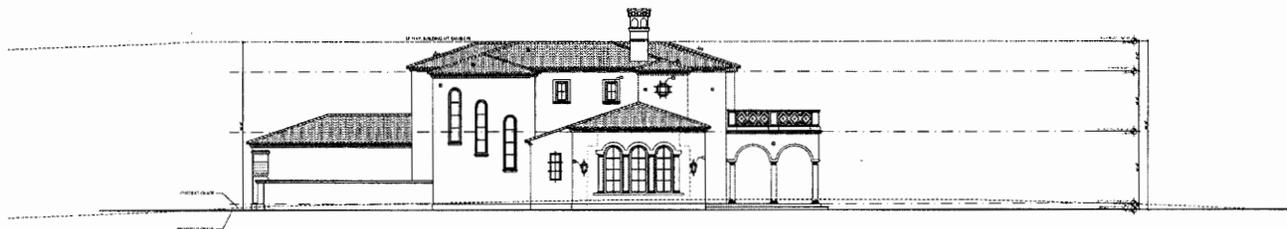
| LINE NO. | LENGTH | WIDTH | DATE/PLANNING | LAND NO. |
|----------|---------|---------|---------------|----------|
| 01 | 84' | ---- | NW4155/1071 | ---- |
| 02 | 73.43' | 35' | 30'42.58' | 17.63 |
| 03 | 63' | ---- | H5232/2276 | ---- |
| 04 | 82.97' | 143' | 23'5.65' | 42.79 |
| 05 | 188.13' | 205' | 4'45.42' | 84.11 |
| 06 | 192.17' | 142' | 7'21.18' | 68.27 |
| 07 | 143.97' | 182' | 4'48.49' | 67.04 |
| 08 | 116.76' | 1161.5' | 1'38.28' | 58.34 |
| 09 | 39.67' | 418' | 5'19.35' | 18.45 |
| 10 | 88.97' | 167.73' | 25'13.41' | 35.06 |
| 11 | 67.48' | 122.3' | 27'11.33' | 24.04 |
| 12 | 153.77' | 201' | 15'29.24' | 27.14 |
| 13 | 37' | ---- | 52'417'11' | ---- |
| 14 | 32' | ---- | N84'33'30"E | ---- |
| 15 | 62.62' | 46' | 39'48'12" | 34.30 |
| 16 | 31.58' | 63' | 26'05'14" | 16.34 |
| 17 | 43' | ---- | N33'50'32"E | ---- |
| 18 | 81.47' | 63' | 3'740'15" | 34.07 |
| 19 | 52.58' | 148' | 24'54'29" | 31.56 |

Exhibit 5: Previous Proposed Development Configuration and Elevations



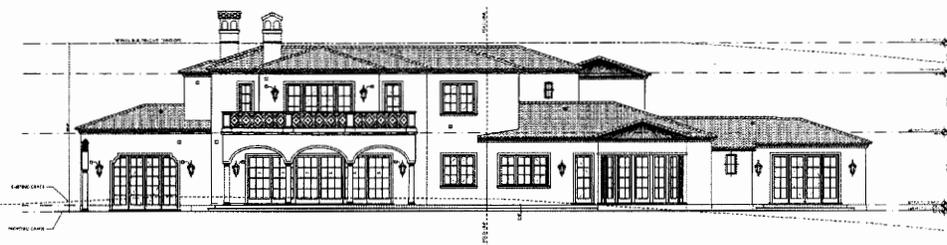
SCALE: 1/8"=1'-0"

(NORTH) SIDE ELEVATION 4



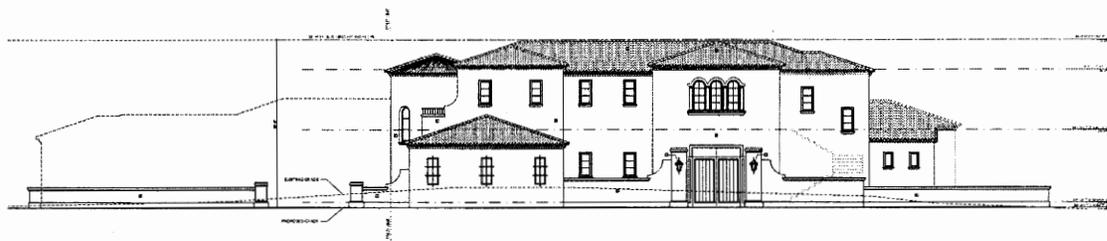
SCALE: 1/8"=1'-0"

(SOUTH) SIDE ELEVATION 3



SCALE: 1/8"=1'-0"

(EAST) REAR ELEVATION 2



SCALE: 1/8"=1'-0"

(WEST) FRONT ENTRY ELEVATION 1

NOTES TO SHEET

- 1 SHOOBY STUDIO
- 2 BRICK
- 3 STAIR CASE WOOD
- 4 PRECAST CONCRETE
- 5 WOODWORK / BRICK
- 6 CORNER
- 7 METAL DOOR / WINDOW
- 8 WREATHED HIGH DOOR / WINDOW
- 9 SPECIALTY GLASS
- 10 SLAB
- 11 CLAY TILE
- 12 CLAY TILE GROUND STAIRS
- 13 DECORATIVE TILING
- 14 EXTERIOR LIGHTING
- 15 DECORATIVE METAL PANEL
- 16 WELD SCREEN
- 17 HOSE BIB
- 18 ALL APPROVED SPRAY ARRESTOR
- 19 MESH
- 20 FINISH

GENERAL ELEVATION NOTES

1. CONTRACTOR TO VERIFY CONFORMANCE TO CITY AGENCY. ALL WORKSHOPS AND MATERIALS TO BE IN ACCORDANCE WITH ALL APPLICABLE CODES AND REGULATIONS.
2. CONTRACTOR TO COORDINATE ALL UTILITIES AND SERVICES. ALL UTILITIES TO BE LOCATED AND DEPTH TO BE DETERMINED BY CONTRACTOR. ALL UTILITIES TO BE PROTECTED AND REPAIRED AS NECESSARY.
3. CONTRACTOR TO VERIFY ALL MATERIALS AND FINISHES. ALL MATERIALS AND FINISHES TO BE APPROVED BY ARCHITECT AND CITY AGENCY. ALL MATERIALS AND FINISHES TO BE APPROVED BY ARCHITECT AND CITY AGENCY. ALL MATERIALS AND FINISHES TO BE APPROVED BY ARCHITECT AND CITY AGENCY.
4. ALL APPROVED SPRAY ARRESTOR TO BE INSTALLED AT TOP OF ALL VERTICAL CHIMNEYS. ALL APPROVED SPRAY ARRESTOR TO BE INSTALLED AT TOP OF ALL VERTICAL CHIMNEYS. ALL APPROVED SPRAY ARRESTOR TO BE INSTALLED AT TOP OF ALL VERTICAL CHIMNEYS.



LANDRY
DESIGN
GROUP

11111 S. WILSON AVENUE
LOS ANGELES, CA 90024
PHONE: 310.774.1111
FAX: 310.774.1111
WWW.LANDRYDESIGN.COM

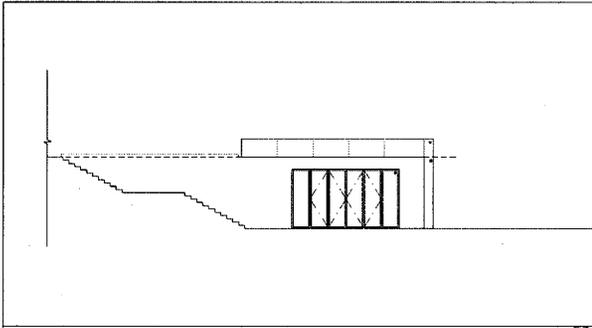
| REVISION | DATE | BY |
|----------|------|----|
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CRUMMER LOT 1
24108 PACIFIC COAST HIGHWAY
MALIBU, CA. 90265

ELEVATIONS

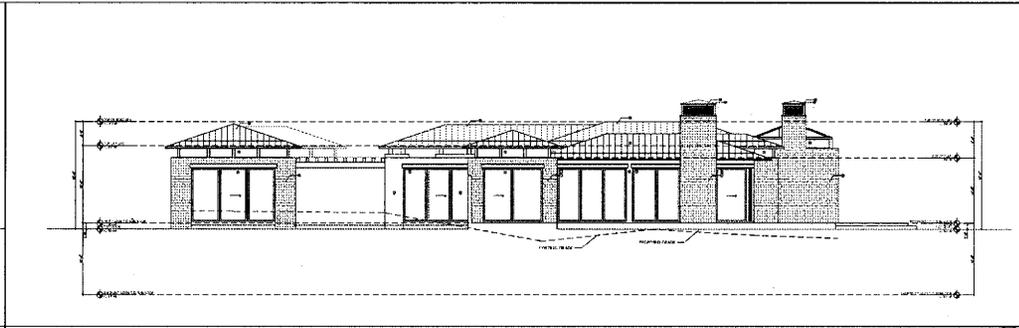
| | |
|---------|------------|
| DATE | 04.14.2014 |
| SCALE | AS NOTED |
| PROJECT | LDG |
| DATE | 06/04/01 |

A-6.0
ELEV.



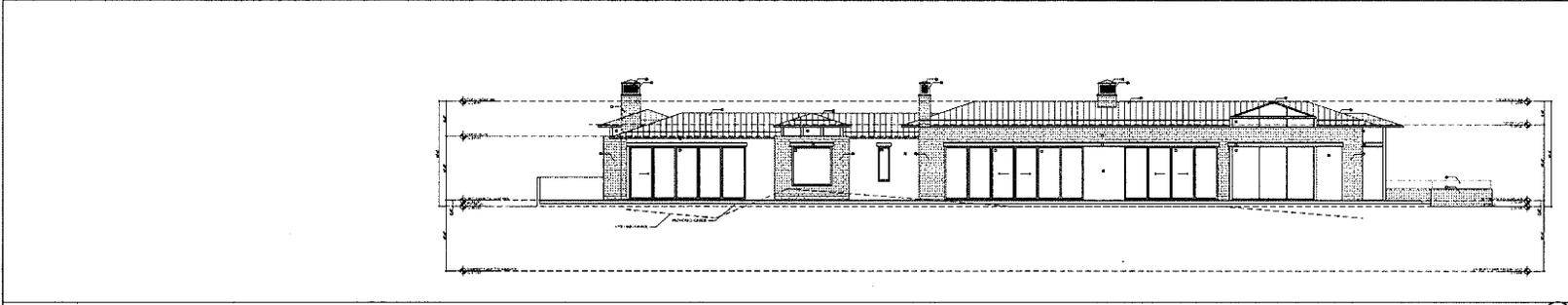
SCALE: 1/8" = 1'-0"

GYM ELEVATION 5



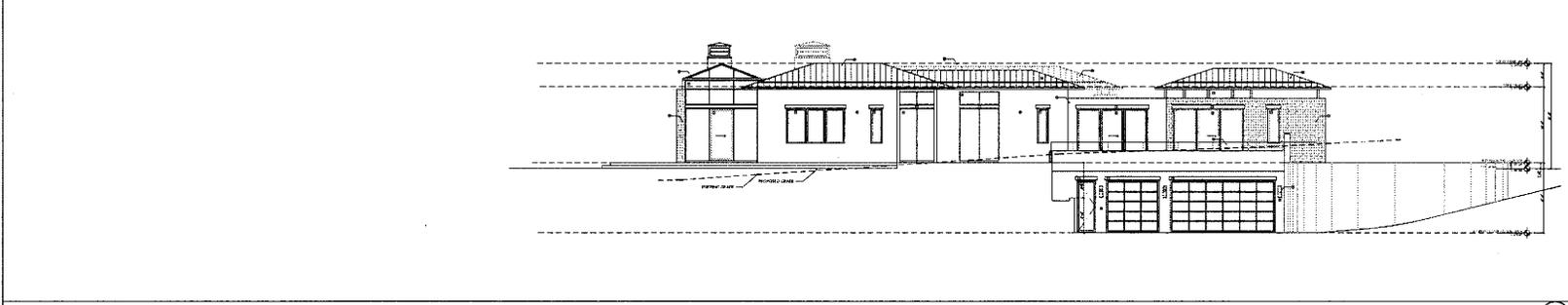
SCALE: 1/8" = 1'-0"

EAST(SIDE) ELEVATION 4



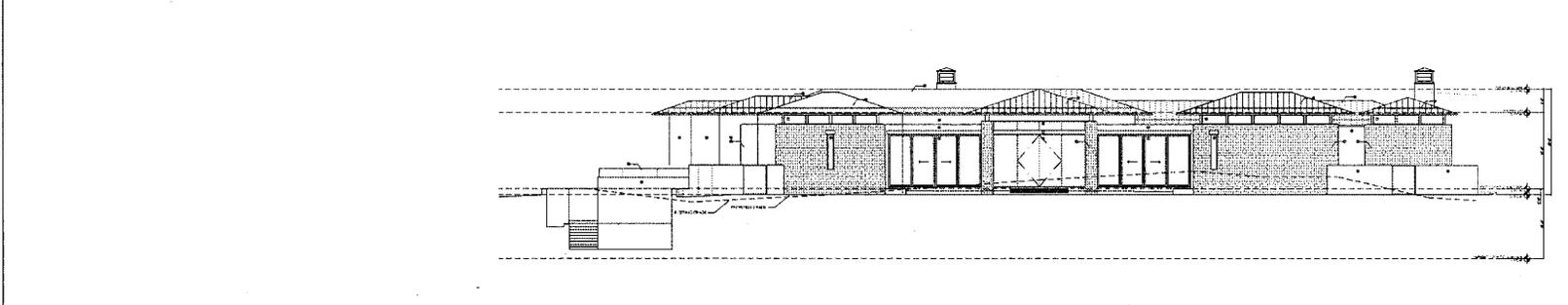
SCALE: 1/8" = 1'-0"

SOUTH (REAR) ELEVATION 3



SCALE: 1/8" = 1'-0"

EAST (SIDE) ELEVATION 2



SCALE: 1/8" = 1'-0"

NORTH (FRONT) ELEVATION 1

- NOTES TO SHEET**
- 1. SMOOTH STEELCO WITH GALVANIZING FINISH
 - 2. LIMESTONE
 - 3. STAIN GRADE WOOD
 - 4. STEEL CHANNELS
 - 5. WROUGHT IRON
 - 6. COPPER
 - 7. ALUMINUM DOOR - HONEYCOMB
 - 8. GLASS FINISH
 - 9. SPECIALTY GLASS
 - 10. METAL FINISHING
 - 11. CLAY TILE
 - 12. CLAY TILE SQUARE SET WITH
 - 13. POLYURETHANE TRAY
 - 14. EXTERIOR LIGHTING
 - 15. EXTERIOR ELECTRICAL OUTLET
 - 16. WASH SINK
 - 17. HIPS PAN
 - 18. U.L. APPROVED SPRAY ARRESTOR
 - 19. VENT
 - 20. HIPS

- GENERAL ELEVATION NOTES:**
1. CONTRACTOR TO VERIFY COMPLIANCE TO CITY AGENCY BUILDING DEPARTMENT AND PROVIDE BEST PRACTICE INDUSTRY OF ANY DISCREPANCIES.
 2. CONTRACTOR TO VERIFY RESULTS AND APPROVED FINISHES FOR EXACT LOCATION AND ELEVATION OF THE SPECIFIC ELEMENT AND HEIGHT OF THE DISCREPANCY.
 3. CONTRACTOR TO VERIFY RESULTS WITH NEAREST ADJACENT PROPERTY OWNER TO VERIFY PROPERTY LINE OR PROPERTY LOCATIONS AND BE IN THE CORRECT POSITION OF CONCRETE FOUNDATION TO A POINT NOT THE THICKNESS OF CONCRETE FOUNDATION WHERE WALLS, TOP FINISH OR OTHER FINISHES ARE NOT TO OCCUR.
 4. U.L. APPROVED SPRAY ARRESTOR IN METAL SHOWING AT TOPS OF ALL VENT AND CHIMNEYS AND BE ACCORDANCE WITH CITY AGENCY DEPARTMENT TO VERIFY FIRE SYSTEMS IN THIS ALL CORRECT SHALL BE VERIFIED AND LISTED THROUGHOUT THE HEIGHT POINT OF EACH VENT OR CHIMNEY.



REVISION LOG

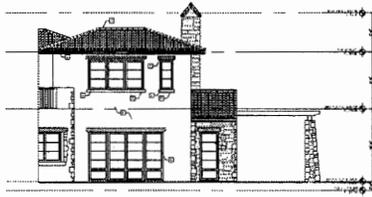
| NO. | DATE | DESCRIPTION |
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| | | |

CRUMMER LOT 2
24120 PACIFIC COAST HIGHWAY
MALIBU, CA. 90265

ELEVATIONS

| | |
|-------|------------|
| DATE | 04/14/2014 |
| SCALE | 1/8"=1'-0" |
| DRAWN | LDG |
| CHECK | 0604/02 |

A-6.0
ELEV



SCALE: 1/8"=1'-0" REAR FAMILY ROOM/GARAGE ELEVATION. 5



SCALE: 1/8"=1'-0" LIBRARY SIDE ELEVATION 4



SCALE: 1/8"=1'-0" MAIN HOUSE SIDE ELEVATION 3



SCALE: 1/8"=1'-0" OVERALL REAR ELEVATION 2



SCALE: 1/8"=1'-0" OVERALL FRONT ELEVATION 1

- NOTES TO SHEET**
- WINDOW FINISH WITH REGULATING FINISH
 - SAND & BASSNET LIMESTONE
 - STAIN GRADE WOOD
 - WAREHOUSE BRICK
 - STONE/BLK
 - WOOD DOOR / WINDOW
 - CLAY TILE
 - CLAY TILE DOUBLE STAIRER
 - EXTERIOR LIGHTING
 - TRILIA

GENERAL NOTES

1. CONTRACTOR TO VERIFY COMPLIANCE TO CITY AGENCY SURVEYING REQUIREMENTS. VERIFY ELEVATION POINTS OF ANY DISCREPANCIES.
2. CONTRACTOR TO CORRECT ANY VARIANCE DISCREPANCIES EXISTING BETWEEN THE SURVEYING AND THE ARCHITECT'S INTENT OF ANY DISCREPANCIES.
3. CONTRACTOR TO CORRECT ANY VARIANCE DISCREPANCIES EXISTING BETWEEN THE SURVEYING AND THE ARCHITECT'S INTENT OF ANY DISCREPANCIES. VERIFY ELEVATION POINTS OF ANY DISCREPANCIES. VERIFY ELEVATION POINTS OF ANY DISCREPANCIES. VERIFY ELEVATION POINTS OF ANY DISCREPANCIES.
4. VERIFY ELEVATION POINTS OF ANY DISCREPANCIES. VERIFY ELEVATION POINTS OF ANY DISCREPANCIES. VERIFY ELEVATION POINTS OF ANY DISCREPANCIES.

LANDRY DESIGN GROUP

11111 DOWA AVENUE
LOS ANGELES, CA 90024
PHONE 310 441 1111
FAX 310 441 1111
WWW.LANDRYDESIGN.COM

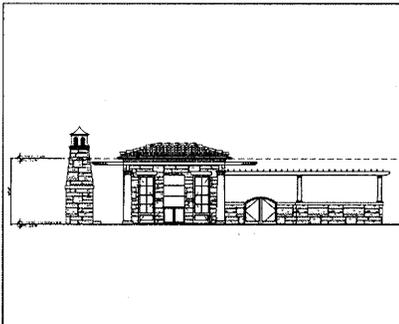
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|--------------|------------|--------------------|
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| 2 | 05/01/2014 | ISSUED FOR PERMITS |
| 3 | 05/01/2014 | ISSUED FOR PERMITS |
| 4 | 05/01/2014 | ISSUED FOR PERMITS |

CRUMMER LOT 3
24134 PACIFIC COAST HIGHWAY
MALIBU, CA, 90265

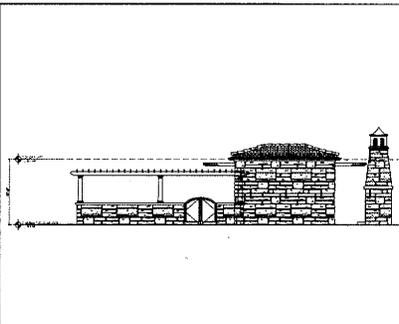
OVERALL ELEVATIONS

| | |
|---------|---------------|
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| SCALE | 1/8"=1'-0" |
| PROJECT | CRUMMER LOT 3 |
| DATE | 05/01/2014 |

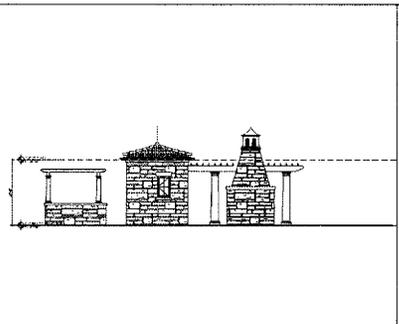
A-6.0
ELEVATIONS



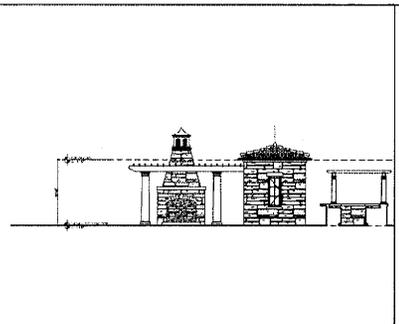
SCALE: 1/8"=1'-0" POOL CABANA ELEVATION 11



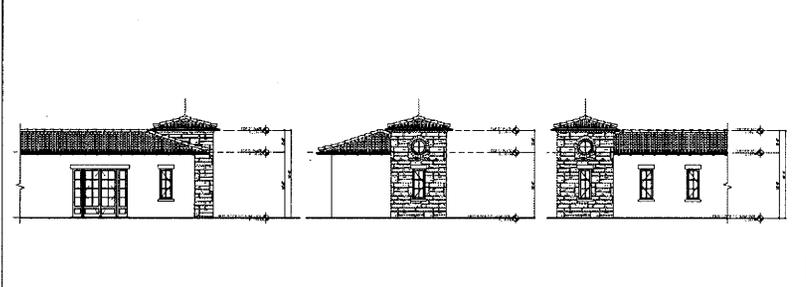
SCALE: 1/8"=1'-0" POOL CABANA ELEVATION 10



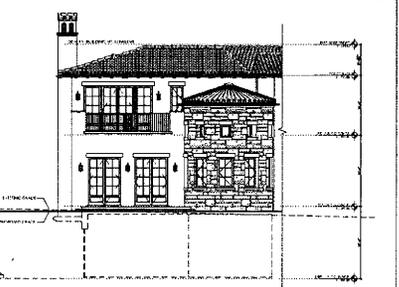
SCALE: 1/8"=1'-0" POOL CABANA ELEVATION 9



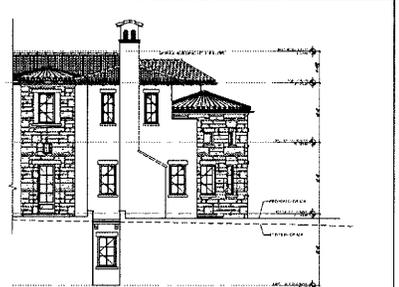
SCALE: 1/8"=1'-0" POOL CABANA ELEVATION 8



SCALE: 1/8"=1'-0" PARTIAL EXTERIOR ELEVATION 7



SCALE: 1/8"=1'-0" SOUTH PARTIAL EXT. ELEVATION 6



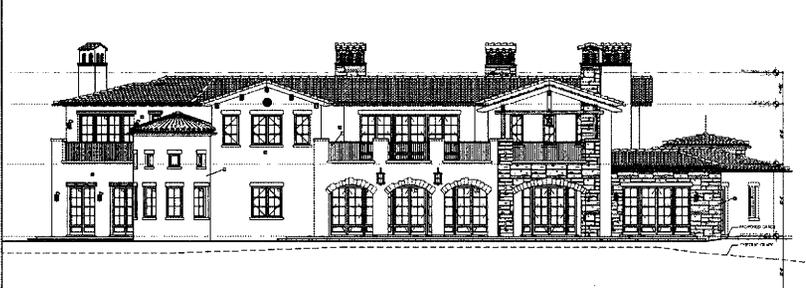
SCALE: 1/8"=1'-0" WEST PARTIAL EXT. ELEVATION 5



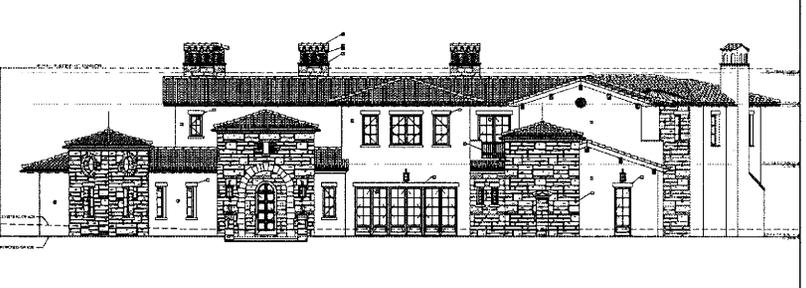
SCALE: 1/8"=1'-0" WEST EXTERIOR ELEVATION 4



SCALE: 1/8"=1'-0" EAST EXTERIOR ELEVATION 3



SCALE: 1/8"=1'-0" REAR (SOUTH) EXTERIOR ELEVATION 2



SCALE: 1/8"=1'-0" FRONT (NORTH) EXTERIOR ELEVATION 1

NOTES TO SHEET

- 1 SPINDLE SLATED ROOF EQUESTRIAN ARCH
- 2 SANTA BARBARA LUNESTONE
- 3 SPAIN GRADE WOOD
- 4 PALM CAS CONCRETE
- 5 WARDLEIGH IRON
- 6 COPPER
- 7 WARDLEIGH IRON 1/2" W/STAIN
- 8 WARDLEIGH IRON WITH STAIN W/BRONZE
- 9 SPECIALTY GLASS
- 10 SLATE
- 11 CLAY TILL
- 12 CLAY TILL COULDE ST. WATER
- 13 DECOMATIVE TILE
- 14 EXTERIOR LIGHTING
- 15 EXTERIOR ELECTRICAL OUTLET
- 16 WEEP SCREED
- 17 HOSE NIP
- 18 ILL APPROVED DRAIN REVISION
- 19 W/ST
- 20 W/ST

GENERAL NOTES

1. CONTRACTOR TO VERIFY COORDINANCE TO CITY AGENCY SURVEY POINTS AND RECORD PLATS AND DRAINAGE MONITORING OF ANY DISCREPANCIES
2. CONTRACTOR TO COORDINATE WITH ARCHITECT ON MARKING FOR EXACT LOCATION AND ELEVATION OF MARKERS, AND FOR RECTIFICATION OF ANY DISCREPANCIES
3. CONCRETE CORNER BRICKS TO BE USED UNLESS SPECIFICALLY NOTED AT LOWEST POSSIBLE POINT OF CONCRETE FOOTING AND ALL CURB, CURB COULDS, CONCRETE ESCAPEMENT, CURBS TO BE 18" MIN. HIGH, 12" MIN. BROAD FROM CURB. ALL WALLS SHALL BE 12" MIN. THICK UNLESS OTHERWISE NOTED.
4. ILL APPROVED DRAIN REVISIONS: ALL INITIAL WORK IN TOP OF ALL REPAIRS. CONTRACTOR TO BE RESPONSIBLE FOR ALL IMPROVEMENTS TO BE MADE TO EXISTING DRAINAGE. ALL CURBS SHALL BE 18" MIN. HIGH FROM FINISH GRADE. NOTES TO BE RECALCULATED FOR EACH WORK ITEM BY THE CONTRACTOR.

LANDRY DESIGN GROUP

CRUMMER LOT 4
24105 PACIFIC COAST HIGHWAY
MALIBU, CA 90265

EXTERIOR ELEVATIONS

DATE: 05.01.2014
SCALE:
PROJECT:
DRAWN:
CHECKED:
PROJECT NO:
A-6.0
ELEV

**STUDY OF LOWER COST OVERNIGHT
ACCOMMODATIONS
SERVING THE CITY OF MALIBU AND ITS VICINITY
SEPTEMBER, 2008**

**AZ WINTER MESA LLC
C/O BIG ROCK PARTNERS LLC
315 S. BEVERLY DRIVE
BEVERLY HILLS, CA 90212
ATTN: ROBERT GOLD
310-734-2353
RGOLD@BIGROCKPARTNERS.COM**

LOWER COST OVERNIGHT ACCOMMODATIONS SERVING THE CITY OF MALIBU AND ITS VICINITY

I. Objective.

AZ Winter Mesa LLC (“AZWM”) has conducted the following study which analyzes the inventory of low-cost overnight accommodations serving the Malibu area in 2008, prior to a downturn in the economy and the existing downward pressure on both occupancy rates and occupancy levels. This study was prepared in connection with AZWM’s request for an LCP amendment which would remove any reference in the LCP to possible CV-2 uses on the Crummer Site (24200 Pacific Coast Highway, Malibu, CA). This study provides empirical evidence that the approval of the proposed LCPA would not interfere with the achievement of appropriate low cost accommodations in the Coastal Zone.

II. Introduction

The coastal area from Point Mugu to Santa Monica

The City of Malibu is uniquely shaped as it stretches approximately 27 miles along the Pacific coast and up to 5 miles inland, bordered by the Santa Monica Mountains and the Pacific Ocean. The public perception of the “Malibu” coastal area extends considerably beyond the City’s legal boundaries both east to Los Angeles and west through Ventura County. The main artery through the area is Pacific Coast Highway. The population of the City of Malibu as of the 2000 census is 12,575 people, with an average household income of \$159,922.

The entire coastal area from Point Mugu to Santa Monica, and the Santa Monica Mountains, attracts travelers visiting the City of Los Angeles, Beverly Hills, Santa Monica, and communities of Hollywood and surrounding areas.

III. Malibu - Tourist Destination

The following is a list of some of the primary tourist destinations in the Malibu area:

- Beaches, including Surfrider and Zuma Beach
- Malibu Film Festival
- Malibu Pier
- Getty Villa
- Santa Monica Mountains
- Celebrity sightings
- Adamnson House
- State Parks, such as the Santa Monica Mountains Recreation Area and State and County beaches
- Malibu Country Mart/Malibu Lumber

Malibu remains mostly a “day-trip” destination. The majority of Malibu’s non-camping visitors, would be consider day-trippers, spending their day in Malibu visiting its beaches, the Getty Villa, shopping or hiking while lodging elsewhere in a more central location in the surrounding Malibu area. Camping visitors generally stay in the Santa Monica Mountains.

The Greater Los Angeles area, “LA” tourists will want to stay in a location that is central to the other attractions, such as Disneyland, Hollywood, Santa Monica, Venice Beach, Long Beach, etc. More urban

areas such as Santa Monica and Los Angeles proper provide significantly more amenities and access to multiple destinations (e.g. the City of Malibu).

Considerations in coastal accommodation planning:

- There is an ample inventory of low cost overnight accommodations to serve visitors to Malibu, given Malibu's neighboring cities: Agoura Hills, Calabasas, Santa Monica, Venice and Los Angeles proper.
- The ratio of high-end rooms to low-cost rooms in Malibu is far less than that of Dana Point, a comparable beach locale that is considered more of a "destination" city than is Malibu.
- The commercial offerings of the City of Malibu (i.e. restaurants, retail shops, entertainment) generally cater to more affluent consumers/visitors rather than visitors seeking low-cost overnight accommodations.
- The high cost of land in Malibu is an obstacle to the construction of new low cost overnight (excluding camping) accommodations.
- The considerable success of Crystal Cove Cottages in Crystal Cove State Park demonstrate that contributions to the establishment of low cost accommodation in State parks can be a highly successful means of promoting more low cost accommodations in the coastal zone,

IV. Methodology

To assess the availability supply of low cost accommodations a study of existing accommodations was performed. The study was not confined to the City of Malibu itself, but rather to an area the normal visitor would consider in terms of accommodations when visiting Malibu and the surrounding Santa Monica Mountains area.

In addition, the survey looked at accommodations up to \$150 average daily rate (ADR) which was considered the upper end of moderate ADR for that survey year.

Methodology

- All listed hotels in the City of Malibu were considered, with the exception of timeshares and private clubs. These hotels can be found online, through third-party websites such as www.hotels.com, and www.tripadvisor.com.
- Phone survey of asking average summer rates using July 25, 2008 w as a representative sample day – a Friday in the peak of summer. For hotels that were not contacted by phone this study uses the hotels advertised "Summer Rates." Lower cost rooms were used for hotels that provide both lower priced and higher cost accommodations.
- Websites used included hotels.com, tripadvisor.com, googlemaps.com, among others. Reservation websites also used, including third-party sites, as long as there were no additional booking fees quoted in the reservation search that could impact the rate.
- Total inventory of rooms for each respective hotel/motel counted in the report, per their ADR.
- Statewide projected peak ADR in 2008 was \$132.90, per Smith Travel Research, for all types of hotels surveyed.
- The threshold used to characterize an accommodation as low or moderate cost was an ADR up to \$150 (2008).
- Survey of accommodations was initially limited to a 15-mile radius from Crummer Site. However, based on information received in a conversation with Steve Curtis, Director Real Estate and Development, Accor/Motel 6 (See Section VI herein) hotels/motels that were outside

of the 15-mile range, were also included when considered to be of the type that visitors would consider, were included, such as Santa Monica, Agoura Hills and Calabasas¹

V. Results

A. Statewide

The following table outlines the statewide ADRs for 2003 through 2007, and projected 2008, by Smith Travel Research. 2008 values projected using exponential regression based on 2003 through 2007 values.

Statewide Average Room Rates for 2003 to 2007 through projected 2008

| | 2003 | 2004 | 2005 | 2006 | 2007 | Projected 2008 |
|-----------------------|----------------|----------------|-----------------|-----------------|-----------------|-----------------|
| January | \$95.39 | \$92.07 | \$96.64 | \$104.32 | \$112.12 | \$114.22 |
| February | \$95.16 | \$97.35 | \$100.62 | \$108.30 | \$118.07 | \$121.72 |
| March | \$93.70 | \$96.42 | \$100.33 | \$109.68 | \$116.64 | \$122.10 |
| April | \$93.18 | \$95.03 | \$102.25 | \$110.49 | \$117.31 | \$124.04 |
| May | \$93.88 | \$96.65 | \$102.39 | \$112.08 | \$119.02 | \$125.82 |
| June | \$92.46 | \$95.86 | \$102.82 | \$111.96 | \$119.01 | \$126.73 |
| July | \$95.09 | \$98.70 | \$106.31 | \$116.39 | \$124.45 | \$132.92 |
| August | \$96.28 | \$100.18 | \$107.37 | \$116.81 | \$124.82 | \$132.88 |
| September | \$92.56 | \$95.48 | \$105.66 | \$112.45 | \$119.84 | \$128.41 |
| October | \$94.65 | \$98.32 | \$104.60 | \$115.48 | \$123.43 | \$131.40 |
| November | \$91.10 | \$93.86 | \$101.67 | \$110.55 | \$118.38 | \$126.12 |
| December | \$86.19 | \$90.51 | \$96.12 | \$103.92 | \$110.06 | \$117.05 |
| Annual Average | \$93.30 | \$95.87 | \$102.23 | \$111.04 | \$118.60 | \$125.28 |

Source: Smith Travel Research, California Tourism, June 2003 through June 2007.

As shown above, the projected 2008 peak average falls in the month of July, where the average ADR is \$132.92. For the purposes of this study, the threshold below which accommodations are deemed "low or moderate cost" will be \$150, taking into account the asking rates of hotels in connection to their quality. An ADR of up to \$150 was chosen a cut off because ADRs in coastal areas generally are significantly higher than other locations in the State.

Database

- Hotels, motels, & campgrounds that fit the above criteria
- Ratio of rooms above and below the average July ADR
- Nature of demographic for both visitors to campgrounds and hotels/motels
- Occupancy rates
 - Occupancy rates range from 60%-100%, with Santa Monica hotels/motels usually reaching capacity during the summer.
 - Agoura Hills and Calabasas hotels/motels provide more room capacity.

¹ Because there are many attractions in the Santa Monica Mountains and the Santa Monica area that would attract visitors, it was assumed that visitors would be flexible and price-driven in choosing where to stay overnight. Because multiple destinations would likely be visited, the normal visitor may choose to stay at a hotel or motel convenient to multiple destination or on the way to or from their primary destination, if any.

B. Malibu

The above in the table below indicates that there are a significant amount of lower cost overnight accommodations-1, 449 in total-that are non-camping, non-RV accommodations within a reasonable distance of Malibu, including in the City Malibu itself. When taken together with other non-hotel accommodations, there are 1,949 rooms available in the greater Malibu area – including in Malibu – which could be characterized as low or moderate overnight accommodations. Therefore, nearly 50% of the total accommodations in Malibu and the greater Malibu area are low or moderate cost.

NOTE-When referring to rooms in campgrounds the table below is referring to number of campsite sites which are at least the functional equivalent of two hotel/motel rooms because of the number of people a campsite can accommodate.

SEE TABLE OF MALIBU ACCOMMODATIONS INVENTORY ON NEXT PAGE

Malibu Accommodations Inventory

Low-Cost Accommodations

| | Name | Address | City | Phone | Rooms | Distance from Project | Average Peak ADR | ADR Source | Occupancy |
|--------------------------------------|--|--------------------------------|--------------|--------------|--------------|-----------------------|------------------|--------------------|--------------------|
| Conventional Lodging | | | | | | | | | |
| 1 | Malibu Riviera Motel | 28920 Pacific Coast Hwy | Malibu | 310-457-9503 | 13 | 6.5 | \$123 | Phone - 5/30 2:56p | 90% |
| 2 | Good Nite Inn - Calabasas | 26557 Agoura Road | Calabasas | 818-880-6000 | 170 | 9.4 | \$76 | Website | 70-80% |
| 3 | Hilton Garden Inn | 24150 Park Sorrento | Calabasas | 818-591-2300 | 142 | 12.5 | \$114 | Website | 80-85% |
| 4 | Hostelling International | 1436 2nd Street | Santa Monica | 310-393-9913 | 254 | 12.8 | \$32 | Website | 94-95% |
| 5 | Renaissance Agoura Hills | 30100 Agoura Hills Road | Agoura Hills | 818-707-1220 | 280 | 13.1 | \$129 | Phone - 6/2 9:44a | 90-95% |
| 6 | Seaview Motel | 1760 Ocean Avenue | Santa Monica | 310-393-6711 | 16 | 13.2 | \$90 | Phone - 5/27 3:54p | na |
| 7 | Country Inn & Suites by Carlson, Calabasas | 23627 Calabasas Road | Calabasas | 818-222-5300 | 123 | 13.5 | \$114 | Phone - 5/27 3:56p | 60% |
| 8 | Santa Monica Motel | 2102 Lincoln Blvd. | Santa Monica | 310-392-6806 | 32 | 13.9 | \$89 | Phone - 5/30 4:26p | na |
| 9 | Ocean Park Inn | 2452 Lincoln Blvd. | Santa Monica | 310-392-3966 | 29 | 14.1 | \$80 | Phone - 5/30 4:19p | 90% |
| 10 | Palm Motel | 2020 14th Street | Santa Monica | 310-462-3861 | 26 | 14.2 | \$85 | Website | 100% (peak season) |
| 11 | Sea Shore Motel | 2637 Main Street | Santa Monica | 310-392-2787 | 19 | 13.9 | \$130 | Phone - 5/30 4:13p | |
| 12 | Comfort Inn - Santa Monica | 2815 Santa Monica Blvd. | Santa Monica | 310-828-5517 | 108 | 14.6 | \$149 | Website | |
| 13 | Homewood Suites | 28901 Canwood Street | Agoura Hills | 818-865-1000 | 125 | 14.1 | \$139 | Phone - 5/27 3:58p | |
| 14 | Malibu Motel | 22541 Pacific Coast Highway | Malibu | 310-465-6169 | 18 | 2.0 | \$139 | Website | |
| 15 | Hampton Inn Suites Agoura Hills | 30255 Agoura Road | Agoura Hills | 818-597-0333 | 94 | 15.0 | \$100 | Website | 100% (peak season) |
| Subtotal Conventional Lodging | | | | | 1,449 | | | | |
| Alternative Lodging | | | | | | | | | |
| 1 | Malibu Beach RV Park | 25801 Pacific Coast Highway | Malibu | 310-452-6052 | 177 | 1.9 | \$105 | Website | |
| 2 | Malibu Creek State Park | 1925 Las Virgenes Road | Calabasas | 818-880-0367 | 62 | 4.6 | \$25 | Website | |
| 3 | Leo Carrillo State Park | 35000 W. Pacific Coast Highway | Malibu | 818-880-0363 | 135 | 13.9 | \$25 | Website | |
| 4 | Point Mugu State Park | 9000 W. Pacific Coast Highway | Malibu | 805-488-5223 | 126 | 19.2 | \$15 | Website | |
| Subtotal Alternative Lodging | | | | | 500 | | | | |
| Total | | | | | 1,949 | | | | |

(1) Reflects May rate
 *Included in survey due to location in Malibu proper

High-End Accommodations

| | Name | Address | City | Phone | Rooms | Distance from Project | Average Peak ADR | ADR Source | Occupancy |
|--------------|--------------------------------------|-----------------------------|--------------|--------------|--------------|-----------------------|------------------|--------------------|-----------|
| 1 | Malibu Beach Inn | 22878 Pacific Coast Highway | Malibu | 310-456-6444 | 47 | 1.8 | \$675 | Website | |
| 2 | Casa Malibu Inn | 22752 Pacific Coast Highway | Malibu | 310-466-2219 | 21 | 1.9 | \$199 | Phone - 5/23 2:43p | |
| 3 | Casa Laronde | 22000 Pacific Coast Highway | Malibu | 310-456-9333 | 2 | 4.0 | \$200 | Website | |
| 4 | Malibu Country Inn | 6506 Westward Beach Road | Malibu | 310-457-9622 | 16 | 6.9 | \$210 | Website | |
| 5 | Huntley Santa Monica Hotel | 1111 2nd Street | Santa Monica | 310-394-5454 | 209 | 12.4 | \$439 | Website | |
| 6 | Hotel Osaema | 849 Ocean Avenue | Santa Monica | 310-393-0486 | 70 | 12.6 | \$460 | Website | |
| 7 | Ocean View Hotel | 1447 Ocean Avenue | Santa Monica | 800-452-4888 | 70 | 12.7 | \$299 | Website | |
| 8 | Georgian Hotel | 1415 Ocean Avenue | Santa Monica | 310-395-9945 | 84 | 12.7 | \$315 | Website | |
| 9 | Santa Monica Beach Travelodge | 1525 Ocean Avenue | Santa Monica | 310-451-0761 | 30 | 12.8 | \$219 | Website | |
| 10 | Ocean Lodge Hotel | 1657 Ocean Avenue | Santa Monica | 310-451-4146 | 20 | 13.1 | \$160 | Phone - 5/27 3:49p | |
| 11 | Loews Santa Monica Beach Hotel | 1700 Ocean Avenue | Santa Monica | 310-394-6326 | 340 | 13.1 | \$399 | Website | |
| 12 | Le Merigot | 1740 Ocean Avenue | Santa Monica | 310-395-9700 | 175 | 13.1 | \$375 | Website | |
| 13 | Holiday Inn Santa Monica at the Pier | 120 Colorado Avenue | Santa Monica | 877-863-4780 | 132 | 13.1 | \$243 | Website | |
| 14 | Viceroy Hotel | 1819 Ocean Avenue | Santa Monica | 310-260-7500 | 162 | 13.2 | \$449 | Website | |
| 15 | Hotel Casa Del Mar | 1910 Ocean Front Walk | Santa Monica | 310-581-5533 | 129 | 13.4 | \$520 | Website | |
| 16 | Doubletree Santa Monica | 1707 4th Street | Santa Monica | 310-395-3332 | 253 | 13.5 | \$269 | Website | |
| 17 | Sheraton Delina | 530 Pico Boulevard | Santa Monica | 310-399-9344 | 308 | 13.6 | \$242 | Website | |
| 18 | Best Western Gateway | 1920 Santa Monica Boulevard | Santa Monica | 310-829-9100 | 123 | 14.0 | \$199 | Website | |
| 19 | Su Casa at Venice Beach | 431 Ocean Front Walk | Los Angeles | 310-452-9700 | 12 | 14.5 | \$455 | Website | |
| Total | | | | | 2,203 | | | | |

VI. Feasibility Analysis of Low or Moderate Cost accommodations at the Crummer Site

If the Crummer Site were used for visitor-serving, such use could conceivably include a hotel or motel. In order to assess whether such a facility is in fact feasible at the Crummer site, an analysis of the siting opportunities and constraints of private operators was undertaken.

Barriers to Low-Cost Accommodations

One of the best known brands of low cost accommodation sought by price-conscious visitors is Motel 6.

- Criteria for a Motel 6 include²:
 - Location proximate to a transient freeway which services commuters, visitors and truckers. Low-cost accommodation hotels, such as Motel 6 (Accor) attract highway travelers en-route to another destination, as well as visitors to the surrounding area.
 - Proximate to demand generators such as local restaurants, retail, tourist locales.
 - Land value extremely important in the selection of a location--Significant impact on the profitability of a low-cost accommodation hotel.
 - Motel 6 also is attracted to tourist locales.

The City of Malibu does not meet many of these requirements. For example, Highway 101 is the preferred “transient” freeway compared to PCH because of the width of lanes, velocity of traffic, and versatility. In addition, lower cost, fast food restaurants are severely lacking in Malibu. The visitor seeking the lower cost accommodations and lower cost dining options will find only a limited number of such dining options in Malibu. Visitors would have to travel to Santa Monica, where there are significantly more options.

Does Malibu qualify as a tourist destination that demands overnight stay?

Most tourists visiting Malibu do not stay overnight, unless they want to:

- Camping: Most of the visitors to Malibu seeking lower cost overnight accommodations are campers. There are sufficient available overnight campgrounds to meet the demands of this group.
- Luxury/High-end vacations: There are a significant number of available overnight accommodations in facilities that cater this segment of the market providing full-service amenities.
- Amenities: Lower cost options are limited.

Comparison to Dana Point

To place the Malibu area in an appropriate context, a southern California site was chosen for comparison that offers many of the attractions in the Malibu area. The City of Dana Point is in Orange County, California.

Dana Point

The City of Dana Point has a population of 35,100, per the 2000 census. Similar to Malibu, Dana Point is seen as a destination for its beaches and its high-end shopping. Neighboring cities, which include Laguna Beach and San Clemente, are larger and provide a more extensive inventory of accommodations.

² As per telephone conversation with Steve Curtis, Director of Real Estate and Development, Accor/Motel 6, May 30, 2008.

Orange County is a destination for visitors to Aliso/Wood Canyons Regional Park, Soka University, San Clemente, Disneyland, beaches (Huntington Beach/Newport Beach), the Block at Orange, South Coast Plaza, and sporting events.

- Database of accommodations in Dana Point
Dana Point has a higher ratio of high-end accommodations to low-end accommodations including camping accommodations compared to Malibu.
- Explanation of difference in geography, consumer profile
Similar to Malibu, land costs in Dana Point make it prohibitive for the low-cost hotels chains. Pacific Coast Highway is the main artery through the city, with commuters and transients using Interstate 5 as the long-distance artery.
- Ratio of Affordable Rooms
Of the hotels surveyed, by way of publicly available internet sites and search engines, Malibu has a total of 4,152 rooms available within a rough 15 mile radius, 47% of which are deemed "low-cost," i.e., below a \$150 ADR. Similarly, the City of Dana Point, has a total of 3,100 available rooms, 26% of which are considered low-cost. As can be seen, there is a lower ratio of low and moderate cost rooms available to visitors to the greater Malibu area when compared with Dana Point.
- Occupancy Rates
Occupancy rates range from 40-100%, with Country Plaza Inn, located approximately 7 miles from Dana Point..

SEE TABLE BELOW OF DANA POINT ACCOMMODATIONS INVENTORY

Dana Point

Low Cost Accommodations

| | Name | Address | City | Phone | Rooms | Distance from City Center | Average Peak ADR | Occupancy |
|--------------------------------------|-----------------------------|-------------------------------|---------------------|--------------|-------------|---------------------------|------------------|-----------|
| 1 | Dana Marina Inn | 34111 Pacific Coast Highway | Dana Point | 949-496-1300 | 20 | 1.6 | \$90.00 | n/a |
| 2 | Capistrano Seaside Inn | 34862 Pacific Coast Highway | Dana Point | 949-496-1399 | 28 | 3.2 | \$129.00 | 40% |
| 3 | Best Western Capistrano Inn | 27174 Ortega Highway | San Juan Capistrano | 949-493-5661 | 199 | 4.1 | \$119.00 | n/a |
| 4 | Best Value Laguna Inn | 28742 Camino Capistrano | San Juan Capistrano | 949-347-8520 | 32 | 5.9 | \$126.75 | n/a |
| 5 | Country Plaza Inn | 35 Via Plco Plz | San Clemente | 949-498-8800 | 98 | 6.5 | \$132.00 | 100% |
| 6 | The Little Inn by the Beach | 1819 S. El Camino Real | San Clemente | 949-492-1960 | 18 | 7.9 | \$90.00 | 90% |
| 7 | Comfort Suites San Clemente | 3701 S. El Camino Real | San Clemente | 949-361-6600 | 60 | 9.3 | \$129.99 | 90-95% |
| 8 | Holiday Inn Laguna Hills | 25205 La Paz Rd. | Laguna Hills | 949-586-5000 | 147 | 11.2 | \$127.00 | 100% |
| 9 | Laguna Hills Lodge | 23932 Paseo de Valencia | Laguna Hills | 949-830-2550 | 122 | 13.7 | \$129.00 | 100% |
| 10 | Comfort Inn Laguna Hills | 23061 Avenida de la Carlota | Laguna Hills | 949-859-0166 | 76 | 14.7 | \$105.00 | 85-95% |
| Subtotal Conventional Lodging | | | | | 800 | | | |
| Alternative Lodging | | | | | | | | |
| 1 | Crystal Cove State Park | 8471 Pacific Coast Highway | Laguna Beach | 949-494-3539 | 34 | 1.8 | \$15.00 | |
| 2 | Doheny State Beach | 25300 Dana Point harbor Drive | Dana point | 949-496-6172 | 228 | 1.9 | \$35.00 | |
| Subtotal Alternative Lodging | | | | | 262 | | | |
| Total | | | | | 1062 | | | |

High-End Accommodations

| | Name | Address | City | Phone | Rooms | Distance from City Center | Average Peak ADR |
|--------------|------------------------------------|-------------------------------|------------------|--------------|--------------|---------------------------|------------------|
| 1 | St. Regis Monarch Beach | 1 Monarch Beach Resort | Dana Point | 949-234-3200 | 400 | 1.0 | \$595.00 |
| 2 | Dana Point Harbor Inn | 25325 Dana Point Harbor Drive | Dana Point | 949-493-5001 | 43 | 1.7 | \$149.00 |
| 3 | Ritz-Carlton, Laguna Niguel | 1 Ritz Carlton Dr. | Dana Point | 949-240-2000 | 393 | 1.8 | \$475.00 |
| 4 | Mariott Laguna Cliffs | 25135 Park Lantern | Dana Point | 949-661-5000 | 376 | 2.2 | \$299.00 |
| 5 | Doubletree Doheny Beach | 34402 Pacific Coast Highway | Dana Point | 949-661-1100 | 196 | 2.4 | \$269.00 |
| 6 | Capistrano Beach Resort | 34734 Pacific Coast Highway | Capistrano Beach | 949-248-1316 | 34 | 3.1 | \$172.00 |
| 7 | Holiday Inn San Clemente | 111 S. Ave De La Estrella | San Clemente | 949-361-3000 | 72 | 6.1 | \$169.00 |
| 8 | Best Western Laguna Brisas | 1600 S. Coast Highway | Laguna Beach | 949-497-7272 | 66 | 6.6 | \$279.20 |
| 9 | Capri Laguna Beach | 1441 S. Coast Highway | Laguna Beach | 949-494-6533 | 50 | 6.8 | \$245.00 |
| 10 | Days Inn San Clemente | 1301 North El Camino Real | San Clemente | 949-381-0636 | 43 | 7.3 | \$199.00 |
| 11 | Always Inn San Clemente | 177 Avenida Carillo | San Clemente | 949-374-6165 | 3 | 7.5 | \$219.00 |
| 12 | Fairfield Inn Mission Viejo | 26328 Oso Parkway | Mission Viejo | 949-582-7100 | 147 | 7.8 | \$149.00 |
| 13 | By the Sea Inn | 475 North Coast Highway | Laguna Beach | 949-497-6645 | 36 | 8.2 | \$359.00 |
| 14 | San Clemente Cove | 104 S. Alameda Lane | San Clemente | 949-492-6666 | 33 | 8.2 | \$329.00 |
| 15 | San Clemente Inn | 2600 Avenida Del Presidente | San Clemente | 949-492-6103 | 96 | 8.6 | \$150.00 |
| 16 | Laguna Beach Motor Inn | 985 N. Coast Highway | Laguna Beach | 949-494-5294 | 22 | 8.8 | \$159.00 |
| 17 | Crescent Bay Inn | 1435 N. Coast Highway | Laguna Beach | 949-494-2508 | 15 | 9.0 | \$155.00 |
| 18 | Ayres Hotel Laguna Woods | 24341 El Toro Road | Laguna Hills | 949-588-0131 | 139 | 10.8 | \$209.00 |
| 19 | Courtyard by Marriott Laguna Hills | 23175 Avenida de la Carlota | Laguna Hills | 949-859-5500 | 136 | 14.8 | \$149.00 |
| Total | | | | | 2,300 | | |

(1) Peak ADR surveyed is an average of standard rooms offered

VII. Conclusion.

- When reviewing the number of low-cost accommodations, Malibu compares favorably when compared with Dana Point on its own or when looking at their respective surrounding geographic areas.
- The majority of its visitors are tourists on day trips and the geographical makeup of the city does not suggest the need for additional low or moderate cost accommodations on the Crummer Site.
- High land costs and limited number of budget travelers who want to spend the night in Malibu (outside of camping) deters low-cost accommodating hotels from establishing a presence there.
- Hikers and “day-trippers” usually stay in neighboring Santa Monica, Agoura Hills, and Los Angeles. The typical visitor to Malibu is of a transient nature, whereas cities such as Dana Point are more destinations for luxury travelers.
- Malibu benefits from the accommodations offered by nearby cities, such as Calabasas and Santa Monica, which provide overnight stays for low-budget travelers who want to make a day-trip to Malibu.
- Overall, the availability of low-cost accommodations in a 15-mile radius from the Crummer Site seems to sufficient to meet demands and exceeds similarly situated coastal areas, in that the City of Malibu provides a higher ratio of low and moderate cost rooms than that of a similarly established beach destination in the City of Dana Point. In both cities, at least one hotel reported occupancy of 60% or lower in peak season, further evidencing sufficient inventory.
- The enormous success of the Crystal Cove Cottages suggest that contributions in funding to State park accommodation programs offer a feasible and appropriate response to the desire for the creation of additional low and moderate cost overnight accommodations.
- Such an opportunity is being undertaken by the State Department of Parks and Recreation (DPR) at the Topanga Ranch Motel, and other areas of the state park are being targeted for additional establishment or expansion of low and moderate overnight accommodations as funding permits.
- The key obstacle to the DPR program is funding.³
- The Malibu LUP Section 2.35 specifically provides for the creation of lower-cost overnight accommodations through payment of an in-lieu fee into a fund to subsidize the construction of lower-cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County.
- The decline in tourism construction is expected to be protracted, with few new hotel products of any kind being built and many struggling to fill rooms in light of the economic downturn.
- Contributions to the DPR program or other meritorious programs can produce a greater supply of low and moderate cost accommodations in the long term, as land prices, lending, construction costs, and obsolescence lead to retirement of older products without corresponding replacements.

³ Pers. comm.. Ruth Coleman, Director, December 2008

Sources used:

TripAdvisor.com:
www.tripadvisor.com

Malibu Chamber of Commerce:
http://www.malibu.org/business_directory.php?catid=148

Accor:
<http://www.accor-na.com>
Steve Curtis
Director of Real Estate and Development
(9720 360-2711)

Google Maps:
<http://maps.google.com>

April 28, 2015

MAY 20 2015



PCH Project Owner, LLC
c/o BRP LLC
315 South Beverly Drive
Suite 311
Beverly Hills, California 90212
Mr. Robert Gold, Vice President

RE: 24200 Pacific Coast Highway, Malibu, CA A/K/A Crummer Trust Property (the "Site")

Dear Mr. Gold:

In accordance with our agreement, we have completed our analysis of the feasibility of a potential hotel development on the above referenced site in Malibu, California for PCH Project Owner, LLC (the "Owner"). We have toured the Site and analyzed the potential feasibility of developing a hotel on the Site. This report is subject to the General Statement of Assumptions and Limiting Conditions presented in the Addenda.

SITE OVERVIEW AND BACKGROUND

The Site, also known as the Crummer Trust Property, is located on Pacific Coast Highway (PCH) in Malibu, adjacent to Bluffs Park, just south of Pepperdine University and across PCH from the formerly proposed Rancho Malibu Hotel, also known as the Adamson Hotel site, which is now being considered for other uses, including a cemetery. The Site encompasses 23.9 acres on a sloping bluff of varying topography, of which approximately 5.5¹ acres is allocated to a conservation easement. This results in a net developable area of approximately 18.4 acres, or 801,504 square feet. We note that the actual developable area of the Site may actually be significantly smaller than 18.4 acres, as this figure does not take into consideration height restrictions or landscaping, open space, bluff setbacks, safety setbacks, and parking requirements as dictated by the zoning of the parcel.

SITE AND OPERATIONAL CHALLENGES

Just in reviewing the zoning restrictions and site-specific preparations needed to build a hotel at the subject Site, we are of the opinion that the subject Site suffers from both site and operational challenges that would render a hotel of any quality level physically infeasible. Our primary concerns regarding the preparation of the subject Site for the development of a hotel are discussed below.

¹We are of the understanding that PCH Property Owner, LLC is currently under discussions with the Coastal Commission Staff to increase the size of the proposed conservation easement.

Site Challenges

Topographical Challenges

While the Site is 18.4 acres after deduction of the proposed conservation easement, the Site's steep topography, south facing bluff layout, a ravine that bisects a portion of the Site, as well as safety and bluff setback requirements limit the buildable area of the Site to approximately nine acres. For the purpose of this study, we have not been requested to provide a potential layout of a hotel on the site; however, code requirements for parking, loading, fire access, open space, parking, height restrictions, and required landscaping coupled with the limited buildable area could further limit the number of rooms and additional facilities that could be constructed within the developable land on the Site. There are superior sites for hotel development, including the Nobu Ryokan Hotel at 22752 Pacific Coast Highway nearing completion, that provide a location and layout more economically beneficial for hotel operations while also having the advantage of a beachfront location and two affiliated restaurants adjacent to that property.

Grading Limitations

Malibu's Local Coastal Plan limits grading to 1,000 cubic yards per acre. This limitation could significantly affect what could be developed on the Site. For example, in order to meet Malibu's parking requirements, plans for the proposed 146-room Rancho Malibu Hotel project included a subterranean parking garage containing 489 spaces (which was approximately 500 cars less than required under the City's ordinance and required a variance) also generated more than 50,000 cubic yards of grading beyond what was permitted by code.

Sewage Disposal Costs

Until such time as the Site is able to connect to a municipal sewer, we have been informed that there is not sufficient space to percolate the amount of cleaned effluent that would be generated from a hotel. Preliminary estimates for site grading and preparation (excluding actual building or above ground construction) are \$14 million for the proposed residential uses at the Site; this estimate incorporates an onsite waste water treatment package plant (estimated at a cost of \$750,000 to \$1,000,000) and access for five home sites. We note that the site preparation costs may be significantly higher for a hotel property with significantly greater density and parking requirements than the current plan of five home sites. However, we are also aware that the City of Malibu has recently formed a Community Facilities District (CFD) to fund the design of a proposed municipal wastewater treatment system, which has been approved by the City and the Coastal Commission. The implementation of the municipal wastewater treatment system could bring down the site preparation costs for the Site. However, if the Owner attempts to build a zero discharge system, this would significantly add to the site preparation and operational costs.

Height Restrictions

The City of Malibu has an 18-foot height restriction on buildings which may be increased to 24 (flat roof) feet and 28 feet (pitched roof) with City approvals. This would allow for a

maximum of two stories, and would limit the height of structures housing public spaces such as the lobby and ballroom, which typically have heights approximating or exceeding these ranges.

Measure R

The recently approved Measure R in the City of Malibu requires that after approval of a commercial development by the City, the development plan for the project must be approved in a popular vote. Measure R was a direct response to concerns about potential impacts from the proposed Rancho Malibu hotel project directly north of PCH from the subject Site. Complying with Measure R adds considerable uncertainty, as well as costs, on the viability of any hotel project on the Site.

Operational Challenges

Access Challenges

Vehicular ingress and egress from PCH to the proposed hotel will be limited to Winter Mesa Drive to the south, which is shared with the adjacent Malibu Bluffs Park directly west of the subject Site. While a traffic impact study has not been undertaken for a proposed hotel on the Site, it is likely that the limited entryway to the proposed hotel could create significant negative traffic impacts to the local thoroughfares, particularly during special events, which will be an important generator of room occupancy. Such limited/shared access would also make it extremely difficult to service the Site as a hotel. As such, potentially significant infrastructure improvements to address potential traffic impacts would likely be required, adding to the costs of such a proposed project.

Lack of On-Site and Area Amenities

As will be discussed in a later section of this report, the potential positioning of a hotel at the subject Site is limited to luxury/resort. As a coastal luxury resort, the proposed hotel at the subject Site would need to compete with and achieve comparable rates to other coastal luxury resorts such as Montage Laguna Beach, St. Regis Monarch Beach, and the Four Seasons Santa Barbara. We find that these competitive properties generally have superior access to nearby amenities, as well as and site-specific traits, such as an on-site golf course. The subject Site does not have beach access nor does it enjoy proximity to desirable area amenities, such as shopping venues and restaurants.

With its isolated location, the subject at the Site will be charged with the responsibility of creating its own demand rather than relying on the demand that currently exists in the market. However, the size and zoning restrictions of the Site does not allow for the development of additional facilities within the hotel itself, such as a full-service spa facility or adequate meeting space, due to the lack of developable area that can be allocated to these amenities. Furthermore, its coastal orientation and location places the Site significantly farther from commercial and leisure demand generators in the immediate area, such as Santa Monica, making it a less desirable lodging option for those who wish to remain proximate to the areas in which they are either doing business or leisure attractions

that they are visiting. We find it unreasonable that the subject Site, with its limited facilities and amenities, as well as its poor proximity to area demand generators, will be able to attract higher-rated commercial, leisure, or group travelers or command the occupancy and average daily rates to make this scenario financially feasible.

Poor Visibility and Access

The subject Site's environs include less than ideal access and visibility from PCH and a range of surrounding improvements that limit the subject Site's appeal as a destination luxury resort. This includes Malibu Bluffs Park with its ball fields directly west, the residential-serving commercial uses to the east, and the proposed cemetery uses to the north of PCH.

Seasonality of Travel Patterns

We consider the Malibu hotel market as highly seasonal, with peak use during the summer months with an expectation of vacancy rates in the off-season reflective of the more remote location and lack of critical mass as compared to Santa Monica and Santa Barbara. Therefore, in order to generate more off season vacancies, we would recommend that a significant amount of meeting space and amenities be included in the project. This may reduce the number of rooms that the Site could accommodate, further impacting the economic feasibility of the Site as a hotel.

ANALYSIS OF HOTEL FEASIBILITY

Although the challenges presented above render a hotel at the Site physically infeasible, we have also toured the Site and reviewed its locational aspects in the context of a coastal lodging facility. Based on the site size of 801,504 square feet and a FAR of 0.15, the maximum allowable development is 120,226 square feet of improvements. Preliminary estimates for site grading and preparation (excluding actual building or above ground construction) are \$14 million for the proposed residential uses at the Site. Just based on the site preparation costs alone, which would likely be significantly higher due to the greater density and parking requirements for a hotel, the subject's starting basis prior to construction of the hotel facilities places it firmly in the category of luxury hotels and resorts and makes the luxury tier the only potentially economically feasible type of development on the Site. This limits the potential positioning of a hotel at the Site to luxury/resort as a result of site preparation costs alone, requiring the Site to achieve rates commensurate with luxury resorts along the southern California coast line.

For full service, luxury hotels, it is industry practice to allocate 1,000 square feet of gross building area for each hotel room and ancillary spaces, which includes an onsite restaurant, as well as a bar and catering kitchen for room service and meetings. The amount of square feet of gross building area for the proposed hotel at the Site may increase due to the smaller room count compared to hotel properties located along the southern California coast. Therefore, based on the allowable FAR, the maximum range of hotel

rooms that could be accommodated would range from 110 to 120 rooms for a luxury, full-service hotel.

As previously noted, the height restrictions at the subject Site would limit a building to a maximum height of 18 feet, which would result in a one-story hotel. With a FAR limiting the development to 120,226 square feet, coupled with the code requirements for parking, loading, fire access, open space, and required landscaping, the number of rooms and additional facilities that could be constructed would yield even less than 110 to 120 rooms, making the project even less feasible.

Luxury Hotel Feasibility

According to *HVS Hotel Development Cost Survey 2014/15*, the per-room range of costs for luxury hotels and resorts range from \$513,600 to \$1,005,500 per room, with an average cost of \$705,100 per room. As a point of comparison, we have presented the development budgets of three southern California coastal resorts. Comp #1 represents actual cost for a coastal resort developed in 2008/09, and Comps #2 and #3 represent the budget of hotels currently under development.

| Comparable Luxury, Southern California Coastal Resort Development Budgets | | | |
|--|------------------|------------------|--------------------|
| | Amount Per Room | | |
| | Comp #1 | Comp #2 | Comp #3 |
| Land Purchase Price/Site Preparation | \$176,117 | \$109,946 | \$177,515 |
| Building Improvements | 428,414 | 514,491 | 495,140 |
| Personal Property (FF&E) | 69,617 | 41,098 | 141,160 |
| Legal, Title, and Escrow Fees | 13,043 | 101,378 | 148,588 |
| Real Estate Taxes | 9,477 | 11,151 | 14,675 |
| Contingency Fees | 6,247 | 37,068 | 2,699 |
| Pre-Opening Expenses and Working Capital | 37,163 | 12,195 | 32,367 |
| Financing Costs | 13,915 | N/A | 54,850 |
| Interest Carry | 60,440 | N/A | N/A |
| Entrepreneurial Profit | N/A | 25,424 | 31,072 |
| Leasehold Payments | N/A | 20,152 | N/A |
| Total Development Costs | \$814,433 | \$852,751 | \$1,098,066 |

As can be seen from the table above, the actual and estimated development costs of the comparable developments ranges from \$814,433 per room to \$1,098,066 per room. Based on the foregoing, we are of the opinion that the cost per room to develop a luxury hotel or resort commensurate with other luxury hotel and resorts along the coast would range from \$700,000 to \$900,000 for the subject Site.

In order to achieve critical mass, hotels in the competitive set typically have larger room counts, as can be seen, by the following summary of six luxury coastal properties that are typically recognized as being among the highest positioned properties in California and would ultimately be competitive to the subject Site.

| Proposed Malibu Hotel Competitive Supply | |
|--|------------|
| Primary Competition | Room Count |
| Four Seasons Santa Barbara | 207 |
| Montage Laguna Beach | 262 |
| Bacara Resort & Spa | 354 |
| St. Regis Monarch Beach | 400 |
| Ritz-Carlton Laguna Niguel | 396 |
| Fess Parker's DoubleTree | 360 |
| Competitive Market Total | 1,979 |
| Average Room Count | 330 |

Source: PKF Consulting

The following table presents the historical operating performance of the six coastal hotels previously presented.

| Historical Market Performance of the Competitive Supply | | | | | | | | | |
|---|---------------|----------------|----------------|----------------|------------------|--------------------|----------------|----------|----------------|
| Year | Annual Supply | Percent Change | Occupied Rooms | Percent Change | Market Occupancy | Average Daily Rate | Percent Change | REVPAR | Percent Change |
| 2008 | 722,335 | N/A | 439,322 | N/A | 60.8% | \$412.35 | N/A | \$250.79 | N/A |
| 2009 | 722,335 | 0.0% | 375,044 | -14.6% | 51.9 | 356.53 | -13.5% | 185.11 | -26.2% |
| 2010 | 722,335 | 0.0 | 416,222 | 11.0 | 57.6 | 341.06 | -4.3 | 196.52 | 6.2 |
| 2011 | 722,335 | 0.0 | 465,883 | 11.9 | 64.5 | 357.63 | 4.9 | 230.66 | 17.4 |
| 2012 | 694,960 | -3.8 | 464,179 | -0.4 | 66.8 | 379.39 | 6.1 | 253.41 | 9.9 |
| 2013 | 701,530 | 0.9 | 488,348 | 5.2 | 69.6 | 382.55 | 0.8 | 266.30 | 5.1 |
| 2014 | 722,335 | 3.0 | 526,905 | 7.9 | 72.9 | 403.19 | 5.4 | 294.11 | 10.4 |
| CAAG | 0.0% | | 3.1% | | | -0.4% | | 2.7% | |

Source: PKF Consulting USA

Supply within the competitive set during the preceding seven years has remained flat with fluctuations due to renovations. During the same period, demand as measured in occupied room nights, increased at a compound annual growth rate (CAAG) of 3.1 percent. The market experienced its lowest level of occupancy of 51.9 percent in 2009 due to the effects of the economic downturn, but occupancy levels have enjoyed year-over-year increases since then. Between 2008 and 2014, average daily rate (ADR) decreased an average of 0.4 percent annually, mainly attributed to the decreases experienced in 2009 and 2010. The competitive market average daily rate has not yet surpassed pre-recession levels.

Given the subject Site's access and site environs and the historical performance of the competitive supply, we estimate that the property could achieve an ADR (Average Daily Room Rate) of approximately \$415 at an occupancy level of 65 percent. Relative to the competitive supply, this places the proposed hotel below the market average in terms of occupancy due to its isolated location in a less established leisure destination and at the market average in terms of average daily rate. Using this and five comparable financials of Southern California coastal luxury resorts, we have projected the potential value per key of the subject Site as a luxury hotel.

| Summary of Net Value | | |
|---------------------------|--------------------------------------|--|
| Basis | # | Notes |
| Rooms | 120 | Maximum allowable rooms |
| Occupancy | 65% | Slightly below market |
| ADR | \$415 | At market |
| Other Spend | \$187 | 45% of rooms revenue, comps at 40% |
| Total Daily Spend | \$602 | Rooms plus Other Spend |
| Occupied Rooms | 28,470 | 120 rooms @ 365 days @ 65% |
| Total Revenue | \$17,132,000 | Occupied Rooms X Daily Spend |
| NOI % (of Total Revenues) | 21% | Comps average 25%, 21% after reserve |
| NOI | \$3,598,000 | |
| NOI per Key | \$29,983 | |
| Capitalization Rate | 7.0% | Coastal cap rates range from 6% to 10% |
| Value | \$51,400,000 | |
| Value per Key | \$428,000 | |
| Cost per Key | \$700,000-\$900,000 | |
| Spread | (\$272,000 - \$472,000) | |
| Total Cost Deficit | (\$32,600,000 - \$56,600,000) | |

As previously noted, the development of a luxury, coastal resort ranges from approximately \$700,000 to \$900,000 per guest room, or \$84,000,000 to \$108,000,000 for a 120-room luxury, coastal resort. As shown in the table above, the value of the Site developed as a luxury, coastal resort is estimated at \$51.4 million, or \$428,000 per guestroom. After taking into consideration the projected income for the subject, we are of the opinion that a luxury, coastal resort is not feasible at the Site, as the anticipated income will not cover the capital invested.

SUMMARY OF CONCLUSIONS

Based on our foregoing analysis, the site and operational challenges associated with the development and operation of a proposed hotel of any quality renders this project infeasible. Even if a hotel could be built on the subject Site, a luxury resort is the only type of lodging facility that would potentially support the costs associated with development. However, the specific site attributes and zoning result in a low-rise luxury property with operational issues, significant site issues that reduce the ability of the property to compete on a regional basis in the luxury resort market, and a cost basis reflective or exceeding that of a world class resort.

Financial feasibility is based on whether a proposed project will attain a cash flow of sufficient quantity, quality, and duration to allow investors to recover the capital invested and achieve the necessary and expected rate of return. Similar to the conclusion reached in a previous engagement relating to the subject Site in 2010, given the scale of site preparation and site deficiencies and our analysis of projected occupancy and rate levels, the total costs of hotel construction, current capitalization rates, it is our opinion that the subject Site has significant cost factors and operational factors that would inhibit it from becoming an economically feasible hotel project at this time and in the foreseeable future.

We thank you for the opportunity to conduct this study.

Sincerely,

PKF Consulting
a Subsidiary of CBRE, Inc.

A handwritten signature in cursive script, appearing to read "Bruce Baltin".

Bruce Baltin
Senior Vice President

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

This report is made with the following assumptions and limiting conditions:

Economic and Social Trends - The consultant assumes no responsibility for economic, physical or demographic factors which may affect or alter the opinions in this report if said economic, physical or demographic factors were not present as of the date of the letter of transmittal accompanying this report. The consultant is not obligated to predict future political, economic or social trends.

Information Furnished by Others - In preparing this report, the consultant was required to rely on information furnished by other individuals or found in previously existing records and/or documents. Unless otherwise indicated, such information is presumed to be reliable. However, no warranty, either expresses or implied, is given by the consultant for the accuracy of such information and the consultant assumes no responsibility for information relied upon later found to have been inaccurate. The consultant reserves the right to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

Hidden Conditions - The consultant assumes no responsibility for hidden or unapparent conditions of the property, subsoil, ground water or structures that render the subject property more or less valuable. No responsibility is assumed for arranging for engineering, geologic or environmental studies that may be required to discover such hidden or unapparent conditions.

Hazardous Materials - The consultant has not been provided any information regarding the presence of any material or substance on or in any portion of the subject property or improvements thereon, which material or substance possesses or may possess toxic, hazardous and/or other harmful and/or dangerous characteristics. Unless otherwise stated in the report, the consultant did not become aware of the presence of any such material or substance during the consultant's inspection of the subject property. However, the consultant is not qualified to investigate or test for the presence of such materials or substances. The presence of such materials or substances may adversely affect the value of the subject property. The value estimated in this report is predicated on the assumption that no such material or substance is present on or in the subject property or in such proximity thereto that it would cause a loss in value. The consultant assumes no responsibility for the presence of any such substance or material on or in the subject property, nor for any expertise or engineering knowledge required to discover the presence of such substance or material. Unless otherwise stated, this report assumes the subject property is in compliance with all federal, state and local environmental laws, regulations and rules.

Zoning and Land Use - Unless otherwise stated, the projections were formulated assuming the hotel to be in full compliance with all applicable zoning and land use regulations and restrictions.

Licenses and Permits - Unless otherwise stated, the property is assumed to have all required licenses, permits, certificates, consents or other legislative and/or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

Engineering Survey - No engineering survey has been made by the consultant. Except as specifically stated, data relative to size and area of the subject property was taken from sources considered reliable and no encroachment of the subject property is considered to exist.

Subsurface Rights - No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials, except as is expressly stated.

Maps, Plats and Exhibits - Maps, plats and exhibits included in this report are for illustration only to serve as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced or used apart from the report.

Legal Matters - No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate consultants.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

(continued)

Right of Publication - Possession of this report, or a copy of it, does not carry with it the right of publication. Without the written consent of the consultant, this report may not be used for any purpose by any person other than the party to whom it is addressed. In any event, this report may be used only with proper written qualification and only in its entirety for its stated purpose.

Testimony in Court - Testimony or attendance in court or at any other hearing is not required by reason of rendering this appraisal, unless such arrangements are made a reasonable time in advance of said hearing. Further, unless otherwise indicated, separate arrangements shall be made concerning compensation for the consultant's time to prepare for and attend any such hearing.

Archeological Significance - No investigation has been made by the consultant and no information has been provided to the consultant regarding potential archeological significance of the subject property or any portion thereof. This report assumes no portion of the subject property has archeological significance.

Compliance with the American Disabilities Act - The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We assumed that the property will be in direct compliance with the various detailed requirements of the ADA.

Definitions and Assumptions - The definitions and assumptions upon which our analyses, opinions and conclusions are based are set forth in appropriate sections of this report and are to be part of these general assumptions as if included here in their entirety.

Dissemination of Material - Neither all nor any part of the contents of this report shall be disseminated to the general public through advertising or sales media, public relations media, news media or other public means of communication without the prior written consent and approval of the consultant(s).

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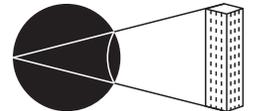
Limits to Liability - PKF Consulting cannot be held liable in any cause of action resulting in litigation for any dollar amount which exceeds the total fees collected from this individual engagement.

Legal Expenses - Any legal expenses incurred in defending or representing ourselves concerning this assignment will be the responsibility of the client.

Malibu Coast Estate: Additional Visual Simulations

June 17, 2015

S.A. JOHNSON



scott@scottajohnson.org

Malibu Coast Estate: Additional Visual Simulations

June 17, 2015

I. INTRODUCTION

A. Background

B. Methodology

II. ENVIRONMENTAL SETTING

III. VIEW LOCATIONS

IV. CLOSURE

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A. Aerial Image with Plotted photograph Locations

B. Visual Simulations of One-story Project Alternative With and Without Landscaping

C. Photography Log

Malibu Coast Estate: Additional Visual Simulations

June 17, 2015

I. Introduction.

A. Background

Scott A. Johnson (“Consultant”), at the request of PHC Project Owner, LLC (the “Owner”), prepared a computer generated 3-D model and visual simulations for Owner’s proposed Malibu Coast Estate development (the “Project”) located at 241808, 24120, 24134, 24150 and 24174 Pacific Coast Highway a/k/a the Crummer Property (the “Project Site”). An Initial Report dated November 29, 2012 contained visual simulations from fourteen (14) locations was submitted to the City of Malibu and was included in the Project’s DEIR. At the request of the City of Malibu a supplemental report dated September 13, 2013 containing visual simulations from an additional twelve (12) locations was submitted to the City of Malibu and included in the Project’s Final EIR. The proposed Project in the reports submitted to the City of Malibu consisted of five single-family residences of up to 28 feet in height (the “Proposed Project”).

This Additional Report has been prepared for Owner at the request of the Coastal Commission staff to simulate a revised project, as now proposed by the Owner consisting of five single-story homes at a reduced height of 18 feet *with* landscaping, as reflected in the revised landscape plan. It also includes the same simulations without landscaping.

B. Methodology.

Methodology

The purpose of a visual simulation is to create an image that mimics a future reality as closely as current technology and technique allow. Visual simulations are a relatively new tool for decision-makers, and they can be created by a wide variety of practitioners, from architects, specialists, even citizens using a wide variety of software, cameras, and techniques. At this point in time there is not a uniform set of “best-practices” as is often found in other disciplines. This creates an environment where various simulations are often compared on an equal footing, when the tools and techniques used can be unequal in terms of accuracy and suitability. Explaining what makes one set of simulations better than another can

result in a dense, technical document that is almost impossible to understand from the point of view of a decision-maker, or other non-practitioner. What follows is an explanation in plain language, which discusses both the techniques used and the reasoning behind those techniques.

Visual simulations consist of two major components: real (practical) photography, and the computer model. Each component is made up of hundreds, if not thousands, of smaller parts and decisions. In order for the final simulation to be of true value to decision makers, each of those parts and decisions must be made in order to serve the twin goals of accuracy and suitability. The explanation below is made with specific references to the Crummer Project in Malibu, CA and is the standard practice for all simulations created by this firm.

Photography

Photography drives the whole process of creating simulations. Each decision, from choosing viewpoint locations, the type of camera and lens used, to how the photographs are processed after capture all effect the accuracy and suitability of the final simulation analysis.

View Locations

- *Crummer EIR*

Selection of view locations is the primary decisions made in the simulation process. The number of viewpoints and their physical locations are determined by a combination of recommendations from relevant public agencies, the applicant, and the professional of experience of the simulation specialist. In the case of the Crummer Project, viewpoints used in the preparation of the EIR were suggested by both the City of Malibu Planning Department and the applicant, who had knowledge of viewpoints of concerned citizens and applicable regulations. Additional viewpoints, and fine tuning of suggested areas was provided by the simulation specialist. The total number of viewpoints exhaustively examined the potential for view impacts from all sides and at a wide variety of distances to the Project Site. All locations of each photograph was logged with a GPS device and those GPS points were transferred into the 3D model for camera matching purposes.

- *Coastal Commission*

For the Coastal Commission, some viewpoints from the EIR were reused, and several new ones were added to address additional concerns from the

Commissioners as requested by Staff. Areas of concern were extensively covered, and more than 200 additional photographs were taken. Final viewpoint locations were determined based on providing a set of representative views that showed the potential visual impacts of the Crummer Project. Given the large number of photographs to choose from, it was decided to focus on locations that showed ‘worst-case’ potential for visual impacts, as is standard practice for aesthetic analysis in EIRs.

Equipment

Lens choice for capturing photographs is critical for providing simulations that are accurate and suitable. Regardless of camera system, the lens should be chosen to closely mimic the focal length of the human eye in order to create an image that is representative of what the human would “see” from the particular location. This rules out the use of all wide-angle and telephoto lenses (and camera systems, such as smartphones with fixed wide-angle lenses). Where expansive views, or large amounts of area context are relevant, panoramic photographs (composite images made from ‘stitching’ together standard photos) are used. This maintains the proper visual perspective of foreground to background, while providing a wider view, something that does not happen with wide-angle lenses. In the case of the Crummer Project, two different camera systems were used over the course of developing the simulations, a micro 4/3rds system from Olympus, and a full-frame DSLR from Nikon. In both cases, appropriate lenses were used for every photograph.

Post Processing

With every simulation, post-processing of photographs is a necessary practice, in order to composite (blend) the computer-model imagery into the photograph. However, post-processing can also skew the final results. From color adjustment, to minor or aggressively cropping the final images, to mismatching the model perspective with the real-camera perspective, it is possible to create an inaccurate representation of a project. Aggressive cropping is often used to overstate the potential for impacts by minimizing or excluding important or relevant parts of the view. Unless use of cropping or methodology is disclosed, it is almost impossible to detect unless the identical viewpoint is captured and compared to this image using the proper lens. In some cases, such as with panoramic photographs, minor cropping is unavoidable to present a standard rectangular image, as was done with some of the visual simulations submitted for the Crummer Project. However cropping was kept to the absolute minimum and only used to create a rectangular image. All images used in the Crummer Project

that are not panoramas are uncropped, and other than project compositing (blending), the images photos are presented as captured.

Computer Model

Computer Modeling

The computer model of how the Crummer Project would “look” when completed was created using plans (both in PDF and CAD formats) provided by the project’s architect, landscape architect and civil engineer. The images have been reviewed by both the architect and landscape architect in order to confirm the simulations accurately represents their respective plans. The model matches both the Proposed Project and the proposed landscaping as closely as possible. Once the structures and proposed landscaping were created in the model, the GPS data from the photographs were imported to the model, and facsimiles of the real-world cameras were created in the computer. These virtual cameras matched in all the relevant ways, such as camera location, direction, focal length, exposure, ISO, etc. It is critical that these virtual cameras match their physical counterparts in every aspect as a mismatch in location or focal length would create an inaccurate simulation.

Landscaping was created by either creating tree models or using stock models of species contained in the landscape plan. These were textured and placed in the model according to the landscape plan. This model included proposed colors, materials, and plantings as appropriate and supplied by Owner’s design team. While this is not a finalized, approved design, Consultant has been advised that the plans provided to him were the most recent plans filed with the Coastal Commission and are the plans for which the Owner has sought approval.

The model was created to provide an illustrative view of the intended scope, and style of the final Project. Plant and tree models were matched with the proposed landscape plans whenever possible, but where exact matches were not possible, plants and tree models with similar scale and form were selected. All efforts were made to use the most recent, best available information to provide an accurate example of the type of development and landscaping proposed for the Project.

Compositing

Once the model and all of its elements (landscaping, cameras, colors, materials etc.) are complete, the computer creates (renders) imagery of the model that can be composited (blended) with the real photographs. Compositing imagery is a blend

of skill and experience which, when done properly, can provide the public, stakeholders, and public agencies with information unavailable any other way.

Hardware/Software

The Crummer Project images were created using a combination of hardware and software. Photographs were taken with an Olympus E-P3 with a 20mm lens from Panasonic, and a Nikon D600 with a AFS 28-85mm lens from Nikor set to 50mm. GPS data was captures using a Promote GPS data-logger that utilizes a SiRFstar III GPS receiver. The 3D model was built using AutoCAD 2014, 3DS Studio MAX 2014, and Sketchup 2014. The photographs were composited using Adobe Photoshop CS6

II. Environmental Setting.

The Project Site is 24-acres of undeveloped land. The Project Site is located in an area with substantial development. Development within approximately one-half of a mile from the Project Site include single family residential development on Malibu Road, the Malibu Knolls (229 homes) and the Malibu Country Estates (97 homes) subdivisions, two condominium developments totaling 152 units, office buildings, including the HRL Research complex (approximately 225,000 square feet), Malibu City Hall and Los Angeles County offices, two wastewater treatment plants, Pepperdine University and the Malibu Colony Plaza Shopping Center. The Project Site does not contain any distinct landform features and the north boundary of the Project Site was created as a result of the construction of Pacific Coast Highway.

III. VIEW LOCATIONS

- **View 1: Pacific Coast Highway & Cross Creek Road looking west toward the Project Site.**
- **View 2: Malibu Legacy Park looking west toward the Project Site.**
- **View 3: Pacific Coast Highway & Webb Way looking west toward the Project Site.**

- **View 4: Malibu Canyon Road looking south toward the Project Site.**
- **View 5: Bluffs Park (baseball outfield) looking east toward the Project Site.**
- **View 6: Surfrider Beach looking west toward Project Site.**
- **View 7: Malibu Colony Beach looking west toward Project Site.**
- **View 8: Malibu Bluffs Park.**
- **View 9: Malibu Bluffs Park walkway.**
- **View 10: Pacific Coast Highway looking west toward Project Site.**
- **View 11: Pacific Coast Highway (Entrance to Colony Plaza Shopping Center) looking west toward Project Site**
- **View 12: Malibu Library looking southwest toward Project Site.**
- **View 13: Malibu Pier (southern end of Pier) looking west toward Project Site.**

III. CLOSURE

Subject to the accuracy of the plans and other information provided to me by the Owner and Owner's other consultants, it is my professional opinion that the visual simulations annexed to this report were prepared in a manner consistent with accepted standards and accurately represent how the Project both with landscaping and without landscaping would look when viewed by human observer from the locations described, and indicated in Appendix B.

IV. CV & QUALIFICATIONS

Scott A. Johnson has more than 10 years of experience in creating images for visual impact analysis, shade/shadow projections, solar access, and informational graphics for a wide scope of clientele. He produces imagery for use in pre-

visualization studies, constraints analysis, CEQA aesthetic analysis, and shade/shadow studies for a variety of private sector developers, attorneys, architects, and public agencies of all sizes.

Project Experience

- Ascension Heights Subdivision Project (EIR – Visual Simulation Peer Review)
- Belvedere-Tiburon Library Expansion Project (EIR – Visual Simulations)
- Beverly Hilton (Presentation - Visual Simulations)
- Big Wave Wellness Center & Office Park (EIR - Visual Simulations)
- Bradley Landfill and Recycling Center Master Plan (EIR - Visual Simulations)
- Century Plaza Mixed-Use Development (EIR - Visual Simulations)
- Deer Creek Plaza (EIR - Visual Simulations)
- Dutra (EIR - Visual Simulations Peer Review)
- Laguna Beach Village Entrance (EIR - Visual Simulations)
- Mammoth Crossing (EIR - Visual Simulations)
- Malibu Coast Estates (Presentation & EIR - Visual Simulations)
- Millennium Hollywood Project (EIR - Visual Simulations)
- NBC Universal Evolution Plan (EIR – Shade/Shadow Analysis)
- Ponte Vista (EIR - Visual Simulations)
- Ponte Vista/Bisno Project (EIR - Visual Simulations)
- Sierra Star Master Plan (EIR - Visual Simulations Peer Review)
- Snowcreek VIII (EIR - Visual Simulations)
- 10000 Santa Monica (Presentation – Shade/Shadow Analysis)
- Tehachapi WalMart (EIR - Visual Simulations)

- The Prospects Project (EIR - Visual Simulations Peer Review)
- Travelodge Hotel Project (Presentation & EIR - Visual Simulations)
- Verdugo Hills Golf Course Residential Development (EIR - Visual Simulations)



View Location Map



View 1 Cross Creek and PCH: One Story Project with Landscaping



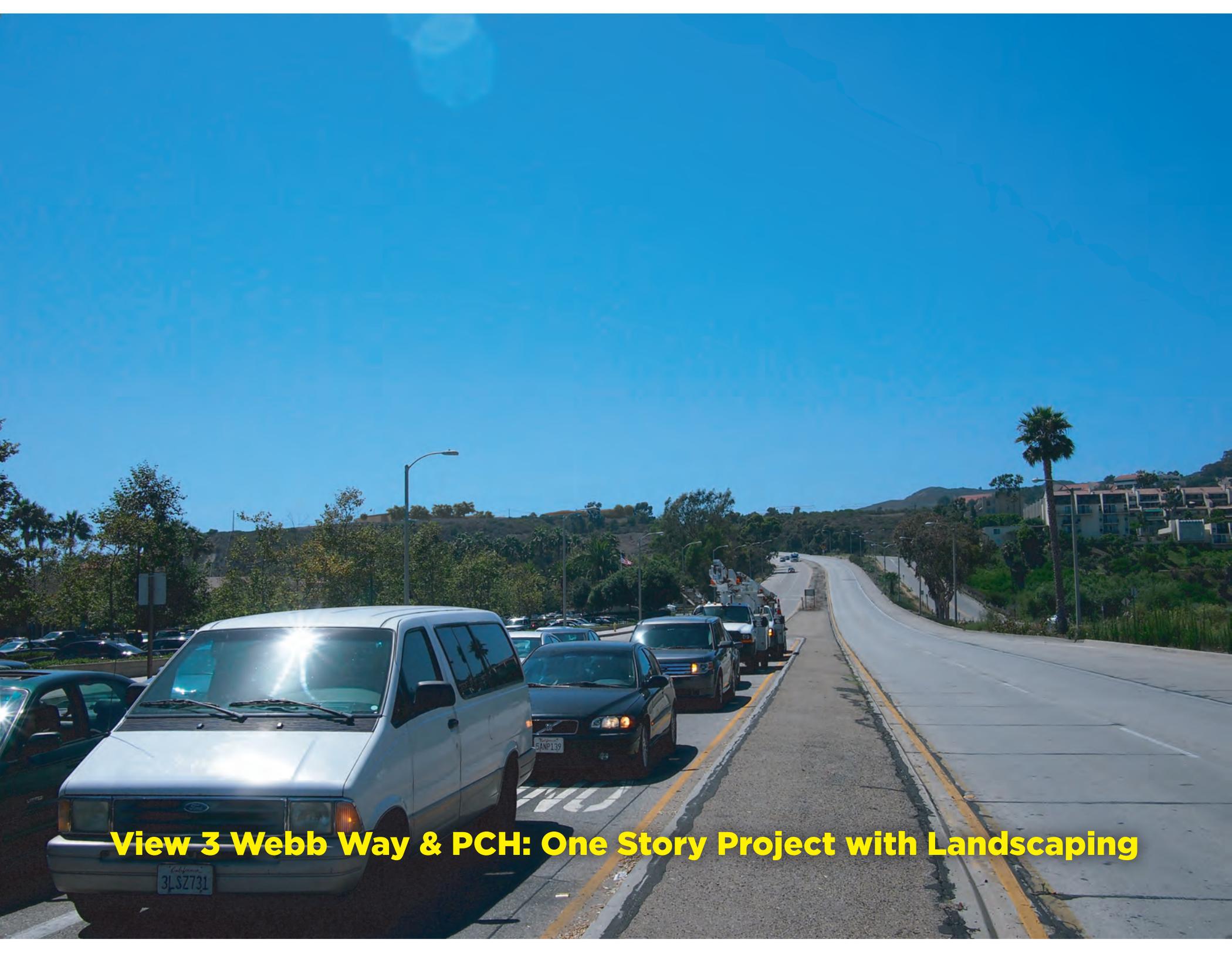
View 1 Cross Creek and PCH: One Story Project with No Landscaping



View 2 Legacy Park: One Story Project with Landscaping



View 2 Legacy Park: One Story Project with No Landscaping



View 3 Webb Way & PCH: One Story Project with Landscaping



View 3 Webb Way & PCH: One Story Project with No Landscaping



View 4 Malibu Canyon Road: One Story Project with Landscaping



View 4 Malibu Canyon Road: One Story Project with No Landscaping



View 5 Bluffs Park: One Story Project with Landscaping



View 5 Bluffs Park: One Story Project with No Landscaping



View 6 Surfrider's Beach: One Story Project with Landscaping



View 6 Surfrider's Beach: One Story Project with No Landscaping



View 7 Malibu Colony Beach: One Story Project with Landscaping



View 7 Malibu Colony Beach: One Story Project with No Landscaping



View 8 Bluffs Park: One Story Project with Landscaping



View 8 Bluffs Park: One Story Project with No Landscaping



View 9 Bluffs Park: One Story Project with Landscaping



View 9 Bluffs Park: One Story Project with No Landscaping



View 10 PCH: One Story Project with Landscaping



View 10 PCH: One Story Project with Landscaping



**View 11 Entrance Malibu Colony Shopping Center:
One Story Project with Landscaping**



**View 11 Entrance Malibu Colony Shopping Center:
One Story Project with No Landscaping**



View 12 Civic Center Way: One Story Project with Landscaping



View 12 Civic Center Way: One Story Project with No Landscaping



View 13 Malibu Pier: One Story Project with Landscaping



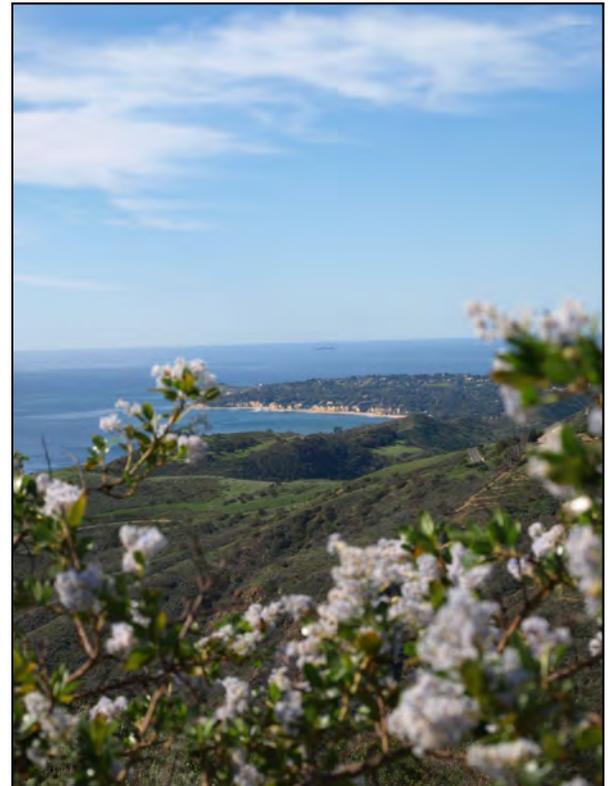
View 13 Malibu Pier: One Story Project with No Landscaping

Appendix C: Photography Log for August 14, 2012, June 17, 2013 April 17, 2015 Site Visits; Malibu Coast Estates Project

| View | Date | Time | Size | Exposure | Shutter Speed | ISO | Lens | 35mm Equiv |
|------|-----------|-------|-----------|----------|---------------|-----|-------------------|------------|
| 1 | 8/14/2012 | 13:10 | 4032X3024 | 6.3 | 1000 | 200 | Panasonic 20mm | 40 |
| 2 | 8/14/2012 | 14:00 | 4032X3024 | 10 | 400 | 200 | Panasonic 20mm | 40 |
| 3 | 8/14/2012 | 14:23 | 4032X3024 | 10 | 500 | 200 | Panasonic 20mm | 40 |
| 4A | 8/14/2012 | 14:40 | 4032X3024 | 5.6 | 800 | 200 | Panasonic 20mm | 40 |
| 4B | 8/14/2012 | 14:40 | 4032X3024 | 5.6 | 800 | 200 | Panasonic 20mm | 40 |
| 5A | 8/14/2012 | 15:35 | 4032X3024 | 10 | 400 | 200 | Panasonic 20mm | 40 |
| 5B | 8/14/2012 | 15:35 | 4032X3024 | 10 | 400 | 200 | Panasonic 20mm | 40 |
| 5C | 8/14/2012 | 15:36 | 4032X3024 | 6.3 | 1000 | 200 | Panasonic 20mm | 40 |
| 5D | 8/14/2013 | 15:36 | 4032X3024 | 6.3 | 1000 | 200 | Panasonic 20mm | 40 |
| 6 | 6/17/2013 | 11:06 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 50 |
| 7 | 6/17/2013 | 12:33 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 50 |
| 8A | 6/17/2013 | 13:36 | 6016x4016 | 8 | 250 | 100 | AFS Nikor 28-85mm | 50 |
| 8B | 6/17/2013 | 13:36 | 6016x4016 | 8 | 250 | 100 | AFS Nikor 28-85mm | 50 |
| 9A | 4/9/2015 | 15:30 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 48 |
| 9B | 4/9/2015 | 15:30 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 48 |
| 9C | 4/9/2015 | 15:30 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 48 |
| 10 | 4/9/2015 | 16:15 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 48 |
| 11 | 4/9/2015 | 14:56 | 6016x4016 | 8 | 250 | 100 | AFS Nikor 28-85mm | 50 |
| 12 | 4/9/2015 | 14:32 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 48 |
| 13 | 6/17/2013 | 11:21 | 6016x4016 | 9 | 320 | 100 | AFS Nikor 28-85mm | 48 |

Proposal for Low-Cost Public Campground and Foster Youth Camp Cameron Nature Preserve at Puerco Canyon

Mountains Recreation and Conservation Authority



Proposal for Low-Cost Public Campground and Foster Youth Camp Cameron Nature Preserve at Puerco Canyon

Mountains Recreation and Conservation Authority

The Mountains Recreation and Conservation Authority (MRCA) proposes to create new low-cost camping facilities at the Cameron Nature Preserve at Puerco Canyon, including a group campground available to community-based organizations, an overnight camp for disadvantaged youth, and a public access trailhead. The primary purpose of these low-impact improvements is to serve disadvantaged populations throughout Southern California by introducing them to California's coastal resources and recreational opportunities. The general public will also benefit through shared use of the group campground, maximized public access, and the demonstration of sustainable use of coastal resources.

I. Low-Cost Group Campground

The group campground will include tent camping sites, shower and restroom facilities, kitchen and dining areas and group gathering spaces. MRCA proposes to use this campground to continue the tradition of introducing nature to underserved populations who traditionally do not have access to public parkland. In most cases, this will be the first camping experience for the families of these community-based organizations and youth groups. By providing a venue, camping gear, supplies, transportation, and certified naturalist interpreters, MRCA is able to eliminate the economic, logistical, and educational barriers that prevent these families from participating in outdoor recreation on the coast.

MRCA has been providing these types of camping programs throughout the Santa Monica Mountains for decades, and has long established relationships with community groups in underserved and disadvantaged areas around Los Angeles County. The Puerco Canyon facility would provide greatly needed space for this program type on the coast. By facilitating the experience, MRCA provides an introduction to camping and the enjoyment of the outdoors. All these users need is a willingness to participate and the MRCA provides the rest. This program will provide a low or no-cost camping experience for groups who would otherwise have no means to participate.

The campground would be made available to other groups (such as scout troops, churches, service organizations, schools, etc.) and the general public by reservation when not in use by MRCA's community partners. Southern California's climate allows year round use of the property.

II. Overnight Camp for Foster Youth

The overnight camp is being developed in partnership with Los Angeles County Department of Children and Family Services (DCFS), so that it will serve youth from the County's extensive foster care system. The physical layout of the overnight camp would include tent cabins, shower and restroom facilities, kitchen and dining area, and group gathering and activity spaces. This overnight outdoor camp will create a respite for children in the foster care system by providing a safe and enjoyable place to meet friends, have new experiences and benefit from the communal experience that is camp.

Outdoor education camp provides an opportunity for children to experience nature while also supporting healthy recreation, nature skills development, team building and leadership skills. At Puerco Canyon, children can hike a trail, learn about the stars, roast a marshmallow, and experience other rights of childhood, most for the first time. Since Puerco Canyon also features superb public connections to the regional Backbone and Coastal Slope Trails, the park provides a unique opportunity for foster youths to have a familiar place on the coast that they can return to.

III. Property Description

The subject Puerco Canyon property, also known as the Cameron Nature Preserve, was acquired in 2014 by the Mountains Recreation and Conservation Authority, and at that time was among the largest privately owned open space parcels in the Santa Monica Mountains. It is an outstanding example of the Mediterranean biome with a range of plant communities including chaparral, coastal sage scrub, native grasslands, and oak woodlands. Situated between the 1,000-acre Corral Canyon Park and 8,000-acre Malibu Creek State Park, the site abuts numerous public lands and is an unparalleled opportunity to introduce more people to the coastal resources of the Santa Monica Mountains.

Portions of the 703-acre property were cleared and graded for residential development prior to the adoption of the California Coastal Act, and a few of the ranching and homestead structures still exist. The proximity to the coast and other public parkland and the large areas of previously disturbed and developed land make Puerco Canyon an ideal site for improved and increased public access. Access to the property is via the paved Puerco Canyon Road 2,000 feet from Pacific Coast Highway. Dirt-surfaced De Bell Ranch Road runs up the center of the property up Puerco Canyon, and the unpaved Puerco Motorway ridgeline fire road courses along the western property boundary and then connects to the unpaved Mesa Peak Motorway to Malibu Creek State Park and the Backbone Trail.

The proposed camping and public use improvements are appropriate for the property. Tent cabins would be removable, and the footprint of new structures will be within the amount of existing building area. All areas proposed for use are in unincorporated Los Angeles County, and the project is subject to compliance with the Santa Monica Mountains Local Coastal Plan adopted and certified in 2014.

IV. Additional Information

Current Status: The Santa Monica Mountains Conservancy granted funds to MRCA for preliminary project planning and design. MRCA is currently performing a site constraints analysis and testing conceptual program options for the various improvements proposed. After sufficient capital funding is secured, MRCA would then commence the permitting and entitlement processes, complete CEQA compliance, prepare construction plans, specifications, and estimates, followed by bidding, procurement, construction, and operations. MRCA is also currently establishing a formal partnership with DCFS and Los Angeles County Supervisor Sheila Kuehl for the project's foster youth component.

Budget: Preliminary analysis estimates the total project cost at \$8-10 million.

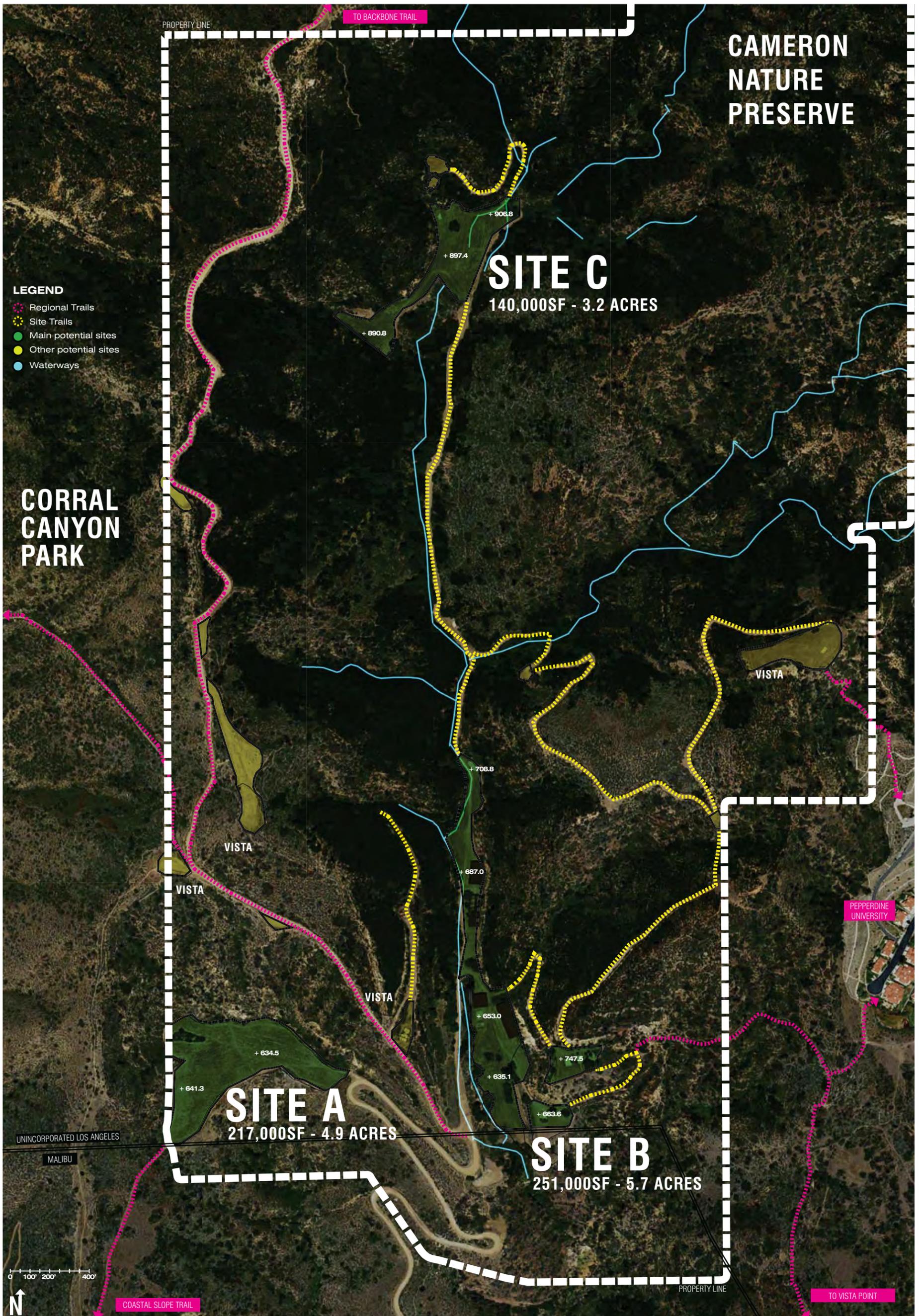
Proposal for Low-Cost Public Campground and Foster Youth Camp Cameron Nature Preserve at Puerco Canyon

Mountains Recreation and Conservation Authority



CAMERON NATURE PRESERVE AT PUERCO CANYON

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY



Christensen, Deanna@Coastal

From: dickboro@aol.com
Sent: Tuesday, July 14, 2015 9:34 AM
To: Christensen, Deanna@Coastal
Cc: rgold@bigrockpartners.com
Subject: LCP-4-Mal_14-0408-1

July 14, 2015

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen
deanna.christensen@coastal.ca.gov

**Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu**

Dear Commissioners:

My name is Richard T. Robertson.

I am writing to express my support for the Crummer Project.

I have owned a home across the street from the Crummer Project for over 27 years and during the last 9 years I have followed the Crummer Project and have met numerous times with one of the project's principals.

The project, five homes on a 24-acre property is a far less intense use and development than past development proposals for the property which have included a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes. In contrast, local architect Richard Landry designed the current project with landscape design by Jim Hyatt, both of whom worked with the owner to put forth a project compatible with and respectful of our scenic and rural surroundings.

To that end the property owner has also worked closely and diligently with the local community and has modified the design of the project numerous times to address concerns about potential visual impacts, including most recently reducing the height on all of the homes to 18 feet in response to concerns raised at the project's hearing in February.

The project has been thoroughly reviewed in the City's rigorous and transparent planning process and enjoys wide community support.

Exhibit 9

Correspondence Received

Since February 12, 2015 Hearing

The project includes a donation of almost 2-acres to the City of Malibu and \$1M to construct recreational facilities on the land that will be used by the community as well as the many visitors to Bluffs Park. The property owner has also agreed to donate \$2M to State Parks in order to help create lower cost visitor-serving accommodations at lower Topanga State Park.

The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act.

I urge you to approve the Crummer Project when it comes before you at your August hearing.

Thank you for your consideration.

Sincerely,

Richard T. Robertson
23936 Malibu Road
Malibu, CA 90265

cc: Robert Gold

July 14, 2015

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001

Attn.: Deanna Christensen
deanna.christensen@coastal.ca.gov

Re: LCP-4MAL 14-0408-1
Support of the Crummer Project, City of Malibu

Dear Commissioners,

My name is David Shaheen. My wife Linda and myself have owned property across the street from the Crummer Project since February 1988.

Over the years we have been dismayed by various proposals for the Crummer site including a large office building and a condo development. It was with great relief when the current Crummer Project took shape over nine years ago. The five homes designed by the renowned architect Richard Landry will cause minimal impact on such a large piece of property. In addition, the developers will donate two acres to the City of Malibu and a substantial amount of funding to provide much needed community service to the existing park on the bluff.

We are also greatly encouraged by the transparency and expertise the developers have shown throughout this process. They are under construction developing a parcel adjacent to the Crummer Project. This project has had little or no impact on our neighborhood. We would expect them to do no less with the Crummer Project.

The City of Malibu has approved this project as has our homeowner's association. This is a win-win for our community.

We urge you to approve the Crummer Project when it comes before you at your August hearing.

Thank you for your consideration.
Sincerely,



David Shaheen
23940 Malibu Road
Malibu, CA 90265
310-456-2122

**JOHN D. MILLER
CHARLENE UNDERHILL MILLER**

July 18, 2015

Ms. Deanna Christensen
California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Deanna.christensen@coastal.ca.gov

Received

JUL 17 2015

California Coastal Commission
South Central Coast District

**Re: LCP-4-MAL-14-0408-1
SUPPORT of the Crummer Project, City of Malibu**

Dear Chair Kinsey and Commissioners:

I am writing to express my support for the Crummer Project. My family and I have lived in Malibu for 15 years. My 87-year-old mother (who lives with us) uses Bluffs Park weekly for her walks, and my 13-year-old son has played soccer, baseball, flag football, and lacrosse at Bluffs Park since he was in kindergarten. I am a member of the Board of Directors of Advocates for Malibu Public Schools (AMPS) and my wife, Charlene Underhill Miller, is a Malibu business owner and member of the Malibu Chamber of Commerce.

Our family has long been aware of the shortage of playing fields in the City of Malibu for active recreation. The Crummer Project seeks to address this community need and includes a dedication by the property owner of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of the new athletic fields and other improvements including much needed public parking spaces. It also includes a \$2 million donation to State Parks to build cabins at lower Topanga State Park, not far from where we live in east Malibu.

The project, five homes on a 24-acre property is a far less intense use and development, and therefore more compatible with our scenic and rural surroundings, than the previously proposed projects. Past development proposals for the property have included a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes. In addition, the property owner has worked with closely and diligently with the local community and has modified the design of project several times to address concerns about potential visual impacts, including most recently reducing the height on all of the homes to 18 feet.

We believe this project will provide a great public benefit to the youth sports community, as well as everyone who uses Bluffs Park. The project will also be visitor serving in that the park is used both by tourists as well as by youth sports teams from other cities who come to Malibu to compete. The more fields and visitor amenities, the more such uses will occur.

The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act. I encourage you to approve the Crummer Project when it comes before you at your August hearing.

Sincerely,



20435 Roca Chica Drive · Malibu, California · 90265-5372
(310) 456-3758 · Fax: (310) 317-0902

Christensen, Deanna@Coastal

From: Colleen Baum <colleen@casabaum.com>
Sent: Monday, July 20, 2015 10:26 PM
To: Christensen, Deanna@Coastal
Cc: Ainsworth, John@Coastal; rgold@bigrockpartners.com
Subject: SUPPORT of the Crummer Project, City of Malibu: LCP-4-MAL_14-0408-1

July 20, 2015

California Coastal Commission

South Central Coast Area

89 South California Street

Ventura, CA 93001

Attn: Deanna Christensen

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Dear Commissioners:

My name is Colleen Baum and I have been a resident of Malibu and an active volunteer in the Malibu community and public schools (board member of Point Dume Elementary PTA, Malibu High PTSA, Malibu High Athletic Booster Club, Malibu High Arts Angels, AMPS and Boys and Girls Club of Malibu) for over 15 years. My family has spent many days at Bluffs Park while our children participated in the athletic opportunities offered there from Little League to AYSO. We have enjoyed many events at the park – from the Easter Egg Hunt, music events and more.

I am writing to express my support for the Crummer Project. The owners of the Crummer Project are strong supporters of improving this community and in particular the education and safety needs of our children. They have contributed generously to The Shark Fund, which supports excellence in education at Malibu's middle and high school, Malibu High Graduation Night, which supports a safe and sober grad night, and Juan Cabrillo Elementary School.

It has been well documented that the City of Malibu has a shortage of playing fields for active recreation. Given the project owners' sensitivity to the needs of the community, it is not surprising that the Crummer Project seeks to address this community need and includes a dedication of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of a new athletic field and other improvements to benefit the community including providing much needed public parking spaces. I also understand that the property owner has agreed to make a \$2M donation to State Parks to develop lower cost visitor-serving accommodations at lower Topanga State Park.

The project, five homes on a 24-acre property is a far less intense use and development, and therefore more compatible with our scenic and rural surroundings, than the previously proposed projects. In addition, the property owner has worked with closely and diligently with the local community and has modified the design of the project several times to

address concerns about potential visual impacts, including most recently reducing the height on all of the homes to 18 feet.

I believe this project will provide a great public benefit to the youth sports community, as well as everyone who uses Bluffs Park and has wide community support including, Malibu Little League and AYSO and the neighboring homeowners association.

The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act.

I urge you to approve the Crummer Project when it comes before you at your August hearing.

Thank you for your consideration.

Sincerely,

Colleen Baum

7046 Grasswood Ave.

Malibu, CA 90265

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Honorable Chair Kinsey and Commission Members:

Our Lady of Malibu Catholic School is home of the BULLDOGS! Sports are a key component of the school curriculum. As OLM's athletic director, I am writing to express my strong support for the project located at the "Crummer" site adjacent to Bluffs Park. It has been well documented that our City has a shortage of playing fields for Malibu's youth. Although many other ideas have been discussed over the years to fill this void none have come to fruition. The Crummer Project represents a real opportunity to expand Bluffs Park and create additional active park space for the City while locking in an appropriate development for the property.

The project, five homes, is a far less intense use and development, then the past proposals for the site, which included a large-scale hotel, a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes. The project also includes a dedication by the applicant of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of the new athletic fields and other improvements including the addition of 54 much-needed public parking spaces and a \$2 million donation to State Parks to build cabins at Lower Topanga State Park.

I believe this project will be a great benefit to not just the youth sports community, but everyone in Malibu who uses Bluffs Park. We urge you to approve the Crummer Project when it comes before you on August 12, 2015.

Sincerely,

John Meyers

Athletic Director, Our Lady of Malibu

CC: Robert Gold-By email rgold@bigrockpartners.com

July 29, 2015
California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen
Christensen.deanna@coastal.ca.gov
John.ainsworth@coastal.ca.gov

**Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu**

Dear Commissioners:

I am pleased to have the opportunity to submit this letter of support for the Crummer Project including the LCPA approved by the Malibu City Council in February 2014.

Having lived at 24508 Malibu Road for over 35 years and served on the Malibu City Council from 2000 to 2010, I am very familiar with the Crummer Project. During my Council tenure Malibu's LCP was drafted and certified, the City negotiated but did not finalize a development agreement with Roy Crummer, the previous owner of the property, and the City purchased Bluffs Park from State Parks.

It is with this background that I can state that I support the latest project design of five homes ranging from 9,000 to 11,000 square feet which will not exceed 18 feet in height on a 24-acre property. This new design is a far less intense use and development, and therefore more compatible with our scenic and rural surroundings, than the previously proposed projects.

Having served on the City Council I know how rigorous the City's planning review process is--and given the prominent location of the Crummer property any project proposed there would rightly be given heightened scrutiny. During the last 9 years the project was vetted at numerous public hearings. Malibu residents and community organizations, the City's staff, an independent EIR consultant, your staff and numerous State agencies all had repeated opportunities to comment on the Crummer project. The City prepared an Environmental Impact Report that concluded that the project approved by the City would not result in any unmitigated significant environmental impacts.

The property owner has now modified the project's design lowering the height of all of the homes to 18 feet to address concerns about potential impacts to visual resources, which the Commission knows is an issue of utmost importance to this community. The recommendation of your staff to approve the project at your February hearing attests to their confidence in both the process and analysis of the Crummer project by the City. The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act.

As you know, in May 2015 the Commission approved an LCPA and CDP for the City's Municipal Wastewater Treatment Plant. In 2012, the City formed a Community Facilities District to fund the remaining costs of the design and approval process for the City's Municipal Wastewater Treatment Plant.

Evidencing their commitment to the ever increasing challenge of water quality and re-use, the Crummer owners voluntarily agreed to be included in the Community Facilities District almost two years prior to the approval of the Crummer project by the City. Going forward, the Crummer site is intended be an important component of the sewer assessment district and a recipient site of recycled water from the plant.

The project's public benefits, a dedication of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of a new athletic field and other improvements and a \$2M donation to State Parks to develop lower cost visitor-serving accommodations at lower Topanga State Park, are considerable.

There have been various development proposals for the Crummer property since at least the early 1980's as well as opportunities for the City or others to purchase the property for recreational or open space. None have come to fruition. The current property owners through their actions have demonstrated their commitment to Malibu LCP and the Coastal Act by putting forth a project that is consistent with both while also providing significant public benefits. This thoughtful and responsive approach to development should be encouraged and any further modifications to the project are not warranted and under these circumstances could be deemed punitive.

I urge you to approve the Crummer Project when it comes before you at your August hearing.

Should you have any further questions, please feel free to contact me at my email address.

Thank you for your consideration.

Sincerely,

Sharon Barovsky

cc: Robert Gold-By email rgold@bigrockpartners.com

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Deanna.christensen@coastal.ca.gov

John.ainsworth@coastal.ca.gov

Re: LCP-4-MAL_14-0408-1

SUPPORT of the Crummer Project, City of Malibu

Dear Honorable Chair Kinsey and Commission members:

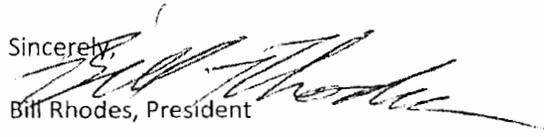
The Malibu Road Association (MRA) is a voluntary membership organization serving owners and renters of the more than 200 residences along our 2.5-mile stretch of Paradise – Malibu Road (aka Old Malibu Road), in Malibu, California. I am writing today to express MRA's strong support for the project located at the "Crummer" site adjacent to Bluffs Park.

Due to our community's close proximity to this site, we have a unique perspective as to what type of development belongs next to Bluffs Park. We believe that this project as proposed is thoughtful and sensitive to the rural and scenic character of Malibu and will fit in comfortably in this setting. Furthermore, the project, which has now been further downsized to five one-story homes in a privately gated community, is a far less intense use and development than past proposals for the site, which included a large-scale hotel, a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes.

Not only is MRA supportive of the project, but we are excited about the community benefits this project will bring. Those benefits include a dedication by the developer of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of new athletic fields and the addition of 54 much-needed public parking spaces.

We believe this project will be a great benefit to not just the youth sports community, but to everyone in Malibu and beyond who uses Bluffs Park. We urge you to support the Crummer Project when it comes before you on August 12, 2015.

Sincerely,


Bill Rhodes, President

CC: Robert Gold



MALIBU

CHAMBER OF COMMERCE

Chairman of the Board

Rod Bergen

Past Chair 2014

Christine Hameline

Vice Chair

Governmental Affairs

Paul Grisanti

Vice Chair Membership

Taylor Baehr

Vice Chair Finance

Paul Apodaca

Vice Chair

Community Relations

Brandon Wiemann

Directors

Kristine Bocchino

Buzz Cadenhead

Philip Gajic

Robert Hayman

Jeffrey Jennings

Sophie Kidian

Julie Labin

Beth Mohiuddin

Mark Olson

Bob Perkins

David Reznick

Jeff Runyan

Don Schmitz

Honorary

Captain Patrick S. Davoren

Captain Todd Watkins

Chief Executive Officer

Mark Persson

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Deanna.christensen@coastal.ca.gov

John.ainsworth@coastal.ca.gov

Re: LCP-4-MAL_14-0408-1

SUPPORT of the Crummer Project, City of Malibu

Dear Honorable Chair Kinsey and Commission members,

As you know, the Malibu Chamber of Commerce is dedicated to helping local companies grow their businesses. We are deeply invested in the success of our city, and we work tirelessly on our members' behalf to ensure that local and state elected officials are educated on the impact their decisions will have on our economy and community. It is the Chamber's job to analyze the impact each issue will have on local businesses and to relay this information to our members and the community.

The Malibu Chamber of Commerce is proud to voice its strong support for the Crummer project directly adjacent to Bluffs Park. It has been well documented that there has long been a need for additional active park space in Malibu, and we think that this project represents a great opportunity for the City to benefit from this thoughtful development.

The proposal is for the construction of 5 single-family residences; a far cry from past proposals for the site, which included a hotel and a large-scale condominium complex. This project, designed by local Malibu architects Richard Landry and Brian Pinkett, two of the principals of the Landry Design Group, is significantly less intensive than what is currently permitted for the property in the Local Coastal Program. In addition, the Final Environmental Impact Report independently concluded this proposal has no significant impacts to the site and its surroundings.

The best news, however, is that the plan includes the dedication of nearly 2 acres of land to the City to be used as much-needed active park space, an additional 54 public parking spaces, a \$1 million gift by the property owner to develop the donated land and a \$2 million donation to State Parks to construct lower cost overnight accommodations at Lower Topanga State Park. It sounds like a win-win-win for everyone.

Accompanying our endorsement of this project, we would like to request that the developer continue to hire locally whenever possible. With a membership of nearly 400 local businesses, the chamber is happy to work with the project's representatives to help facilitate this endeavor. We respectfully request that the Coastal Commission vote to approve this exciting project as designed.

Sincerely,

Mark Persson

Christensen, Deanna@Coastal

From: Jo Giese <email@jogiese.com>
Sent: Tuesday, July 28, 2015 7:44 AM
To: Christensen, Deanna@Coastal
Cc: robert gold
Subject: Support Crummer project, City of Malibu

July 28, 2015

California Coastal Commission

South Central Coast Area

89 South California Street

Ventura, CA 93001

Attn: Deanna Christensen

Re: LCP-4-MAL_14-0408-1

SUPPORT of the Crummer Project, City of Malibu

Dear Commissioners:

My name is Jo Giese and I have lived in Malibu for over 20 years. I am writing to express my enthusiastic support for the Crummer Project.

Over the last 9 years as a Malibu homeowner and founder and president of the MalibuGreenMachine, I have had the opportunity to work with the one of the owners of the Crummer Project. In fact, they were one of MalibuGreenMachine's earliest supporters. Their generous financial support and contribution of their time were critical to our Pacific Coast Highway landscaping improvement project, which served the dual purpose of greening PCH while also improving public safety on this dangerous highway.

The project, five homes on a 24-acre property is a far less intense use and development than past development proposals for the property which, as you probably know, have included a large office building, a condo development, and, most recently, plans that would have contemplated up to eight homes. In contrast, local architect Richard Landry designed the current project with landscape design by Jim Hyatt, both of whom worked with the owner to put forth a project compatible with and respectful of our unique scenic and rural surroundings.

To that end the property owner has also worked closely and diligently with the local community and has modified the design of the project numerous times to address concerns about potential visual impacts, including most recently in response to concerns raised at the project's hearing in February by reducing the height on all of

the homes to 18 feet. The project has been thoroughly reviewed in the City's rigorous and transparent planning process and enjoys wide community support.

The project includes a donation of almost 2-acres to the City of Malibu and \$1M to construct recreational facilities on the land that will be used by the community as well as the many visitors to Bluffs Park. The property owner has also agreed to donate \$2M to State Parks in order to help create lower cost visitor-serving accommodations at lower Topanga State Park.

The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act.

I urge you to approve the Crummer Project when it comes before you at your August hearing. Thank you for your consideration.

Sincerely,

Jo Giese

31500 Broad Beach Road

Malibu 90265 Ca

cc: Robert Gold-By email rgold@bigrockpartners.com

<http://jogiese.com>

July 25, 2015

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Deanna.christensen@coastal.ca.gov

John.ainsworth@coastal.ca.gov

**Re: LCP-4-MAL-14-0408-1
SUPPORT of the Crummer Project, City of Malibu**

Dear Commissioners:

Our family moved to Malibu three years ago because my wife and I believe Malibu is a great community to raise our family.

I am writing to express my support for the Crummer Project. The owners of the Crummer Project are strong supporters of improving this community and in particular the education and safety needs of our children. They have contributed generously to The Shark Fund, which supports excellence in education at Malibu's middle and high school, Malibu High Graduation Night, which supports a safe and sober grad night, and Juan Cabrillo Elementary School.

It has been well documented that the City of Malibu has a shortage of playing fields for active recreation. Given the project owners' sensitivity to the needs of the community, it is not surprising that the Crummer Project seeks to address this community need and includes a dedication of nearly two acres of land to the City to be incorporated into Bluffs Park along with a \$1 million donation to fund the construction of a new athletic field and other improvements to benefit the community including providing much needed public parking spaces. I also understand that the property owner has agreed to make a \$2M donation to State Parks to develop cabins at lower Topanga State Park. Two very significant public benefits.

I cannot emphasize enough how important sports are for our children. Sports---being part of a team, learning how to co-exist with different personalities and cultural backgrounds, taking direction from coaches, learning sportsmanship, and building lifelong friendships are all important pieces of our children's upbringing; something we should not discount.

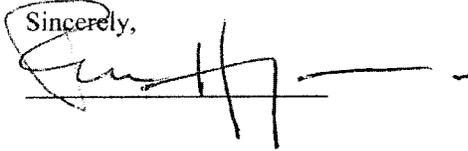
The project, five homes on a 24-acre property is a far less intense use and development, and therefore more compatible with our scenic and rural surroundings, than the previously proposed projects. In addition, the property owner has worked with closely and diligently with the local community and has modified the design of the project several times to address concerns about potential visual impacts, including most recently reducing the height on all of the homes to 18 feet.

The project as designed is appropriate in both scale and size to this area and is fully consistent with the Malibu LCP and Coastal Act.

I urge you to approve the Crummer Project as designed when it comes before you at your August hearing.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Gold-By", written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

cc: Robert Gold-By email rgold@bigrockpartners.com

Christensen, Deanna@Coastal

From: Seth Jacobson <seth@jcipr.com>
Sent: Wednesday, July 29, 2015 10:10 PM
To: Christensen, Deanna@Coastal
Subject: Crummer Property - COMMENT August 12th Commission Meeting

Honorable Chairman Kinsey and Commission Members:

As an activist and board member of many local civic and educational groups, I believe I have a sense of the pulse of the community and also a concept of what is right for our town, our kids, our families and our city. As a resident for over 20 years, I have seen many projects come and go. I have seen a number of projects in the area of the proposed Crummer plan that have been approved others that have fallen down because they have not taken into account the unique and special nature of our community. Malibu boasts 26 miles of coastline, of which much of it is locked away behind private gates and inaccessible to our residents. What I appreciate the most about this proposal, is it not only protects the surrounding area, it provides for more open space and enhances open space that will have public access. This is the definition of a project that has done its work to understand the importance of working with not against the community's interests.

Additionally, in the last round of revisions to the proposed plan such things as the proposed berms for the view from city center and the set backs and reduction of space used on the entire site, have gone way farther than even I had recommended in my letter to the Malibu Planning Commission in its first round of review of the CUP. Additionally, the lighting plan conforms substantially with the Dark Sky elements of the city's new plan for reducing light pollution and has I believe successfully addressed the concern of homeowners in the area above the site.

The additional contributions to the state parks and other efforts to restore and enhance the playing fields is a much needed benefit to an already good project. I would encourage you to move forward on this project as it meets the letter and the spirit of the concerns raised by regulators, city staff and local residents.

Regards,

Seth Jacobson

Attn: Deanna Christensen (805)641-1732

California Coastal Commission
South Central Coast Area
89 South California Street
Ventura, CA 93001
Attn: Deanna Christensen

Received

JUL 29 2015

California Coastal Commission
South Central Coast District

Deanna.christensen@coastal.ca.gov
John.ainsworth@coastal.ca.gov

Re: **LCP-4-MAL_14-0408-1**
SUPPORT of the Crummer Project, City of Malibu

Honorable Chair Kinsey and Commission Members:

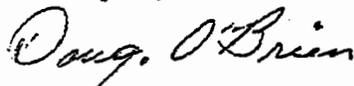
I am writing to express my strong support for the "Crummer Project."

As a resident of Malibu who lives in close proximity to Bluffs Park, I know all about this site and the potential for its development. Over the years, we have heard proposals ranging from office buildings to clusters of condos and other far reaching designs that would be inappropriate for the location. However, the project that now comes before you on August 12, is none of those things. On top of that, it will be providing our town with real tangible benefits for young and old, resident and visitor a-like.

Simply stated, this project consisting of five single-family one-story homes is as reasonable as we are going to get. Add to this the land dedication and millions of dollars to the City and State Parks, I can't see a reason why anyone would not vote to approve this.

I believe this project will be a great benefit to not just the youth sports community, but everyone who uses Bluffs Park. We urge you to support the Crummer Project when it comes before you on August 12, 2015.

Thank you,



Doug O'Brien

29500 Rainsford Place

Malibu, CA 90265

Christensen, Deanna@Coastal

From: Cheryl Whitbread <cwhitbread@ezralow.com> on behalf of Marc Ezralow <mezralow@ezralow.com>
Sent: Thursday, July 30, 2015 11:52 AM
To: Christensen, Deanna@Coastal
Cc: 'rgold@bigrockpartners.com'
Subject: Crummer Project

Re: LCP-4-MAL_14-0408-1
SUPPORT of the Crummer Project, City of Malibu

Dear Chair Kinsey and Commissioners:

I am writing to express my support for the Crummer Project.

My family has owned a home in Malibu for over 25 years and I can see the Crummer Property from my home.

The project, five homes on a 24-acre property is a far less intense use and development than past development proposals for the property and is appropriate in both scale and size.

As a real estate developer, I understand that the development of a vacant parcel often creates apprehension in the community. To address community concerns the project has been modified, including most recently reducing the height on all of the homes to 18 feet.

The project includes significant public benefits including a donation of almost 2-acres to the City of Malibu and \$1M to construct recreational facilities on the land that will be used by the community, as well as the many visitors to Bluffs Park and a \$2M donation to State Parks in order to help create lower cost visitor-serving accommodations.

I urge you to approve the Crummer Project when it comes before you on August 12th.

Thank you for your consideration.

Marc Ezralow
23654 Malibu Colony Road

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CALIFORNIA COASTAL COMMISSION
THE CLIFFS RESORT HOTEL
2757 SHELL BEACH ROAD
PISMO BEACH, CALIFORNIA 93449
FEBRUARY 12, 2015

TRANSCRIPT OF PROCEEDINGS - ITEM 20B

City of Malibu Local Coastal Program Amendment No.
LCP-4-MAL-14-0408-1 (Malibu Coast Estate/Crummer
Trust Property Planned Development)

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COMMISSION MEMBERS PRESENT

STEVE KINSEY, SUPERVISOR AND CHAIR
MARTHA MCCLURE
WENDY MITCHELL
EFFIE TURNBULL-SANDERS
MARK VARGAS
JANA ZIMMER, VICE-CHAIR
DAYNA BOCHCO
GREGORY COX
ERIK HOWELL
MARY SHALLENBERGER
CAROLE GROOM
CHRIS PEDERSON, DEPUTY CHIEF COUNSEL
CHARLES LESTER, EXECUTIVE DIRECTOR
JACK AINSWORTH, SENIOR DEPUTY DIRECTOR

SPEAKERS

| | |
|--------------------|----|
| JOSH JASCHJANOWICZ | 38 |
| ROBERT GOLD | 43 |
| SEAN DOHERTY | 50 |
| FRED GAINES | 53 |
| PATT HEALY | 57 |
| DANI MALLAY | 64 |
| TIM ELKINS | 66 |
| PAUL ALMOND | 68 |
| SUSAN JORDAN | 70 |
| EDWARD FONSECA | 72 |
| CARRIE MADDEN | 73 |

1 CHAIRMAN KINSEY: Okay. We are back in
2 session for the Coastal Commission. And we're on
3 item No. 20.b. the City of Malibu's local coastal
4 program amendment. And we'll turn to Mr. Ainsworth.

5 MR. AINSWORTH: Thank you, Mr. Chairman.
6 We have a Power Point for this item. I'm going to
7 take a little time to walk through this item. It
8 can be confusing, a little complicated, so bear with
9 me.

10 The item 20.b, the City of Malibu is
11 requesting an amendment to Land Use Plan and Coastal
12 Zoning Ordinance portions of the Certified Local
13 Coastal Program. The land use portion of the
14 amendment includes request to delete land use plan
15 policy 2.78, and modify the requirements of the
16 planned development land use designation to allow
17 for a mix of residential and recreation use on a
18 single site in the city of Malibu.

19 The amendment further proposes to modify
20 the planned development zone district of the
21 implementation plan to similarly allow for a mix of
22 residential and recreational use, including a very
23 specific set of development standards.

24 The planned development designation is
25 currently applied to one vacant 24-acre parcel

1 adjacent to Malibu Bluffs Park, formerly known as
2 the Crummer Trust Parcel, it's now commonly called
3 the Malibu Coast Estates.

4 The parcel is situated on a bluff between
5 Pacific Coast Highway to the north and Malibu Road
6 and the Pacific Ocean to the south, as you can see
7 there.

8 Single-family residences are situated on
9 both landward and seaward side of Malibu Road to the
10 south of the property. The ocean is about 300 feet
11 to the south as well. West of the subject parcel is
12 the city-owned Malibu Bluffs Park, which includes
13 two baseball fields, a soccer field, a playground,
14 there's parking there, a walking path with an
15 overlook, and a visitors' center.

16 To the west of the site, here, the City of
17 Malibu recently approved coastal development permits
18 for construction of four single-family residences
19 there.

20 The planned development designation of the
21 certified LCP specifies that the Crummer Trust
22 Parcel shall be commercial visitor-serving, unless
23 an agreement was reached with the State Parks to
24 move Bluffs Park athletic field to the property, at
25 which point the site would be redesignated for a mix

1 of residential and recreational uses with up to
2 eight residential units permitted.

3 However, that agreement was never reached
4 by operation of the land use plan policy 2.78, and
5 the land use designation for the site then reverted
6 back to this commercial visitor-serving designation.

7 I think a little background would be
8 helpful to provide some historical context to this
9 amendment.

10 So prior to the incorporation of the City
11 of Malibu in 1991, the subject property was
12 designated as a commercial office designation in the
13 certified 1986 Los Angeles County, Malibu-Santa
14 Monica Mountains land use plan.

15 The property was not specifically
16 designated for visitor-serving in that 1986 LUP.
17 This designation persisted until the City
18 incorporated in 1991. While the property was still
19 in the county of Los Angeles jurisdiction, there was
20 really one, only one serious proposal here on this
21 site. And that was for a think tank for office
22 facility for General Motors. However, that proposal
23 was abandoned.

24 Since that time, there's been -- no
25 visitor-serving commercial project has been proposed

1 on this site. At the time the Commission was
2 preparing the Malibu Local Coastal Program in 2002,
3 the City of Malibu and State Parks had been
4 negotiating for proposal for State Parks to fund the
5 transfer of existing temporary athletic fields on
6 Bluffs Park to the subject Crummer Trust property.

7 The goal of this negotiation was to
8 preserve state park land for regional uses, and also
9 preserve the athletic fields for local use.

10 After -- however, after the Malibu LCP was
11 certified by the Commission, a different agreement
12 was reached between State Parks and the City of
13 Malibu. State Parks transferred ownership of Bluffs
14 Park to the Santa Monica Mountains Conservancy, and
15 the City of Malibu purchased portion of Bluffs Park
16 that included the athletic fields and the visitors'
17 center facility from the conservancy for \$2.5
18 million.

19 These funds were used to help purchase Soka
20 University in the Santa Monica mountains for park
21 and recreation purposes.

22 The Crummer Trust property was not part of
23 the transaction. Therefore, by operation of the
24 land use plan policy 2.78, the land use designation
25 of the site reverted back to this commercial

1 visitor-serving designation.

2 However, the certified land use and zoning
3 maps designate the site as planned development, not
4 commercial visitor-serving use. Therefore, there's
5 this internal inconsistency in the LCP that has to
6 be resolved.

7 Now, in 2010, the Commission approved an
8 almost identical LCP amendment to the proposed
9 amendment for the property that would allow for a
10 mix of residential and recreational use, instead of
11 this commercial visitor-serving use.

12 Although a specific project had not been
13 approved by the City, and it was not proposed as
14 part of the LCP amendment. The amendment
15 conceptually approved a residential density of the
16 site, allowing 70 lots, five lots containing five
17 new single-family residences, one lot for a private
18 access road, and ancillary facilities, and a -- one
19 lot consisting of 1.74 acres to be dedicated to the
20 City of Malibu to expand the adjacent City-owned
21 park.

22 In order to mitigate for the loss of
23 visitor-serving use, the suggested modifications
24 approved by the Commission had included a provision
25 for the payment of a \$2 million in lieu mitigation

1 fee to assist in the funding for overnight --
2 affordable overnight accommodations.

3 The Commission determined that the fee
4 should be used locally to provide funding to the
5 California Department of Parks and Recreation for a
6 lower-cost overnight visitor-serving accommodations
7 at the former Topanga Ranch Motel site within Lower
8 Topanga State Park.

9 The Commission also found that approx --
10 the 1.74 acre resident -- recreational area of the
11 site should be limited to passive recreational use
12 in order to increase its regional public benefit.

13 However, the City of Malibu never took
14 formal action to accept the Commission's required
15 suggested modification on the LCP amendment within
16 the required six-month time frame.

17 Therefore, the Commission's approval of the
18 LCP amendment expired, and was never certified. The
19 City of Malibu objected to several aspects of the
20 Commission's required suggested modifications. The
21 City objected to the requirement that the 7 -- the
22 1.74 acre recreation lot for City was limited to
23 passive public recreational use instead of more
24 active uses for ball fields and such.

25 The City was also concerned about a

1 specific visitor-serving in lieu fee mitigation --
2 in lieu mitigation fee amount specified in the LCp
3 rather than as a general concept. Now, the planned
4 development that is the subject of this new LCP
5 amendment is pretty much the same as the
6 previously-approved amendment. The owner of the
7 subject property proposes a specific plan
8 development that involves subdividing the parcel
9 into seven lots, as shown here in this slide. Five
10 lots for five new single-family residences, one lot
11 for a private road, a gate house and ancillary
12 facilities, and one lot consisting of this 1.74
13 acres to be dedicated to the City to expand the
14 City-owned park for passive and active recreational
15 uses.

16 Now, the City and the property owner
17 believe that a visitor-serving -- that a
18 visitor-serving or any commercial use for that
19 matter is not economically viable on this property.
20 The site is constrained, given its bluff-top
21 location and topography, and although the site is 24
22 acres in size, the actual development area on the
23 site is, with required bluff setbacks and other
24 setbacks, is about nine acres.

25 The other constraints are traffic

1 circulation and conflicts with adjacent park uses.
2 The Malibu Bluffs Park ball fields are used for
3 youth baseball, soccer, and other sports year round
4 and the traffic at peak use periods is significant,
5 and the existing parking lots are not adequate to
6 accommodate these uses.

7 Managing traffic circulation and parking
8 with a visitor-serving commercial development in
9 combination with the neighboring ball fields would
10 be a significant challenge on this site.

11 The existing intersection of -- from the
12 park to PCH would likely have to be configured to
13 accommodate the additional traffic, which would also
14 require likely reconfiguration of the ball fields.

15 The site is also surrounded by slopes,
16 which makes it somewhat hard to see in access from
17 the highway. In addition, any development of the
18 site would have to be very low profile so it would
19 not loom over the Pacific Coast Highway, and would
20 not present adverse visual impacts as seen from the
21 highway and adjacent city and state parks to the
22 west.

23 The Applicant and the City do not believe
24 that any hotel use, for example, would be
25 economically viable on the site. The Applicant has

1 submitted an economic study of a hotel use on the
2 site that indicates even a very high end boutique
3 hotel-style hotel would not be economically viable
4 here.

5 Under the City of Malibu's LCP, certified
6 by the Commission in 2002, there are approximately
7 12 parcels totaling 80 acres zoned for commercial
8 visitor-serving excluding the subject site in the
9 city. Several of these parcels contain hotels and
10 motels and B&Bs, there are currently six overnight
11 accommodations within the city, totaling about 117
12 rooms.

13 I would also note that the commercial
14 visitor-serving designation that is the current site
15 designation does not require an overnight
16 accommodation on the site. It could be used for a
17 variety of visitor-serving commercial uses.

18 It should also be noted that the nearby
19 civic center is the more appropriate area for
20 visitor-serving uses and is zoned for both
21 visitor-serving and community commercial land uses.

22 The staff's view, given the nearby civic
23 center -- the staff's view -- I'm sorry -- given the
24 unique circumstances and history surrounding the
25 site, the conversion of the subject property from a

1 visitor-serving commercial to a residential
2 designation is appropriate in this case, provided
3 the loss of potential visitor-serving overnight
4 accommodations is adequately mitigated.

5 I would note that through the adoption of
6 the LCP pursuant to policy 2.78, the Commission
7 already conceptually authorized the conversion of
8 this property to a residential designation if the
9 ball fields were moved onto that site.

10 Under that policy, eight homes could have
11 been developed on the site, and under the proposed
12 planned unit designation in this case, only five
13 homes would be allowed on the site with a 1.7 acre
14 park.

15 Furthermore, the property owner is offering
16 a \$2 million mitigation fee to assist in funding the
17 lower-cost visitor-serving accommodations at Lower
18 Topanga State Park.

19 As you can see here on this slide, here is
20 the general area of Lower Topanga Park where the
21 overnight accommodations are contemplated. It's off
22 of Pacific Coast Highway, just down-coast of the
23 city of Malibu, and near the Topanga county beach,
24 which is directly across the street.

25 State Parks is interested in rehabilitating

1 the former Topanga Ranch Motel and construction of
2 cabins within Lower Topanga State Park as lower-cost
3 accommodations, but is in need of funding to make
4 this happen. Therefore, this is an excellent
5 opportunity to implement an affordable
6 visitor-serving accommodation project within the
7 Malibu area that is accessible to inland and beach
8 parklands.

9 In addition, Lower Topanga Park is -- is
10 close to and easily accessible to the vast urban
11 areas of the city of Los Angeles. In staff's
12 opinion, the proposed conversion would provide
13 substantially more lower-cost visitor-serving
14 opportunities than what was required on the existing
15 policy 2.78, which authorized up to eight
16 residential units with simply the transfer of those
17 ball fields.

18 The mitigation fee in combination with the
19 proposed expansion of the park would provide
20 significant low-cost recreational facilities, and
21 rather than the high-end hotel on the property or
22 some other visitor-serving use.

23 Now, the City of Malibu has expressed
24 concern about the specific visitor-serving in lieu
25 fee mitigation amount being specified in the LCP.

1 And this is one of the reason the City never
2 accepted the Commission's suggested modifications
3 prior -- on the prior LCP amendment.

4 The City has indicated that it would have
5 to conduct a mitigation in lieu fee nexus study if
6 the fee was part of the LCP amendment. In this case
7 the City is simply not interested in dedicating the
8 time and funds to do such a study.

9 So, to address this issue and the City's
10 concerns and provide effective alternative method
11 for the project proponent to mitigate for the loss
12 of visitor-serving opportunities, the property
13 owner, the City and the Commission staff have worked
14 cooperatively to reach an agreement on a mechanism
15 whereby the property owner has entered into an
16 agreement with the Coastal Commission through an
17 escrow account to pay the \$2 million fee to the
18 California Department of Parks and Recreation for
19 use in developing lower-cost visitor-serving
20 accommodations. To be released upon the owner
21 securing entitlements to the sub -- to subdivide and
22 develop the site, with a mix of residential and
23 recreational uses.

24 This agreement also provides the -- for the
25 owner's execution of a covenant on the property, to

1 be recorded if the escrow funds are returned to the
2 developer in accordance with the escrow agreement in
3 which the payment of the \$2 million is an obligation
4 that runs with the land, and is binding on all
5 future owners should the current property owner sell
6 the property prior to securing entitlements or
7 otherwise exercise its right under the escrow
8 agreement to terminate the agreement under certain
9 conditions.

10 In your addendum packet you'll find an
11 updated escrow agreement, which has some minor
12 tweaks to it. The agreement is structured to
13 provide the Commission with the assurance of the
14 payment of the fee, which is necessary to mitigate
15 for loss of the higher priority use, using escrow
16 arrangement provides the property owner assurances
17 that the mitigation -- that required fee will be
18 only transferred upon securing final entitlements --
19 entitlements for the planned development.

20 Now, staff recognizes that this is a
21 creative approach, and out of the ordinary to
22 resolve the differences between the City of Malibu,
23 and to assure this payment, this in lieu fee payment
24 to State Parks.

25 The fee would be deposited with State Parks

1 pursuant to an MOU with the Commission that
2 specifies that the funds can only be used for
3 lower-cost accommodations at the Lower Topanga State
4 Park.

5 So, in this case the City also proposes to
6 add a set of development standards to the
7 implementation plan portion of its certified LCP,
8 including very detailed standards regarding the
9 permitted type, density and intensity of
10 development. The standards also address permitted
11 uses on these seven lots, including the very
12 specific lot dimensions, structure, size, setbacks,
13 grading, color of the structures, lighting and
14 fencing and such.

15 Staff believes that the proposed density of
16 the residential development of the property combined
17 with the dedication of the portion of the property
18 by the City of Malibu for recreational use is
19 consistent with the character of this area and with
20 the adjacent development. There is no ESHA on the
21 property, and the development provides for the
22 appropriate bluff setbacks.

23 Staff is recommending adoption of the
24 suggested modification of the proposed plan
25 development standards in order to protect scenic

1 public views from public viewing areas to ensure
2 internal consistency among the provisions of the
3 LCP.

4 Now, staff has received a number of letters
5 raising concerns regarding potential adverse impacts
6 that the project may have on scenic resources in the
7 area. This is -- the site is a prominent bluff-top
8 property that is situated adjacent to the Pacific
9 Coast Highway. The project is visible from a number
10 of public viewing areas to the east or down-coast of
11 the site, including portions of Pacific Coast
12 Highway, Malibu civic center area, Malibu Colony
13 Beach, Surf Rider Beach and Malibu pier.

14 The project is also visible from Malibu
15 Bluffs Park, immediately to the west or up-coast of
16 the site, and portions of Malibu Canyon Road inland,
17 and there are several -- several locations at much
18 higher elevations looking down on the site.

19 However, a number of these public viewing
20 areas are a substantial distance away, and so the
21 development in scale is very de minimis.

22 So given the visibility of the site from
23 various multiple vantage points, and the potential
24 impact to scenic resources from this planned
25 development, the -- the -- this proper -- this

1 project has been extensively analyzed by the City
2 and also by your staff. In response to identified
3 visual impacts during the City's processing of the
4 subject permit applications for the development on
5 this site, the property owner made several revisions
6 to the siting, square footage and height of the
7 residences and landscaping in order to reduce the
8 visibility of this project.

9 Story poles were placed in two different
10 alternative residential configurations and views for
11 both public and private viewing areas were assessed.
12 Visual simulations were also prepared from multiple
13 residential configuration alternatives.

14 So I'm going to just quickly go through
15 some of the -- the visual simulations, the slides
16 which are kind of difficult to see at this scale,
17 but this is a slide of the view of the bluff-top
18 site, with story poles as seen from westbound PCH
19 and the Malibu Civic Center. And this is the one
20 location where the -- where the development will be
21 probably most visible, and it's hard to see, but
22 here are the story poles there. This is PCH looking
23 westbound. Yeah, it says northbound, but really
24 it's westbound.

25 Next slide. It's not working. Hello. All

1 right. So this slide is a visual simulation of the
2 proposed development. It is very difficult to see,
3 and most of it is, you know, screened with
4 landscaping.

5 Next photo is a view of the site from the
6 city's Legacy Park, and again here's a visual
7 simulation -- oop, back up one. Anyhow, I'm just
8 going to move on.

9 This is a view from Malibu Colony, and the
10 visual simulation. Next, please. This thing's not
11 working. So since development on lots 1 and 2 of
12 the planned development are on the eastern portion
13 of the property, it would be visible from those
14 viewpoints that I just showed.

15 The City approved a required reduction in
16 the square footage of the structure's second floor
17 at a 28-foot height level from 3,334 square -- 344
18 square feet to 2,565 square feet, and also on lot 2
19 the City approved the reduction of the structure
20 height to a maximum of 18 feet high. So pretty much
21 a one-story residence on -- on that lot. And it
22 reduced the structure size from 11,000 square feet
23 to about 9400 square feet.

24 The reduction in height of the structure on
25 lot 2, which is the most visible as seen from

1 down-coast areas, we believe will minimize the
2 impact the structure will have on views. And I
3 would also note that all of the structures are
4 visible from PCH, they're not really interfering
5 with any ocean, coastline or significant mountain
6 views.

7 So this next slide is the story poles and
8 visual simulation of the proposed development as
9 seen from -- from Malibu Canyon road on the inland
10 side, and at a higher elevation. The proposed
11 residences are visible from Malibu Canyon Road, but
12 they will not block views of the ocean. And the
13 City -- however, the City did approve some
14 reductions in the square footages to lots 3 and 4 in
15 order to reduce the visibility of those -- of those
16 structures.

17 All right. At the northwest corner of the
18 property, the property is at the same grade of --
19 could we back those up? This thing is -- there you
20 go.

21 So at the -- the property at the northwest
22 corner is pretty much at grade with PCH; however,
23 the grade of PCH drops significantly below grade
24 traveling south or -- or eastbound towards Malibu
25 Civic Center along the site's northern boundaries

1 you can see here there's a large separation, the
2 topography blocks the view there. Therefore, the
3 proposed development will not have any impact on
4 ocean or coastline or mountain views from the
5 Pacific Coast Highway in this location.

6 I would note that there is some concerns
7 expressed by the public, appear to relate to some
8 private view sheds and not particularly public view
9 sheds. This particular view is from a private
10 property located across the street, so there will be
11 some private view sheds impacted by the proposed
12 development.

13 Next slide, please. This slide is a view
14 of the proposed development story poles as seen from
15 the public walking path on the City -- Malibu Bluffs
16 Park, just up-coast of the site, and it's difficult
17 to tell from this photo, but the proposed structure
18 in lot 5 is very visible when looking down coast
19 from this public walking path, the bluff's edge, and
20 although the City modified -- or approved
21 modifications to the structure on lot 5 to reduce
22 the visibility of the structure, Commission staff
23 analysis of the approved residential structure on
24 lot 5 indicated the southern extent of that
25 residential structure did obscure some scenic views

1 of the down coast shoreline.

2 Next slide. And in order to -- well, you
3 can't -- that's difficult to see. In order to avoid
4 any obstruction of scenic views of the shoreline
5 from Bluffs Park, Commission staff determined that
6 the residential structure in lot 5 should be shifted
7 an additional 30 feet landward or away from the
8 bluff in order to minimize the -- in order to open
9 up the views of the down coast shoreline.

10 Next. Finally, this is just a visual
11 simulation of the project as viewed from the ball
12 fields on Bluffs Park with the vegetative screening.

13 Next slide, please. In order to ensure
14 that the PD development standards reflect this
15 additional setback for the residential structure on
16 lot 5, in order to adequately carry out these scenic
17 resource protection provisions of the certified LCP,
18 suggested modification 3 is recommended.

19 The City of Malibu also has made a late
20 request to specify that the total authorized
21 residential square footage on each lot be specified
22 in this -- in the PD designation. Therefore, staff
23 is recommending a revision to suggested modification
24 3 to specify the following total maximum square
25 footages on each lot, and I'm just going to quickly

1 read these:

2 Lot 1 be limited to 10,052 square feet.

3 Lot 2, 9,622 square feet.

4 Lot 3, 9,434 square feet.

5 Lot 4, 9,513 square feet.

6 And finally, lot 5 would be limited to
7 10,990 square feet.

8 I would also just quickly note that the
9 subject site has no existing planned -- existing or
10 planned public access trails on the site. The
11 adjacent City-owned Malibu Bluffs Park and the
12 Conservancy-owned Bluffs Park, include both active
13 and passive recreation areas for this area, and as I
14 mentioned, the planned development includes that
15 1.74 acre lot adjacent to the Malibu Bluffs Park,
16 that's going to be dedicated to the City, and for
17 its -- for either passive or rec -- or active
18 recreational use.

19 The Applicant is also providing the City a
20 million dollars in funding in order to develop the
21 site with a public recreational use. Although no
22 specific development has been approved for the City
23 on lot 7, such uses such as a skateboard park, small
24 ball field or other typical park uses are being
25 contemplated here.

1 Staff does believe given this configuration
2 that these are appropriate uses for that, for Malibu
3 Bluffs Park extension, consistent with the access
4 and recreation policies in the LCP.

5 Now, the proposed development also includes
6 a 280 square foot guard house and access gate on the
7 proposed private street that leads to the
8 residences. Typically these are -- private gates
9 are not encouraged, but given the configuration of
10 the planned development in relation to Bluffs Park
11 and the proposed recreational lot, the gated access
12 will not adversely impact any public access in and
13 around the park. In addition, the gate is also
14 necessary given the close proximity to the park, and
15 it prevents conflicts between the park residents and
16 park users. And we think it is appropriate in this
17 particular context.

18 Finally, the staff -- in the staff report
19 addendum, there is some changes and clarifications
20 to the staff report. There's ex parte notices,
21 correspondences included in your addendum packet.
22 And as I mentioned, there's an updated escrow
23 agreement and covenant.

24 We also included the economic study for the
25 viability of a hotel on the site, and an analysis of

1 low cost overnight accommodations to the City. That
2 is also included in your addendum packet.

3 In conclusion, staff is recommending
4 approval of the LCP amendment pursuant to the
5 suggested modifications outlined in the staff
6 report, and as modified in the staff report addendum
7 and in the staff presentation.

8 There are four motions to approve this LCP
9 amendment, and they can be found on pages 6 through
10 8 of the staff report. And that concludes staff's
11 presentation on this item.

12 CHAIR KINSEY: Thank you. We'll begin to
13 my right with ex partes. Commissioner Mitchell?

14 COMMISSIONER MITCHELL: I have one on file,
15 and then -- excuse me. On the 9th of February I had
16 a phone conversation with Patt Healy, we reviewed
17 her letter and the contents therein. On the same
18 day, on the 9th I had a phone conversation with Fred
19 Gaines, and we reviewed his letter, and the
20 specifics in his objections to the project.

21 CHAIR KINSEY: Thank you. Moving down.
22 Yes. Commissioner McClure.

23 COMMISSIONER MCCLURE: Thank you. On the
24 9th of February at one p.m. I had a phone
25 conversation with Patt Healy, from the Malibu

1 Coalition for Slow Growth. We reviewed her letter
2 and her concerns, and the desire for the houses to
3 not have such a high profile, and that the -- the
4 project didn't -- she felt the project didn't meet
5 the visual protections of the -- that are in place
6 with the Coastal Act and the Malibu L -- LCP.

7 Also on the 9th of February, at 12 p.m. I
8 had a telephone conversation with Fred Gaines, and
9 we talked specifically about the oppositions to
10 staff's recommendation, and that he believed that
11 the height of the homes and the size of the homes
12 and the mass of the walls and the landscaping were
13 an issue, and he explained that his client's
14 concerns were about the blockage of the scenic view
15 from the client's property, as well as from the
16 Malibu Park and the nearby public roadways, and he
17 explained that his client's opposition to the loss
18 was also to the loss of potential visitor-serving
19 activities.

20 I also had on February 6th a phone
21 conversation with Robert Gold, Steve Kaufmann, Susan
22 McCabe and Ann Blemker, and we received -- sorry,
23 Ann -- and received, we went through the electronic
24 briefing book that had been provided to the staff
25 previously. They described the proposed LCP, its

1 history, the owner's effort to work with both the
2 City of Malibu and the Coastal Commission over the
3 years.

4 They described the -- they made reference
5 to the \$2 million in funding for state park, the
6 increase in lower -- in order to increase lower-cost
7 recreational use. They were -- identified the park
8 that had been donated to the City. The six-acre
9 conservation easement to the MRCA across the
10 southern bluff, and the clustered, less intense
11 res -- residential and development, and they
12 believed that the project is in -- is consistent
13 with the community character and scale.

14 CHAIR KINSEY: Thank you. Commissioner
15 Vargas.

16 COMMISSIONER VARGAS: Yes. On February
17 10th at 3:45 p.m., I had a conference call with
18 Robert Gold, Steve Kaufmann, Susan McCabe and Ann
19 Blemker. The same -- substantially the same
20 conversation that was just described by Commissioner
21 McClure.

22 On February 6th at 1:30 p.m., I had a phone
23 conversation with Richard Weintraub regarding the
24 Malibu LCP amendment related to the Crummer Trust
25 property. Richard stated his opposition to the use

1 of the property for residential purposes because he
2 believes it is better suited for visitor-serving
3 facilities. He also believes that the properties
4 are higher -- are higher than the traditional
5 18-foot height limit of the City, which will
6 diminish public coastal views.

7 CHAIR KINSEY: Commissioner Howell.

8 COMMISSIONER HOWELL: Nothing.

9 CHAIR KINSEY: Commissioner Shallenberger.

10 COMMISSIONER SHALLENBERGER: On Thursday,
11 February 5th at about 9:00 o'clock I had a telephone
12 conversation with Patt Healy. She talked about the
13 mitigation and said that the loss of the
14 visitor-serving, that the mitigation for that loss
15 needs to specifically be earmarked as going for
16 Topanga Motel, not just to parks generally.

17 She also said that the \$2 million is just a
18 drop in the bucket for what's being lost. It's not
19 enough money. She talked about the amount of
20 acreage that's being set aside in this proposal for
21 visitor-serving and recreation. She said that it's
22 not enough, and her example was that there are a
23 hundred acres set aside in the Bluff Park,
24 Pepperdine set aside, I believe it's 800 acres for a
25 big park for the public to use, which is

1 visitor-serving. And across Malibu Road there's
2 27.8 acres.

3 And then she talked about the visual
4 resources, staff says you can't see, won't be able
5 to see it because it's so far away, but she said
6 that the story poles, before they blew down in a
7 storm, made it clear that it would be very visible,
8 and it would be very visible from Bluff Park, it
9 blocks the mountain and the ocean views, and she
10 said that the landscaping would be problematic.

11 CHAIR KINSEY: Thank you. Commissioner
12 Groom.

13 COMMISSIONER GROOM: Thank you, Mr. Chair.
14 On February 2nd, at 2:20 p.m., I had a telephone
15 conversation with Robert Gold, Richard Ackerman,
16 Steven Kaufmann, Susan McCabe, Ann Blemker. The
17 substance of that similar to what everybody else has
18 previously reported. On February 5th, I had a
19 telephone conversation with Patt Healy at 2:30 p.m.,
20 that is also substantially the same as previous
21 speakers. And on February 4th, I received a letter
22 that was addressed to Chair Kinsey from Gaines and
23 Stacey, but I did not speak with Mr. Gaines.

24 CHAIR KINSEY: Thank you. Vice-chair
25 Zimmer.

1 VICE CHAIR ZIMMER: Thank you. On February
2 9th, 2015, from 10:30 to 11:00 I had a telephone
3 conference, the people on the call were Ann Blemker,
4 Susan McCabe, Steve Kaufmann and Robert Gold, a
5 property owner. I should have done this in the
6 reverse, but we discussed the letter that we had
7 received from Mr. Gaines that identified three
8 issues; view blockage, prioritization of
9 visitor-serving, and the legality of the in lieu
10 fee.

11 This whole thing is attached to the
12 addendum, so I'll just quickly summarize, they gave
13 the history of the in lieu fee and how that occurred
14 initially with when Peter Douglas was the director,
15 that they had offered out that \$2 million as a
16 result of that process, and that they were
17 continuing that offer.

18 The -- Mrs. McCabe indicated that the main
19 reason the City had allowed the original approval to
20 lapse is that they did not believe there was a nexus
21 with the fee, but they also let it lapse because the
22 CCC restricted the use on the 1.75 acres to passive
23 recreation.

24 The -- Mr. Gold said that staff, our staff
25 believes that this 2 million amount is an amount

1 that can do something, the City had called out the
2 Crummer property in several places including policy
3 2.78, and they feel that there is not a clear
4 intention in the LCP to now limit the property to
5 CV2 uses.

6 Mr. Kaufmann stated that -- his belief that
7 the Mitigation Fee Act does not apply to the Coastal
8 Commission. So the former deputy attorney general
9 agrees with the current deputy attorney general on
10 that point. Nice.

11 Ms. McCabe added that -- yeah, we -- that
12 was a repeat. Regarding the heightened view issues,
13 Mr. Gold stated that the property being vacant and
14 adjacent to Bluff Parks would have scrutiny, they've
15 made a number of concessions, reducing density from
16 eight to five houses, they felt that give the
17 multiple vantage point -- points, the City through
18 the EIR process that they had done a visual analysis
19 from 14 vantage points, and then from 26, they did
20 study a -- excuse me, a one-story alternative.

21 They modified the project to respond to
22 scenic resources and reduced the square footage by
23 6,000 square feet, and one house was reduced to one
24 story from two stores, and moved the massing around,
25 et cetera.

1 They made sure there was gaps in the
2 vegetation to maintain some view corridors. They
3 believed that the views from the Gaines client
4 property are private views, they believe one story
5 can create more sprawl and they wanted more open
6 space.

7 Mr. Kaufmann felt that Mr. Gaines' visual
8 simulations were misleading or inaccurate. His
9 client has a sweeping view of the so-called Queen's
10 Necklace. There may be some view blockage, but not
11 the way they portrayed it. And they mentioned a
12 letter that had come in from Malibu Country Estates,
13 their issues being related to visuals as well.

14 And I had spoken at 10:00 a.m. to Fred
15 Gaines, who represents the property across the
16 street, Green Acres, LLC. His clients had been
17 proposing a hotel and are now proposing a memorial
18 park, and they assert that Crummer lies directly in
19 line with the blue water view of the ocean, the view
20 blockage would be complete from their property.

21 This is the larges remaining
22 visitor-serving property in Malibu. This also
23 blocks the view from Malibu Bluffs Park and the
24 Pearl Necklace view down towards Santa Monica.
25 They've provided photo information from the EIR for

1 the Crummer project. They stress this is one single
2 lot now, they'll be allowing five homes of two
3 stories, 10,000 plus -- 10,000 square foot plus
4 each, they've been granted exceptions from the
5 18-foot height limit to up to 28 feet. The City is
6 allowed to go to 28 feet if they make findings that
7 it's not going to affect public view shed.

8 The -- he discussed the photo simulations
9 from the EIR, he thought that if the houses were
10 lower you could at least maintain some of the blue
11 water views. The EIR did not find the impacts
12 significant.

13 They're located directly on the bluff.
14 They stress that the landscape planning allows trees
15 up to 40 feet, and they had wanted to create view
16 sheds through the homes and view corridors. The
17 City was unwilling to impose those additional
18 mitigations.

19 They're only providing for 1.7 acres for
20 the park. That is land on top of the leach field,
21 that's eight percent of the property. In other
22 cases the Coastal Commission has required much
23 larger dedication requirements, especially when
24 visitor-serving is turning into gated private
25 mansions.

1 The 2 million was done without any kind of
2 study, it's unclear why that would mitigate all of
3 the impacts. They will be coming with a
4 presentation. This was historically designated as
5 potentially mixed, some residential, some visitor
6 serving.

7 A lot had to do with the fact that the
8 Bluff Parks would be expanded and other
9 visitor-serving at the park, a separate deal between
10 Santa Monica Mountains Conservancy and the City had
11 occurred, and then the City was not so concerned
12 about having visitor-serving on the other side, but
13 that the area was still going to be visitor-serving
14 and now the net result will be a reduction in
15 visitor-serving.

16 The fee is to pay for refurbishment of the
17 motel site, and there -- we are still losing a
18 visitor-serving site. Instead of being next to
19 other visitor-serving it ends up being next to five
20 gated mansions that will create conflicts. People
21 who live in that kind of housing don't want visitor
22 usage. One of the reasons that both properties were
23 visitor-serving was that they would work together,
24 not in conflict. They stated that there was a study
25 by PKF regarding feasibility and that this was after

1 the fact. The EIR does not review a single
2 visitor-serving alternative. They claim that there
3 is a hotel feasible they could do up to a
4 hundred-room luxury hotel and discount it. He
5 thinks the Coastal Commission could condition the
6 project to require contribution to lower cost
7 accommodations.

8 The EIR did not again include any
9 alternative that would be visitor-serving. That
10 still doesn't mean you still -- you have to do five
11 mansions in a subdivision, et cetera. He doesn't
12 what financial information they utilized to come up
13 with that. Thank you.

14 CHAIR KINSEY: Commission Bochco.

15 COMMISSIONER BOCHCO: Oh, hello. So I had
16 a conversation with Steve Kaufmann, Robert Gold,
17 Susan McCabe on February 3rd at 4:20, and that was
18 totally covered by what Commissioner Zimmer said and
19 some others. I had a conversation on February 9th
20 at 1:00 p.m. with Fred Gaines by telephone, similar
21 to if not exactly what Commissioner Zimmer just
22 said. I had a conversation with Patt Healy, on
23 February 5th at 4:30 by telephone. She went over a
24 letter which has since been submitted to staff and
25 is a part of the addendum now. And we did discuss

1 briefly at the end of our phone call how she could
2 get that material to staff and the Commission.

3 And that's it. Thank you.

4 CHAIR KINSEY: Thank you. Yes,
5 Commissioner Turnbull-Sanders.

6 COMMISSIONER TURNBULL-SANDERS: Thank you.
7 On February 10th at 3:45 p.m. I was on the call with
8 Commissioner Vargas along with Susan McCabe, Robert
9 Gold, Steve Kaufmann, and others mentioned by him.
10 The substance of the conversation was as
11 Commissioner Vargas reported. I also had
12 conversation with Sean Doherty, who was representing
13 Patt Healy and other neighbors in opposition to the
14 project as proposed. Mr. Doherty explained that he
15 was not opposed to the entire project, but just as
16 proposed and believed that the project should be
17 reduced in size and scale.

18 Several suggestions were provided, such as
19 reducing the number of homes on the site from five
20 to three, and also clustering the homes in the
21 northern portion of the site so that there would be
22 less impairment of views, and he also explained that
23 he believed that if we proceeded as staff
24 recommended, this would set a bad precedent for
25 future development along the coast.

1 CHAIR KINSEY: Commissioner Cox?

2 COMMISSIONER COX: Thank you, Mr. Chairman.

3 On February 5th at approximately 2:45 in the
4 afternoon, I had a telephone conference at my office
5 with Ann Blemker, Robert Gold, Steve Kaufmann, Susan
6 McCabe, and Greg Murphy of my staff and myself. It
7 was consistent with the descriptions that have been
8 previously given by other commissions regarding
9 the -- their project and the points of issue. Thank
10 you.

11 CHAIR KINSEY: Thank you. Commissioner
12 Mitchell, did you have additional ex parte?

13 COMMISSIONER MITCHELL: Yes, I'm sorry.
14 This morning I spoke with Sean Doherty, who said he
15 would be here raising concerns about the Crummer
16 project on behalf of his sister, who lives in
17 Malibu.

18 CHAIR KINSEY: Thank you. And on February
19 9th at 2:45 I had about a 20-minute conversation
20 with Robert Gold, Steve Kaufmann, Susan McCabe and
21 Ann Blemker, and the substance of which has been
22 reported by others but we primarily talked about the
23 packet, they took me through a briefing booklet, we
24 discussed the \$2 million in funding for State Parks,
25 and that it would be focused on increasing

1 lower-cost overnight accommodations.

2 We talked about the six-acre conservation
3 easement, and that it would go to the MRCA along the
4 southern bluff, and I raised some questions about
5 the gating and the location of the gate house. And
6 we discussed that as well. And they said that the
7 property owners are in agreement with the staff's
8 recommendation. Thank you.

9 So that completes our ex partes. And now
10 we would begin the presentation with the Applicants.
11 If they want to come forward. Mr. Gold and others.
12 Welcome.

13 MR. JASCHJANOWICZ: Thank you, Chair Kinney
14 (sic). Honorable Commissioners, my name is Josh
15 Jaschjanowicz, contract planner for the City of
16 Malibu, and I am pleased to be here before you today
17 to discuss the City of Malibu's proposed local
18 coastal program amendment. I'll be making brief
19 introductory remarks, and then I'll be turning
20 things over to the project applicant, Mr. Robert
21 Gold, for more detailed presentation.

22 CHAIR KINSEY: How much time would you like?

23 MR. JASCHJANOWICZ: If we could, we'd like
24 15 minutes and then three minutes for rebuttal, if
25 we can have that.

1 CHAIR KINSEY: That would be fine.

2 MR. JASCHJANOWICZ: Okay. Thank you very
3 much. Again, throughout, just want to start by
4 saying that throughout this multi-year project
5 review process City staff has been diligently
6 processing the development application and has been
7 working closely with Coastal Commission staff to
8 thoroughly analyze the land use and environmental
9 issues applicable to site development, the provision
10 of visitor-serving uses, and public recreational
11 opportunities at the appropriate location, and the
12 protection of scenic resources.

13 We have reviewed the Coastal Commission's
14 staff report, and feel that it provides an accurate
15 description of the project history, and a sufficient
16 level of analysis to support the LCPA.

17 We feel, however, that our
18 originally-submitted LCPA request stands on its own
19 and did not warrant all the proposed modifications
20 recommended by Coastal Commission staff. With a
21 couple of minor adjustments, I'll describe, however,
22 we will recommend that the City Council accept the
23 recommended modifications as they are largely
24 clarifications regarding the applicability of LCP
25 standards in order to ensure internal consistency

1 and adequacy in carrying out the policies of the
2 land use plan.

3 We respectfully request that the Commission
4 consider two changes to the proposed LCPA. The
5 first change is located in LCPA Section 4A8, Permit
6 Required, which is on page 14 and 15 of the LCPA.
7 One of staff's -- Coastal Commission staff's
8 recommendation is to treat modifications for this
9 project differently than all other projects in the
10 city.

11 There are a limited number of de minimis
12 modifications that ordinarily would apply to the
13 proposed project under LIP Section 13.4, staff's
14 proposed modification to LCPA Section 4A8 would
15 require full CUP hearings for any modification to
16 the proposed plans no matter how minor.

17 We feel, our City feels -- City staff feels
18 and the City feel that the proposed language an
19 unnecessary burden on staff to process CDPs for any
20 proposed modification to the approved plans.

21 We request that the City's original
22 language be retained which would require the
23 processing of new CDP's for certain plan
24 modifications, but only if the changes were not
25 considered exempt pursuant to LIP Section 13.4.

1 Secondly, we request that the following
2 changes to the -- some of the exhibits be included
3 as part of the LCPA. The first modification is the
4 replacement of development plan maps 1 and 2 with
5 more readable versions. We've had discussions with
6 Mr. Gold and his group, and they have agreed to
7 essentially take off some of the background
8 information to make this more readable for City
9 staff if the project moves forward.

10 The second change is the replacement of
11 Exhibit 7E, which would show the correct location of
12 the modified building configuration on Lot 5.

13 In response to the comments provided by
14 Mr. Fred Gaines, a comprehensive view impact
15 analysis was prepared as part of the draft EIR and
16 final EIR for the proposed project, which was
17 certified by the City in January 2014.

18 This analysis clearly disclosed the extent
19 to which the project would be visible from 26
20 individual vantage points around the city, and
21 specifically from the Rancho Malibu site.

22 Impacts to public and private views were
23 considered less than significant due to the fact
24 that the project would only obscure a slightly
25 noticeable portion of the ocean view from public

1 view locations, and primary private views. A large
2 portion of the public and private views of the ocean
3 would remain.

4 The City takes issue with the view
5 simulations provided in Mr. Gaines' letter, and
6 feels like -- feels the calculated view blockage
7 percentages indicated on slides 14 and 16 through 19
8 provided are inaccurate. In reality, the views
9 presented by Mr. Gaines extend far beyond the
10 Crummer site, and thus will remain largely
11 unobstructed. Thus, the overall view blockage
12 percentages should be significantly reduced compared
13 to what are shown in the slides.

14 Similarly, the view blockage slides shown
15 from the Rancho Malibu site vantage point failed to
16 show the remaining expansive views that are provided
17 if one would turn his or head slightly to the east.
18 The final EIR view analysis concluded the primary
19 views from a large percentage of the proposed hotel
20 buildings at the Rancho Malibu site are actually
21 oriented to the east toward the sweeping daytime and
22 nighttime views of the coastline, the Santa Monica
23 mountains, Catalina Island and the Santa Monica Bay,
24 rather than south directly to the project site.

25 Finally, the Rancho, I just wanted to note,

1 consistent with what was indicated by Coastal
2 Commission staff that the Rancho Malibu property
3 owner has prepared conceptual plans and has
4 submitted those to the City for a modified site
5 design which includes the development of a cemetery.

6 In closing, thank you for the opportunity
7 to speak. We of course are available for questions,
8 and now I'd like to turn things over to Mr. Robert
9 Gold with more details on the project development
10 proposal.

11 CHAIR KINSEY: Thank you.

12 MR. JASCHJANOWICZ: Thank you very much.

13 MR. GOLD: Thank you, Josh, and Jack. Good
14 morning, Chair Kinsey and fellow commissioners. My
15 name is Robert Gold, I am one of the property owners
16 and I've been managing the development of the
17 Crummer Trust property for the past nine years. I
18 would like to thank Coastal and City staff as well
19 as the MRCA and State Parks for their assistance in
20 this project.

21 We've reviewed the staff report and the
22 suggested modifications and respectfully request
23 that you approve the LCP amendment today. As noted
24 by staff in February 2010, this Commission approved
25 a project-driven LCPA with suggested modifications

1 for the Crummer property. That LCPA lapsed because
2 the City had concerns about several of those
3 modifications.

4 During the ensuing five years, we worked
5 with City and staff. We've completed the
6 transparent and rigorous entitlement process in the
7 City of Malibu, which included five public hearings
8 resulting in the certification of the project's EIR,
9 approval of this LCPA and the project's coastal
10 development permits.

11 The LCPA with suggested modifications
12 incorporates all of the significant public benefits
13 included in this Commission's 2010 approval, while
14 addressing concerns that prevented the City from
15 accepting those modifications.

16 Before filing our application with the City
17 in 2007, we established development principles for
18 the project, and in order to assure consistency with
19 both the Coastal Act and Malibu's LCP, with
20 particular attention to scenic resources. The
21 result, in contrast to larger developments
22 contemplated for the site, including an office
23 complex or the eight homes envisioned in policy
24 2.78, this LCPA will result in significantly less
25 development, and has the support of the City, the

1 overwhelming majority of the local community, your
2 staff, the MRCA and State Parks. It is a project
3 that will generate significant public benefits, and
4 your approval today will end over 30 years of
5 uncertainty with respect to the development of this
6 property.

7 Staff has done an excellent job explaining
8 the inconsistency between the property's zoning
9 designation planned development and policy 2.78, as
10 well as the history of this LCPA. I would like to
11 emphasize that the LCPA does not change the
12 residential and recreational uses for the Crummer
13 property, which were found appropriate when the site
14 -- for the site when the Malibu LCPA -- LCP was
15 certified.

16 Also CB2 use is referenced in policy 2.78,
17 a hotel feasibility study prepared by PKF
18 Consultants concluded the subject site would not
19 likely be feasible as a hotel at this time or in the
20 future. The fact is preventing the viability of the
21 site as a hotel, also limits it's viability for
22 other visitor-serving uses. These factors include
23 the stringent development standards contained in the
24 LCP, the property's restricted access through a
25 shared entrance at Plus Park, potential significant

1 traffic impacts, and the site's topography, which
2 limits the buildable area to approximately nine
3 acres.

4 Moreover, such use would be inconsistent
5 with the character of the uses surrounding the
6 property. Staff agrees with this analysis and
7 concluded it is not likely a visitor-serving
8 commercial retail use would be feasible in this
9 location.

10 However, the City's approved project is
11 wholly consistent with the surrounding uses. The
12 lots range from almost three acres to over five
13 acres, creating a natural and rural setting. The
14 development standards contained in the LCPA are
15 consistent with Malibu's residential development
16 standards, and were thoroughly reviewed by the City
17 in the EIR process, and by your staff at a project
18 level review.

19 The staff report concludes the proposed
20 development standards would not result in adverse
21 impacts to coastal resources when applied in
22 conjunction with the other policies of the LCP. And
23 while the coastal development permits approved by
24 the city are not part of the LCP amendment today,
25 these permits were reviewed by the City as part of

1 the project's EIR, which included extensive analysis
2 of potential impacts to scenic resources from 26
3 vantage points.

4 The EIR concluded the project, quote, does
5 not significantly impact any views protected by City
6 ordinances or state regulations.

7 To ensure impacts to scenic resources were
8 minimized and to preserve view corridors, we made
9 significant changes to the project, including
10 reducing the total density by 6,000 square feet,
11 reducing second floor square footage by almost 5,000
12 square feet, moving the homes and modifying the
13 landscape plan.

14 Staff also reviewed the specifics of the
15 approved CDP's in relation to the development
16 standards contained in the LCPA to ensure that
17 impacts to scenic resources were minimize to the
18 maximum extent feasible.

19 The staff report concludes that any further
20 reduction in the height or bulk of the structures
21 would not serve to avoid or significantly reduce
22 visibility, and the approved landscape plan
23 adequately screens the structures from public views.

24 We have also worked collaboratively with
25 staff and the City to provide the Commission of

1 assurances that the in lieu fee will be provided to
2 develop specific lower-cost overnight accommodations
3 at Topanga State Park, while also addressing the
4 City's concerns which led to the lapse of the 2010
5 LCPA. The escrow agreement described by staff is
6 such a mechanism.

7 Approval of this LCP amendment will limit
8 the development on this 24-acre site to five homes
9 rather than eight, providing the following public
10 benefits: \$2 million for increased lower-cost
11 overnight accommodations at Topanga State Park;
12 increased lower-cost recreational opportunities and
13 parking at Bluffs Park, including \$1 million to
14 construct park improvements; and a six-acre
15 conservation easement to the MCA across the
16 property's ocean-facing bluff.

17 We agree with the staff's conclusion that
18 the park dedication coupled with the recommended
19 suggested modification to compensate for lower-cost
20 overnight accommodations would provide substantially
21 more visitor-serving opportunities than required
22 under the existing policy 2.78.

23 I would like to briefly address the issue
24 of the proposed gated street. As the staff report
25 notes, Malibu's LCP allows guard houses and gates

1 within private easements as long as they do not have
2 the potential to limit, deter or prevent public
3 access to the shoreline, inland trails, or
4 parklands. And there are no -- there is not
5 substantial evidence that proscriptive rights exist.

6 None of these factors apply to the Crummer
7 property. In fact, this project embraces public
8 access by creation of significant visitor-serving
9 opportunities. The purpose of the guard house is
10 not to discourage public access, but rather to
11 delineate between the public area and the
12 residential area to avoid potential conflicts. This
13 is acknowledged in the staff report which concludes
14 the gated access will not deter or adversely affect
15 public access. And it is also necessary, given the
16 close proximity of the park and to prevent conflicts
17 between future residents and park users.

18 We are very proud of this project. Over
19 the last nine years we have listened to the concerns
20 of the city and its residents. We have listened to
21 the concerns of your staff, and the other
22 stakeholders.

23 We have modified the project to address
24 these concerns. The LCP amendment before you today
25 meets the requirements of and is consistent with the

1 policy of Chapter 3 and conforms with the provisions
2 of Malibu's LCP.

3 Again, I would like to thank staff for
4 their meticulous review of this project, and we
5 respectfully request your approval of the LCP
6 amendment with suggested modifications, and I'd like
7 to reserve the remainder of our time for rebuttal,
8 and of course we are here for any questions you may
9 have. Thank you so much.

10 CHAIR KINSEY: Thank you. So I have now
11 Sean Doherty followed by Fred Gaines, and then Patt
12 Healy.

13 MR. DOHERTY: Chairman Kinsey,
14 commissioners, good morning, and thank you for this
15 opportunity to speak with you today about this
16 project. My name is Sean Doherty, and I am here on
17 behalf of a group of private citizens from the city
18 of Malibu. As Commissioner Mitchell mentioned, one
19 of them is, yes, my sister, Shannen Doherty, who has
20 some concerns regarding this project.

21 Let me say right out of the gate, we are
22 not opposed to development of this site, whether it
23 be for visitor-serving or even for residential
24 development. Our concerns, however, are that the
25 project as currently proposed is simply too massive

1 and will in fact block the public view shed from a
2 variety of point of views.

3 Now, if you have a block that is set in
4 front of you, and you are standing directly in front
5 of it, it is certainly going to block your view. If
6 you tilt your head this way, you might look around
7 it. If you tilt your head this way, you might look
8 around it.

9 However, that does not deter or does not
10 take away from the fact it is blocking a point of
11 view. It is blocking a view shed. As I think we'll
12 see in later presentation, these homes as they are
13 currently designed will in fact block the public
14 view shed from certainly a fairly significant point
15 of view.

16 As we've heard in the staff presentation,
17 the City guidelines, City zoning require a ceiling
18 of 18 feet high. These homes at their highest point
19 are going to be 32 feet high. Now, in the
20 mitigation for this that has been proposed by staff
21 is that we are going to plant trees in between these
22 homes and PCH, and that is supposed to improve the
23 aesthetics of this development.

24 However, in order to effectively block
25 these homes, these trees themselves are going to

1 have to exceed 32 feet high once they eventually
2 grow in, give or take 10, 15 years. That height is
3 going to only further restrict the public view shed.

4 Now, as I said earlier, we're not opposed
5 to development. But we do not think the EIR
6 adequately addressed all possibilities for this
7 site. It did not examine the possibility, for
8 example, of an equestrian center, which would be a
9 wonderful use of this facility, and would be very
10 profitable. Nor did it examine the further
11 reduction of the number of homes going from five to
12 three, and then situating them not only in terms of
13 general location, but also going from a lower height
14 profile. Maybe they don't have to be 32 feet high.
15 Maybe they can go within the 18-foot limit.

16 Commissioners, this is an incredibly
17 beautiful and scenic bluff. I don't think I need to
18 tell you that standing on this, in any type of
19 facility, is going to present tremendous views.
20 Three homes on this property will provide the
21 applicants a significant profit, and we would
22 certainly congratulate them on that.

23 But the impacts that this is going to have
24 simply are too great. And we encourage you to deny
25 this application and require the Applicants to

1 redesign the project.

2 CHAIR KINSEY: Thank you.

3 MR. DOHERTY: Thank you so much.

4 CHAIR KINSEY: Okay. Fred Gaines, Patt
5 Healy, then Dani Mallay.

6 MR. GAINES: I do have that Power Point if
7 they can bring it up, and I handed out copies if --
8 it's easier to follow along sometimes, in the color
9 copy in front of you.

10 Thank you, Mr. Chairman, members. Fred
11 Gaines of Gaines & Stacey on behalf of Green Acres,
12 LLC. I've laid out some questions that I -- that I
13 hope that you'll utilize in your discussion of this
14 project.

15 Why five mansions? Why a subdivision?
16 This is one lot. They're asking you to do a
17 division of land here for five lots. Why five? Why
18 two stories? The -- the plan is for 18 feet
19 allowing additional footage when they can make
20 findings that they're not having impacts, which the
21 City has made in this case, but I ask you to
22 question those.

23 Why 10,00 square feet? Was that the --
24 always the intention here was that we're going to
25 have these 10,000 square foot mansions? Why laid

1 out completely in the top of the of the bluff? As
2 you saw from the map, they pretty much fill in the
3 whole area in every direction, and not looking to
4 cluster or line up the houses in a way that can
5 provide view corridors.

6 Why 40-foot tall trees? You have trees of
7 28 feet, 38 feet, 40-foot tall allowed in this
8 landscape plan. Why only 1.7 acres of park? Out of
9 24 acres the park ends up with 1.7 acres. By the
10 way, that's the park that's going to be the city
11 public park. It's on to of a leach field, so your
12 Little Leaguer in Malibu will soon be able to play
13 right field, center field, or leach field as they --
14 as they go forward.

15 Why \$2 million? I mean, it's a nice
16 number, but where did it come from? And even the
17 City of Malibu said they couldn't justify that
18 number. And why no visitor-serving alternative?
19 They did an EIR, refused to study any
20 visitor-serving alternative at all.

21 Your staff report identifies five different
22 Coastal Act policies of which this project is
23 inconsistent. Eleven different Malibu LUP policies
24 with which this project is inconsistent.

25 My client does have a problem with -- with

1 the view issues, and you've heard -- you've heard a
2 lot about it. All of these view issues in the EIR
3 were found to be insignificant. We looked at views,
4 we've given you views from a number of different
5 areas, and there's been questions raised as to
6 whether our views are accurate.

7 So I'm going to skip through, you have them
8 in front of you the ones that we provided, let's go
9 straight to the EIR. This is the one in the EIR,
10 and of course it's going to be easier for you to see
11 in the handout.

12 This is their view blockage. And the story
13 today is Fred, don't look from your property
14 directly to the ocean, look this way and look, you
15 can still see blue over there. But this is from the
16 largest visitor-serving parcel still left in the
17 city of Malibu, my client's parcel, across the
18 second largest visitor-serving parcel, which you're
19 being asked to eliminate in this -- in this project.
20 And it's a complete view blockage.

21 There's -- again, for sake of time, I'm
22 down to 20 seconds, and maybe the chairman will give
23 me another minute or two, but I want to go to again
24 the EIR. This is the ball field. So this view, by
25 the way, on the other thing I was supposed to look

1 this way at the view. Now I'm supposed to look
2 straight out to the ocean and not to the Pearl
3 Necklace, because from the ball field the most
4 utilized public park other than the beaches in the
5 city of Malibu, the Pearl Necklace view now
6 completely blocked.

7 And if you -- if those houses were lower,
8 if they were lined up, if the trees were not 25, 35,
9 40 feet tall, you would maintain from the public
10 park, you say, oh, Fred your property, your client's
11 property is private, even though it's
12 visitor-serving, from the public park you would
13 maintain the Pearl Necklace view, or some of it.

14 And this is what I'm asking you to
15 question, whether these, all the mitigations have
16 been put in place to allow you to mitigate the
17 inconsistencies with the Coastal Act policies and
18 the LUP policies.

19 Very quickly, and again this is in front of
20 you, they failed to consider any visitor-serving
21 alternatives in going through this. We put forth
22 these alternatives. Move some of the homes around
23 and create a view corridor to the Pearl Necklace and
24 create view corridors from our client's property.
25 Refuse to do that.

1 CHAIR KINSEY: Thank you, Mr. Gaines.

2 MR. GAINES: Lastly, we -- there was --

3 CHAIR KINSEY: No, I -- you know --

4 MR. GAINES: -- proposal for an equestrian
5 center --

6 CHAIR KINSEY: Thank you. We have the
7 information in your packet. I appreciate it. We
8 did give you additional time.

9 MR. GAINES: Mr. Chairman, members, thank
10 you very much. We appreciate your --

11 CHAIR KINSEY: Yes. Thank you.

12 MR. GAINES: -- listening to the case
13 today.

14 CHAIR KINSEY: Okay. So Patt Healy, to be
15 followed by Dani, then Tim Elkins.

16 MS. HEALY: Commissioner Kinsey, we have a
17 planned presentation, there's five of us. And we're
18 requesting 15 minutes. Is that possible?

19 CHAIR KINSEY: Are they here and did they
20 fill out --

21 MS. HEALY: Yes, they're all here --

22 CHAIR KINSEY: -- speaker cards?

23 MS. HEALY: -- and I believe speaker slips
24 have been put in for everybody.

25 CHAIR KINSEY: Okay. Can you identify the

1 names of the five people?

2 MS. HEALY: Dani Millay, Paul Almond, Joan
3 Almond and Tim someone, I don't know his last name.

4 CHAIR KINSEY: Okay. Okay. Thank you. Go
5 ahead, then.

6 MS. HEALY: Okay. Honorable Commissions,
7 I'm Patt Healy, our group presentation reflects the
8 comments of the Malibu Township Council, Preserve
9 Malibu Coalition, and the Malibu Coalition for Slow
10 Growth. We are all before -- we are all before you
11 today to request that you respectfully deny the
12 application for the local Coastal Plan amendment,
13 and require the Applicant to design a project that
14 is consistent with the land use plan and Coastal
15 Act.

16 I was to do a Power Point, but they just
17 told me it wasn't coming up, so I'm going to ask you
18 to look at the pictures that I've submitted in my
19 written remarks.

20 The first picture is an aerial view of the
21 Crummer project, and Bluffs Park. You'll see the
22 Crummer subdivision, you see the soccer fields and
23 ball fields in Bluffs Park, and then up at the top
24 and surrounding is the ESHA passive portion of
25 Bluffs Park. And this is 10 acres of active

1 recreation, and the rest is passive recreation ESHA.

2 The next photograph shows the surrounding
3 areas. It's not the best, but I think I'd like to
4 point out that the conservation easement, if you're
5 looking -- let me start at the beginning. This is
6 the Malibu Road that's well below the bluffs, it's
7 not in the same neighborhood.

8 If you look at the Crummer property and
9 look at the precipice that goes down, that's the
10 conservation easement that you -- Mr. Gold just told
11 you about. So I don't think there's much to
12 conserve there, and there will be no public access
13 to it.

14 Now, going to the top of the photograph,
15 going from the right to left, you're leaving the
16 civic center area, and that's the commercial area
17 where there are restaurants and small shops, and as
18 you go up the incline, you reach the proper -- the
19 Crummer property, and this area is a visitor
20 destination location, and it's visited by literally
21 millions of people each year, Malibu is.

22 COMMISSIONER SHALLENBERGER: Excuse me,
23 Mr. Chair.

24 MS. HEALY: And the bluffs have long been
25 a pop -- beg your pardon?

1 COMMISSIONER SHALLENBERGER: Could I just
2 ask for a second --

3 MS. HEALY: Oh, okay. Sorry.

4 CHAIR KINSEY: Yes.

5 COMMISSIONER SHALLENBERGER: I wonder if we
6 could take a short break in this and direct us to
7 her -- there's several of us here who are unable to
8 find your Power Point.

9 MS. HEALY: Oh, okay.

10 CHAIR KINSEY: Okay.

11 COMMISSIONER SHALLENBERGER: And it's --

12 MS. HEALY: I'm sorry. Yeah.

13 COMMISSIONER SHALLENBERGER: That's all
14 right. I just want --

15 MS. HEALY: Unexpected.

16 COMMISSIONER SHALLENBERGER: -- us to be
17 looking at it.

18 CHAIR KINSEY: Okay. Have -- have
19 individual commissioners been able to find the --

20 (Simultaneous conversation.)

21 CHAIR KINSEY: The addendum --

22 VOICE: It's in our addendum.

23 CHAIR KINSEY: -- that we received with a
24 cover sheet for item 20B.

25 VOICE: Oh, the blue -- the green one.

1 MS. HEALY: Yes. Yes.
2 VOICE: Okay.
3 (Simultaneous conversation.)
4 VOICE: It's the color pictures in the
5 back.
6 VOICE: Yeah.
7 CHAIR KINSEY: Okay.
8 MS. HEALY: Thank you.
9 CHAIR KINSEY: Individual commissioners --
10 yes.
11 VOICE: Is this yours --
12 VOICE: Yes, that's correct. These colored
13 pictures towards the back of the addendum.
14 CHAIR KINSEY: Right.
15 VOICE: Right. Thank you.
16 CHAIR KINSEY: Thank you for getting us all
17 focused.
18 MS. HEALY: Okay. Should I start again on
19 the first picture?
20 CHAIR KINSEY: Please do. Yeah.
21 MS. HEALY: Okay. The first picture is of
22 Bluffs Park and the Crummer property. You'll notice
23 that they share the same entrance if you look
24 between the two, so they're in the same
25 neighborhood, and PCH, which is the main artery in

1 the area that this -- this project is in, is in the
2 first one. Bluffs Park is a hundred acres, ten of
3 recreation, the rest are ESHA and passive
4 recreation.

5 The next photograph that's the surrounding
6 area, and this I want to point out first of all
7 below the Crummer property is the Malibu Road, so
8 this is a different neighborhood. The Crummer
9 property, the conservation easement is the precipice
10 that goes down to the Malibu Road, so I don't think
11 that's much of a conservation easement.

12 Then if you look at the top of the
13 photograph going from right to left, you're leaving
14 the civic center area and entering into a
15 less-developed, very scenic area that's
16 visitor-serving and a recreational area.

17 Across PCH is -- you can barely see it from
18 this photograph, is the Green Acres parcel that was
19 just spoken about, and then there's the entrance to
20 Malibu Canyon Road. And Malibu Canyon is the scenic
21 highway that traverses the Santa Monica mountains,
22 which have incredibly gorgeous views, and this is
23 where it ends, right at this point at the entrance,
24 actually to Bluffs Park and the Crummer project.

25 And then next is -- is Pepperdine, where

1 the green lawn is at the top, that's 830 acres, 500
2 are dedicated open space. Alumni Park is used by
3 tons and tons of visitors every year. And it's open
4 to the public. So that's the surrounding area and
5 the neighborhood that this project is in.

6 The next slides are a series of slides
7 showing the view blockage. The first one is from --
8 is from the east side of Bluffs Park, and just
9 beyond this curve on the other side of the street is
10 a ball field.

11 The next one is a picture of the playing
12 fields and the view blockage from the playing
13 fields. The next one is from the ESHA portion from
14 one of the trails.

15 The next -- I hope I'm doing it in order
16 here, I don't know.

17 The next one is the picnic area and the
18 view blockage.

19 And this is another one I have of the
20 playing fields.

21 And then we get to the next slides, which
22 are from the -- the first one is from the civic
23 center, and PCH and Legacy Park is on the right.
24 And that's the public space.

25 The next one is from the Malibu Civic

1 Center itself where the library is, and the farmers'
2 market. That's the view blockage from that.

3 This next slide is from the Malibu pier,
4 and you can see -- see the views being obstructed.

5 And then the final one here is, I think,
6 from PCH again, and Legacy Park is on the right, and
7 then this last photograph is from the Civic Center
8 Way, and Legacy Park is on the left, and the civic
9 center is on the right.

10 So those are the pictures of the view
11 blockage. And the reason why we're asking that you
12 deny and give the Applicant time to revise this
13 project. Thank you.

14 MS. MILLAY: Good morning, Commissioners.
15 My name is Dani Millay, and I represent the Malibu
16 Coalition for Slow Growth. The staff report
17 mentions that the project is not set back the
18 required hundred feet from parkland. Sorry. Did
19 you hear the first part?

20 CHAIR KINSEY: Yes, if you could restate
21 your name --

22 MS. MILLAY: Can I continue?

23 CHAIR KINSEY: -- for the record.

24 MS. MILLAY: Yeah, okay.

25 CHAIR KINSEY: Your name for the record?

1 MS. MILLAY: Is Dani Millay.

2 CHAIR KINSEY: Thank you.

3 MS. MILLAY: And I represent the Malibu
4 Coalition for Slow Growth.

5 CHAIR KINSEY: Thank you.

6 MS. MILLAY: Okay. I'll start again. The
7 staff report mentions that the project is not set
8 back the required hundred feet from parkland. This
9 brings into question whether the proposed 1.7 acres
10 donation to the City is truly a dedication of this
11 amount, since much of the donated land is within the
12 hundred-foot buffer park setback area.

13 This brings into question whether this 1.7
14 acres is truly a donation or enough of a donation to
15 justify allowing for the change to the planned
16 development designation. By reducing the number of
17 estate lots from five to -- to a much smaller number
18 and donating much more recreational land to the City
19 of Malibu, could bring this project into compliance
20 with the current planned development definition.

21 Anything less than that would not be
22 sufficient. We would also like to point out while
23 we originally thought the donation of 2 million was
24 far too low, it has since come to our attention that
25 this type of donation could not (sic) set a

1 dangerous precedent which we cannot support, wherein
2 an application can in essence buy a project without
3 suff -- I'm sorry -- without adhering to the
4 coast -- I'm sorry. Without adhering to the Coastal
5 Act provisions, and ignoring application LCP
6 provisions.

7 Therefore, we are now of the opinion that
8 any donation to justify the change in zoning from
9 visitor-serving can only be made if all the other
10 provisions of the Coastal Act and LCP are met.

11 In conclusion -- is that sufficient other
12 speakers? Anyway, you get the drift. Thank you.

13 MR. ELKINS: Give me just a moment. Thank
14 you.

15 Okay. Hello, Commissioners. My name is
16 Tim Elkins. We've lived in Malibu Colony for 55
17 years. This project would mar the natural mountain
18 profile from Point Dume to the top of the mountains.
19 There are a myriad of projects that could be built
20 on this site that will protect the view shed. Even
21 one or two residences that are low profile and
22 strategically placed as not to impede public views
23 can be constructed.

24 We are in no way trying to design the
25 Applicant's project. These are some ideas on how

1 this project can be further mitigated that will meet
2 the mandatory requirements of the LCP and Coastal
3 Act.

4 Single story structures which are required
5 under the LCP. It is only if scenic resources are
6 not impacted that allowable height can be more than
7 18 feet. Reduce the number of residential estates
8 to one or two, significant reduce the total
9 allowable development square footage, relocate the
10 residences further away from the eastern and
11 southern bluff edges so they are not visible from
12 PCH, nor from public beaches and the Malibu pier.

13 The Commission when determining the future
14 of this property must consider these options even if
15 the Applicants and the EIR have not. Currently the
16 project does not comply with Coastal Act 30240(b),
17 30251, 30253, and LIP 6.5.

18 If done properly, Applicant will then be
19 able to come back to the Commission with a project
20 design that conforms to and doesn't violate the
21 Coastal Act and LCP.

22 Just two additional points. Jeff Jennings
23 in 2009 was instrumental in -- who is currently
24 commissioner -- chair -- commissioner of the com --
25 of the planning commission, excuse me, shepherded

1 this project through with a 750,000 donation to the
2 City, it passed without any objection, no story
3 poles were erected then. I happen to know and was
4 well aware at the time during a four-week period in
5 late 2008.

6 And this final quote I'd like to end with
7 from Rolling Stone's Matt Taibbi, famously described
8 Goldman Sachs as a "great vampire squid wrapped
9 around the face of humanity, relentlessly jamming
10 its blood funnel into anything that smells like
11 money." The squid has now come to Malibu.

12 MR. ALMOND: Good day, Commissioners, I'm
13 Paul Almond, I've been in Malibu Colony for 40
14 years, I see the time is running short, so I'm going
15 to cut this a bit short.

16 But the Public Resources Code requires
17 denial of the LCP amendment. It says the
18 certification an LCP amendment must be based in part
19 on the -- upon the finding that it meets CEQA
20 requirements in Public Resources Code.

21 Now, you all know that that has to do with
22 the feasible alternatives. There are feasible
23 alternatives here, which are more environmentally
24 sensitive, and better protect the scenic and visual
25 resources.

1 The Applicant has presented only one
2 possibility, but there are others. These
3 alternatives must be examined before this body can
4 approve the amendment.

5 The staff mentions that many of the view
6 impacts from public places are from a distance, and
7 need not be taken into account, but nowhere in the
8 Coastal Act and the LCP is distance a factor. There
9 is no need that the cumulative effects of this
10 proposed project on visual resources, it must -- I
11 must say it is horrendous. It can be seen from all
12 over.

13 Now, the project plans to build five
14 massive homes, and on a bluff top that is not zoned
15 for construction. Four of the homes are going to
16 tower above the 18 feet allowable.

17 Now, the staff suggests that planting trees
18 in front of them is a good idea. But the next
19 owners, they could cut the trees down, and where are
20 you then? There's nothing to prevent them from
21 doing that. So it's not acceptable mitigation by
22 any stretch of the imagination to plant trees, and
23 should be rejected by the Commission because there
24 are feasible mitigation measures that the Applicant
25 can make. 16 seconds to go.

1 CHAIR KINSEY: There you go. Thank you.
2 We have several more speakers. Susan Jordan, then
3 Edward Fonseca, then Carrie Madden.

4 MS. JORDAN: Susan Jordan of the California
5 Coastal Protection Network. I want to go back a
6 little bit in time here. I want to go back to 2002
7 when California State Parks owned Bluffs Park. Up
8 at the top. And the State Parks wanted to take that
9 parcel, they had these ten acres out of that park
10 stretch, and they had leased it to the City of
11 Malibu to allow athletic fields. They wanted to
12 take back the parcel, the City objected, claiming
13 they had no athletic fields. It was quite a fight,
14 and this was around the time when they were
15 certifying local coastal plan.

16 And what ended up happening was that there
17 was a transaction, and the City obtained those ten
18 acres permanently. Removing them from
19 visitor-serving. Last year, in 2014, and apparently
20 that whole -- the remaining stretch went to the
21 Santa Monica Mountains Conservancy, and if I'm
22 stating this incorrectly, Joe is here and he can
23 correct me.

24 Last year there was a swap that the City
25 did of 532 acres of Charmlee Wilderness Park with

1 the remaining 83 acres that was held by the Santa
2 Monica Mountains Conservancy.

3 In that swap, ten of the acres were -- 73
4 are ESHA, and ten are not. So they are converting
5 that to athletic fields as well, the City is.

6 So the picture I'm trying to paint for you
7 here is the removal -- the march towards the removal
8 of visitor-serving. To me, removing this parcel
9 from what it is zoned, taking it out of
10 visitor-serving and putting it into residential
11 development, five mansions on the gateway entrance
12 to Malibu. I mean, I don't care if you're coming
13 over Malibu Canyon Road and you come down, this is
14 the first thing you see. When you come up from
15 Santa Monica, and you look on the left, you get to
16 the civic center, that's what you see. It's right
17 by Pepperdine.

18 So you are -- you are, in approving this,
19 and in a gated community, no less, I mean, I can't
20 believe in this day and age we're putting a gated
21 community in full view on a bluff parcel overlooking
22 the ocean. It -- it absolutely makes no sense to
23 me. If there is something to be done here, I think
24 it still needs some work. But I think you need to
25 know the history and you need to understand how

1 you've had this march toward the loss of
2 visitor-serving.

3 You know, athletic fields are great, but
4 they're not visitor-serving, and the last time this
5 came before you, one of your conditions was that it
6 had to be passive recreation, because those fields
7 are for local benefit, I think it's great for kids,
8 but it's not visitor-serving. Thank you.

9 CHAIR KINSEY: Thank you. Okay. Edward,
10 and then Carrie.

11 MR. FONSECA: Good afternoon, Commission
12 members. I'll make this short and sweet. My name
13 is Edward Fonseca, I grew up in Agoura Hills, and
14 have the privilege of having Malibu as my backyard.
15 Bluffs Park has been the location of choice for many
16 of my birthdays growing up, not to mention the site
17 where my sisters and I competed in recreational
18 sports. Bluffs Park is cherished by the community
19 because of its breathtaking views, and valuable
20 scenic resources, and unfortunately these homes
21 would eliminate the entire view of the Queen's
22 Necklace.

23 I would hate to see Malibu lose that for
24 private homes, and while they will be donating
25 almost two acres to the city, that land is located

1 on top of a leach field which is hardly ideal for
2 public use. Thank you for your time.

3 CHAIR KINSEY: Thank you. Okay. Carrie
4 Madden. Carrie will be our final speaker. We'll
5 come back to the Applicant then.

6 MS. MADDEN: Yes, we'll go out with a bang.
7 Hello. My name is Carrie Madden, I'm virtually a
8 life-long resident of Malibu, as is my mother and my
9 grandparents, who have lived in the same home for 53
10 years.

11 I attended all 13 years of school in
12 Malibu, eventually graduating from Malibu High
13 School. Growing up, many of my memories were at
14 Bluffs Park. If I wasn't there for my own sports
15 games, I was most definitely there for one of my
16 four siblings. So much of what makes Malibu Malibu
17 is the simplicity of it, and the incredible views
18 that you have while doing something as simple as
19 playing at Bluffs Park. It is a charm that I would
20 hate to see Malibu lose -- for more homes. Sorry.

21 As an alternative, I would love to see
22 something along the lines of an equestrian center go
23 in, allowing future generations of Malibu residents
24 and kids to benefit from that land as I did. I do
25 hope that you'll reconsider this amendment. Thank

1 you.

2 CHAIR KINSEY: Thank you. Okay. So
3 Mr. Gold, would you like to come back up? You'll
4 have three minutes for your final comments, and you
5 had two minutes left over, so you have a total of
6 five if you'd like that.

7 MR. GOLD: Okay. I'll try not to keep you
8 that long. First, I want to point out that the
9 property itself was never zoned commercial
10 visitor-serving in the LCP. It is zoned PD, planned
11 development, which contemplates the uses that we are
12 proposing and that were approved by the City,
13 recreational and residential uses. And that was
14 certified in the LCP when this Commission certified
15 in 2002.

16 We, the purpose of the LCP amendment is to
17 reconcile the language and policy 2.78, which is now
18 obsolete and moot since the City has purchased those
19 ten acres from the State Parks.

20 With respect to the in lieu fee, we are
21 honoring the request by the Commission that was in
22 the suggested modification in 2010, when that's how
23 that in lieu fee came up. It was not something that
24 was -- we had brought up or made up, it was
25 something that was imposed by us, on us in the 2010

1 LCP amendment process. And there was an extensive
2 analysis done at the hearing, and in staff's report
3 prior to that hearing with respect to the in lieu
4 fee. So I'd like to say that about that.

5 In respect to the landscape plan, the City
6 of Malibu has conditioned the project's landscaping
7 not to exceed 35 feet in height. The City of Malibu
8 also recognizes that one of the ways to reduce
9 impacts from -- to visual resources is to allow a
10 property to be higher than twenty -- higher than 18
11 feet up to 28 feet if certain findings have been
12 made.

13 The City did an extensive analysis in their
14 EIR and entitlement hearings, and looked at each one
15 of these homes, and the changes that we proposed and
16 made to each one of the homes, including the height,
17 the bulk, and the siting of those houses.

18 The views from Mr. Gaines' client's
19 property are, as we do say, sweeping, they are
20 private views that are not protected under the LCP.
21 Nevertheless, we had made quite a number of
22 concessions to them to accommodate those views.
23 Again, the views from Bluffs Park have been analyzed
24 by staff, we have added a further setback to the one
25 lot that is most visible from Bluffs Park to make

1 sure that those public views are protected.

2 And the siting on the homes, as I said, has
3 been done in accordance with Malibu's LCP, which is
4 to -- of course, it is impossible to make the houses
5 invisible, so the -- the LCP requires that the
6 impacts are minimized to the maximum extent
7 feasible. The EIR and the staff report concludes
8 that we have accomplished both of those things, and
9 we worked very hard with the City staff and our
10 design team to -- to do that.

11 And that's really -- oh, and the
12 conservation easement, just one last thing. Someone
13 mentioned the conservation easement. Again, we
14 worked in close contact with the MRCA and the
15 Commission in 2010 to cite the conservation
16 easement, and it actually was expanded to include
17 the central canyon on the property to make sure it
18 covered the areas that they felt were important.

19 So thank you, and again, we are here for
20 any further questions that you may have.

21 CHAIR KINSEY: Thank you. Bring it back to
22 the staff. Jack, any additional points you'd like
23 to make or responses to things you've heard?

24 MR. AINSWORTH: Yes, thank you,
25 Mr. Chairman. First off, in response to the City's

1 request to changes, we're not in agreement to make
2 the change on page 14 with regard to the type of
3 development that would be allowed, what would
4 require a coastal development permit. We're
5 concerned about any development that may be exempt,
6 that any of that type of a development such as
7 additions to the house, changes to the landscaping
8 plan, should be reviewed through an amendment to the
9 permit or a new permit. So we're not in agreement
10 with that.

11 We are in agreement with the changes to
12 clarify the exhibits that the City representative
13 mentioned.

14 With regard to some of the visual impacts,
15 you'll note that on the areas as you're looking from
16 the civic center to the -- to the west, the -- the
17 homes will be visible from that portion, but it's
18 important to remember that those views are no
19 blocking any ocean views or mountain views from that
20 point, it's just up on that mesa area, and that will
21 be screened with vegetation and the one home that's
22 most visible will be reduced down to one story in
23 height.

24 Some of the photographs that Ms. Healy
25 showed from the views from the Bluffs Park are

1 actually sitting on the ball fields themselves looking
2 down coast. Some of those views will be blocked. We
3 were more concerned about the public view areas
4 along the bluff, the sidewalk, the overlook, rather
5 than standing on the ball fields. We didn't think
6 that Little Leaguers' views were that important.

7 But we did look at those down coast views
8 from those -- from the -- from the public sidewalk
9 and trail. The homes are set back over 190 feet, or
10 200 feet or more along that bluff area.

11 And we asked for additional 30-foot
12 pullback on lot 5 in order to open up the views down
13 coast. So the question of whether or not in our
14 view, whether single stories would make a
15 significant difference, we don't think so. And
16 you're going to be able to see these homes whether
17 they are one story or two stories, I don't think
18 they're that significant.

19 Also coming down Malibu Canyon Road, any
20 development on the site is going to be visible
21 coming down Malibu Canyon Road, no matter what the
22 height is or what the scale of it is.

23 The other thing is any visitor-serving
24 commercial use on this site, in our view could have
25 even more significant visual impact because of the

1 density that would be required in order to make it
2 economically viable. So it's one of those things
3 you've got to be careful what you wish for, because
4 you may get even a larger development on that site.
5 This is pretty low density development.

6 The other thing, Mr. Gold mentioned that
7 this is a PD designation on this site. He failed to
8 mention, though, that the policy 2.78, it was clear
9 that if the deal didn't go through, this site would
10 revert back to a visitor-serving designation. And
11 where the discrepancy was was that the land use maps
12 said planned development in the zoning maps. But it
13 was clear that the intent was to go back to
14 visitor-serving.

15 We think this -- this conversion to
16 visitor-serving from visitor-serving to residential
17 is appropriate in this case given all the
18 circumstances I've laid out and the history behind
19 this site. And with that, Charles --

20 MR. LESTER: I just wanted to add on that
21 last point, this is a project-driven LCP amendment,
22 but this is an LCP amendment, and so it's important
23 that we all understand that you're being asked to
24 make a land use change in this proposal that would
25 facilitate the specific residential development. It

1 raises important fundamental questions about land
2 use that we have been starting to talk about through
3 the lens of lower-cost visitor-serving and the
4 policies in the Coastal Act that protect
5 visitor-serving, particularly in -- in ocean
6 fronting locations.

7 So Jack described the reasoning behind our
8 recommendation today, it's essentially an extension
9 of the recommendation that was approved by the
10 Commission in 2010. But you're not bound by that
11 recommendation, and you need to consider the
12 fundamental questions about the appropriate zoning
13 for the site, the land use at this site.

14 The visual issues are also important, but
15 those are going to be issues no matter what kind of
16 development comes forward on this site, and so it
17 can be dealt with however they need to be dealt with
18 with the specific developments, but it is important
19 to focus on the land use issues and the
20 visitor-serving component. Thank you.

21 CHAIR KINSEY: Thank you. So I will bring
22 it back to the Commission at this point, and we'll
23 begin with Commissioner Bochco, then Commissioner
24 Zimmer, then Commissioner McClure, then Commissioner
25 Vargas.

1 COMMISSIONER BOCHCO: Okay. Sorry about
2 that. Well, usually by this point I know exactly
3 what I want to do. But now I don't. Charles, I
4 really thank you for that clarification, because I
5 think although I'm still struggling with the
6 visitor-serving versus residential, you know, a lot
7 of my focus had been on the view shed and how it's
8 been affected by development. So if I interpret
9 what you're saying correctly, even though there is
10 this five residential that the City is considering
11 and we have now pretty much gotten a preview of,
12 we're not approving that. That will come back?

13 MR. LESTER: That -- that's correct. I
14 think the City may have approved the permits
15 conceptually, but it's contingent on the land use
16 being changed to allow this project.

17 COMMISSIONER BOCHCO: But I'm saying,
18 though, even if we agree that some form of
19 residential is appropriate, do the five houses come
20 back, or are we then actually giving our agreement
21 to that?

22 MR. AINSWORTH: The five houses are --
23 would be appealable, or at least the subdivision
24 would be appealable.

25 COMMISSIONER BOCHCO: Appealable. All

1 right.

2 MR. AINSWORTH: To the Commission.

3 COMMISSIONER BOCHCO: Okay. All right. So
4 there is a remedy if necessary. Okay. And Jack, I
5 really have -- have gone back and forth in my
6 opinion of whether this has ever been
7 visitor-serving, but I would your last statement
8 that it actually was designated, because when I look
9 at the language in the staff report and he says the
10 inconsistency lies between 2.78 where it says it
11 will revert back to visitor-serving if no athletic
12 fields are -- are designated, but the land use and
13 zoning maps have designated it as planned
14 development.

15 Does one take precedent over the other, or
16 is it just a conflict to be resolved by intent and
17 all those things that we usually do when there's
18 actual obvious conflict?

19 MR. AINSWORTH: In our view that policy
20 2.78 is controlling.

21 COMMISSIONER BOCHCO: Is controlling.

22 MR. AINSWORTH: The land use plan, and that
23 deal didn't go through, which it did not go through.

24 COMMISSIONER BOCHCO: That's true.

25 MR. AINSWORTH: The --

1 COMMISSIONER BOCHCO: For reasons they
2 didn't predict, but still it did not go through.

3 MR. AINSWORTH: The site is in our view
4 commercial visitor-serving.

5 COMMISSIONER BOCHCO: Well, that's very
6 important. I mean, that, I -- I know you -- you
7 probably wrote it very clearly in the staff report,
8 but I didn't quite pick up that -- that
9 clarification. Thank you.

10 What is the significance of the leach field
11 and the park? It's been brought up several times.

12 MR. AINSWORTH: The leach field, recreation
13 use could be -- can be over the top of these leach
14 fields. It's not like it's -- there would be, you
15 know, hip deep in sewage or something. So the other
16 thing to remember here is that there is a proposal
17 as you know coming down the road for a package
18 treatment plant in Malibu, and this site would also
19 qualify for that, to hook up with that package
20 treatment plant.

21 COMMISSIONER BOCHCO: In which case the
22 leach field wouldn't be necessary. I see. Okay.
23 Well, that's interesting. Oh, I think just for
24 clarification, some commissioners didn't quite hear
25 that.

1 CHAIR KINSEY: Okay. Jack, I think --

2 COMMISSIONER BOCHCO: Do you want to
3 clarify?

4 CHAIR KINSEY: -- it may be useful to just
5 clarify, because in the event that that doesn't
6 happen, the application (sic) is proposing to do
7 their own package plant on the premises and deal wit
8 their waste --

9 MR. AINSWORTH: That's right. I believe
10 that's the option, and they're shaking their heads
11 but that's my understanding, that it's either a
12 private sewage system on this site with a leach
13 field, or the option to hook into the package sewage
14 treatment plant, which we'll be hearing in May of
15 this year.

16 COMMISSIONER BOCHCO: Okay. And is it
17 permissible under the LCP for the City just to opt
18 out of doing the survey of lower cost mitigation?
19 Is that something that we normally just -- I
20 remember as probably a lot of people in this room
21 do, how upset I was about the ranch in Laguna Beach,
22 that the City hadn't done what the LCP required,
23 which was a lower cost survey analysis for hotel
24 rooms.

25 Can we demand them to do it and if we can,

1 do you think it would be beneficial to have that
2 analysis at this point?

3 MR. AINSWORTH: I -- I don't think so in
4 this case. The Applicant is offering this
5 mitigation fee, this \$2 million mitigation fee. You
6 really don't have to make these, you know, elaborate
7 nexus findings in order to do that. He's offering
8 it up front. And in order to mitigate this, we do
9 believe that there is a nexus here. The City
10 disagrees with that.

11 Ideally this should all be addressed
12 through the local coastal program, and not through
13 this, you know, escrow agreement, what have you, and
14 all this rigamarole. But in order to effectuate
15 this thing and make it happen, this was the
16 mechanism we came up with. We just think this is a
17 way of -- a creative way of solving a problem, and
18 not having the City object to this mitigation fee.

19 What would happen if they did a nexus study
20 on this? I don't know. Maybe they'd come out with
21 more or less. But I -- I find it hard to believe
22 that they could come out with more than \$2 million
23 for five homes. But --

24 COMMISSIONER BOCHCO: Right. But what I
25 understood is the City just denies that this was a

1 visitor-serving area, which obviously they're
2 mistaken, because of the LCP. But I think my
3 concern is we were looking at pretty old numbers
4 there, 2008, and I know there's a couple of studies
5 provided by the Applicant which I appreciate since
6 the City wouldn't even do it, but I think, you know,
7 things could have changed quite a bit, especially
8 with the economy and especially with land values in
9 West LA, and Malibu in particular.

10 Have we -- have we penciled out in any,
11 just even rough way, that the 2 million will
12 actually accomplish -- because I -- I know exactly
13 where Topanga Motel is, and it's a wonderful piece
14 of land, but a terrible building. Have we penciled
15 it out that we could actually really build something
16 of a significant size to be lower cost
17 visitor-serving on 2 million bucks?

18 MR. AINSWORTH: Yeah, and the way that, you
19 know, in my conversations with the superintendent
20 for the area, we've been talking about this, of
21 course, for years and years. One of the ideas, the
22 way we envision this to go is the first phase would
23 be cabins that could be directly, like 12 cabins
24 that could directly be built quickly for a lot less
25 than 2 million.

1 The rehabilitation of the Topanga Ranch
2 Motel will take a little more time. They don't know
3 whether or not it qualifies as a historic structure.
4 That would take a lot more money to rehab. But this
5 \$2 million is a significant investment for the -- I
6 mean, it would provide a significant offset for
7 the -- for the State Parks in order to actually
8 realize a low cost overnight accommodation that site
9 in a relatively short amount of time, because it's
10 all planned for this, their master plan calls for
11 this overnight accommodation to be developed.

12 So we just saw this as a great opportunity
13 to provide for lost cost visitor-serving, which is
14 really needed in Malibu versus some higher-end hotel
15 or some other visitor-serving use on this site, a
16 restaurant or some other thing like that. I mean,
17 it --

18 COMMISSIONER BOCHCO: Right. I agree with
19 you. I mean, I come from the area, as some of you
20 know, and I do believe that southern California has
21 become so problematic in terms of lower cost
22 accommodations, it's almost impossible to figure out
23 ways to get them built these days. And so in
24 reading the report and now listening to -- to the
25 application of the LCP and your -- your reasoning on

1 it, I'm leaning towards approval from myself because
2 of the lower cost visitor-serving, and without that,
3 and if the City, you know, the City would prevail,
4 there's no way, I think, that we could feel really
5 very comfortable with the development of the size on
6 a residential property in just a residential
7 property.

8 I -- the rest of my time I spent looking at
9 the LCP in terms of height standards and how they
10 went from 18 to 28 and whether that really fit in
11 with the LCP, but as I understand it, that's not
12 really appropriate for this discussion right now.
13 Because I must say I've got a lot of problems based
14 on the photographs I've seen of the view corridor,
15 the view of blue water, and as I think they define
16 it in the LCP as to give the height increment to 28
17 is if you don't obstruct significant scenic ocean
18 views.

19 And I'm not quite sure they don't obstruct
20 those views. I know you don't believe that they do,
21 and that's good, and you've certainly been there
22 more than I have.

23 MR. AINSWORTH: Just one clarification.

24 COMMISSIONER BOCHCO: Certainly.

25 MR. AINSWORTH: With regard to the heights,

1 the development standards in the PD designation are
2 very specific. So the heights are important in this
3 context. So to address the height.

4 COMMISSIONER BOCHCO: Okay.

5 MR. AINSWORTH: If you feel that the
6 heights are too, you know, large, it's in your
7 prerogative to change that -- that development
8 standard to 18 feet, for example, or a lower
9 standard.

10 COMMISSIONER BOCHCO: Oh, I see. Okay.
11 Well, you know, that part is a little difficult,
12 because, you know, photographs are not always
13 accurate. I mean, we've had struggles in all kinds
14 of cases about whether or not a photograph from one
15 vantage point is really true to what is going on. I
16 mean, I -- I might argue with you that the views
17 from the Bluffs Park and the baseball field aren't
18 significant.

19 The young lady who played ball there her
20 whole life, it certainly meant a lot to her, and
21 again, as a resident of that area, I know those
22 bluffs pretty well. And as you further up,
23 basically what you have are estates. I mean, they
24 are very large properties with a single, very
25 expensive house, all behind gates.

1 So I'm not going to really make a
2 recommendation at this point. I'm -- I'm just going
3 to say I'm leaning towards the staff recommendation,
4 but I'd like to hear more from our commissioners.

5 MR. LESTER: Just a clarification on your
6 last comment. My understanding, and I think this is
7 the case, Jack can give you details, is that this is
8 a project-driven LCP amendment, and so it's fairly
9 specific, and generally when we do these, when you
10 approve the LCP amendment you're putting in place
11 the standards that might be expected to follow in
12 the permit. So the question for you is how much
13 discretion you would have if it got appealed to you,
14 so if you are concerned about visual issues, for
15 example, right now, but you want to wait and see,
16 then the question do the standards provide for that
17 discretion in the future or are you locked in to
18 what's being proposed, and I don't know the details
19 here, if they're maximum height limits, for example,
20 maybe those could be reduced in --

21 COMMISSIONER BOCHCO: Right.

22 MR. LESTER: -- an approved permit. But if
23 it's locking in the height limit, then that's
24 something you might --

25 COMMISSIONER BOCHCO: Well, maybe I'm

1 misunderstanding what's in front of us. I thought
2 that the height limits were in other sections of the
3 LCP, not the amendment.

4 MR. AINSWORTH: No, the -- the planned
5 development standards for this site are very --

6 COMMISSIONER BOCHCO: I see.

7 MR. AINSWORTH: -- specific.

8 COMMISSIONER BOCHCO: Are very specific.

9 MR. AINSWORTH: You know, for example, on
10 lot 2 the City has required the maximum height on
11 lot 2 to be 18 feet high. That's locked in. The
12 others are flexible with regard to -- well, it's 28
13 feet maximum, but there's also standards that they,
14 the second floors have to be a certain size in --

15 COMMISSIONER BOCHCO: Right.

16 MR. AINSWORTH: -- orientation and things.
17 So they were very specific development standards,
18 they are laid out in the planned development
19 standards.

20 COMMISSIONER BOCHCO: Right.

21 COMMISSIONER MITCHELL: Can I -- Dayna,
22 really quick -- I'm sorry. Is there any way while
23 we're having this discussion, because I'm at the end
24 of the list, slide 21 had a picture of the different
25 lots of your presentation, Jack, so maybe we could

1 when we're talking about it, then we could refer
2 specifically, I know that would help me. I don't
3 know it would help you, Commissioner Bochco, but --

4 COMMISSIONER BOCHCO: Absolutely.

5 COMMISSIONER MITCHELL: -- I wanted to offer
6 that help in advance.

7 COMMISSIONER BOCHCO: Thank you. Okay.
8 I'm actually going to let others commissioners
9 speak. Because I am, I'm still unclear on -- on how
10 I'm going to vote on this one, but as I said, I'm
11 inclined to go with staff because I know you've been
12 very, very meticulous with this, and this isn't
13 something that we normally rush to approve, so let
14 me hear what everyone else has to say.

15 CHAIR KINSEY: Okay.

16 COMMISSIONER BOCHCO: Thank you.

17 CHAIR KINSEY: Well, you will.

18 Commissioner Zimmer, then Commissioner McClure.

19 VICE CHAIR ZIMMER: Thank you. I have a
20 number of questions, and they may range from the
21 sublime to the apparently ridiculous. But so I am
22 just going to go with them in the order they
23 occurred to me.

24 The first thing I want to -- I just want to
25 comment on in reaction to this issue of the final

1 tract map, or excuse me, the tentative tract map and
2 subsequent City-approved entitlements and whether
3 they're appealable or not. I want to be very, very
4 cautious in assuming that we have any discretion on
5 a second round, because this reminds me quite a bit
6 of a case we had a couple of years ago in Orange
7 County where we had certified -- and this is a
8 little different, but we had certified the land use
9 plan and then the project came in pretty identical
10 to the land use plan, and we didn't have any
11 evidence to come to a different conclusion with
12 respect to the specific project approvals, the CDPs.

13 So I -- if I -- I believe that we need to
14 be clear in our own minds that this project is
15 fairly fully thought out from the Applicant's
16 perspective and from the City's perspective, and so
17 if we have any concerns with any of these issue
18 areas, we need to be addressing them in this
19 proceeding. So that -- I feel pretty strongly about
20 that.

21 I had a secondary -- specific question with
22 regard to the visuals, and I might have missed this,
23 but during the course of the processing of this, it
24 seems to me what we have here is competing visuals.
25 We have the Applicant's visuals and those that were

1 expressed through the EIR that have been submitted
2 to us. We have Mr. Gaines', the Applicant thinks
3 his are misleading; we have Ms. Healy's, there's
4 issues of where they came from, so my question to
5 you is did you rely on the -- on the EIR, did you
6 rely on the Applicant's presentation, or did you
7 have the Applicant set up story poles for your staff
8 to go and view and photograph to make your
9 independent determination?

10 MR. AINSWORTH: We did an independent
11 determination. Those visual simulations are always,
12 you know, the truth is always somewhere in the
13 middle, I always find, between the Applicant's
14 visual simulations and opponents'. There's
15 always -- you know, these homes are going to be
16 visible. There is no doubt about it. They're going
17 to be visible.

18 The question is whether or not they present
19 a significant adverse impact to those scenic views
20 in that area. Our conclusion was with these
21 changes, with these modifications that we've
22 proposed, we don't believe that it's going to be of
23 significant adverse impact. Will you see the homes?
24 Yes. You will see the homes.

25 Reducing the homes down to a single story,

1 you'll still see the homes. They'll be a little
2 shorter. In our view it doesn't -- that doesn't
3 make a significant difference in -- in our view. So
4 that's the way we looked at this. We did take a
5 very close look at this. In lot 5 we had problems
6 with the location of that home and asked them to
7 pull another 30 feet landward. And that was on top
8 of the City's adjustments to that lot as well.

9 But lot 2 is the -- is the one that's most
10 visible down coast. That's been of course reduced
11 down to a single story, 18 feet.

12 Lot 1 will be visible, that's set back off
13 of the, you know, the bluff edge there, the slope
14 facing the civic center, but you're going to see
15 that home. But you know, with the combination of
16 the setbacks and the landscaping screening, it will,
17 you know, reduce some of those impacts.

18 VICE CHAIR ZIMMER: So -- so you've
19 determined based on your own review of simulations,
20 or on your own -- what -- what -- what was your --
21 the basis of your --

22 MR. AINSWORTH: It was the --

23 VICE CHAIR ZIMMER: -- independent
24 determination?

25 MR. AINSWORTH: It was the story poles,

1 really.

2 VICE CHAIR ZIMMER: You did -- you did --

3 MR. AINSWORTH: Going out and --

4 VICE CHAIR ZIMMER: Okay.

5 MR. AINSWORTH: -- looking at, you know --

6 VICE CHAIR ZIMMER: Okay.

7 MR. AINSWORTH: -- our staff went out for
8 var -- all the angles, took all the photographs, you
9 know, and that's where we came to that conclusion
10 on, well, lot 5 was the problem.

11 VICE CHAIR ZIMMER: All right. So you've
12 concluded that it's not that there's no adverse
13 impact from public viewing areas, it's that in your
14 view it's been minimized.

15 MR. AINSWORTH: That -- that's right.

16 And --

17 VICE CHAIR ZIMMER: Is it your view that
18 it's been minimized to the maximum extent feasible?
19 In that kind of analysis?

20 MR. AINSWORTH: No, I think the question
21 is, and these are always tricky because they're
22 judgment calls.

23 VICE CHAIR ZIMMER: Yeah.

24 MR. AINSWORTH: Whether or not they've been
25 reduced to the maximum extent feasible. What we're

1 saying is we don't believe that given the -- the --
2 the angle of these views, that they're not going to
3 have any significant adverse impact on shoreline
4 views, ocean views, or mountain views. The one view
5 that is impacted from the Malibu Bluffs Park on the
6 ball fields themselves, the homes will block those
7 down coast ocean views.

8 But even a single story home would block
9 those views as well, so unless it's an underground
10 house, there -- anything on there is going to --

11 VICE CHAIR ZIMMER: And -- and --

12 MR. AINSWORTH: -- have some --

13 VICE CHAIR ZIMMER: -- with respect to
14 that --

15 MR. AINSWORTH: -- view blockage.

16 VICE CHAIR ZIMMER: -- that one did strike
17 me as well as the presentation of the one from the
18 Malibu pier, looked kind of prominent from, I think
19 it was Ms. Healy's presentation. So with respect to
20 the down coast view, would -- would having -- was
21 that a view of two homes or would a lesser number of
22 homes create a lesser problem from your perspective,
23 or --

24 MR. AINSWORTH: Lots 1 and 2 are the most
25 visible. You'll be able to see a bit of lot 3 and

1 4, but, you know, they're set so far back off of
2 that -- that slope that it's really --

3 VICE CHAIR ZIMMER: And did that --

4 MR. AINSWORTH: -- lots 1 and 2 are the
5 ones that you'll see --

6 VICE CHAIR ZIMMER: So did that slide --

7 MR. AINSWORTH: -- most prominently.

8 VICE CHAIR ZIMMER: Did that slide that she
9 showed represent lots 1 and 2? Is that --

10 MR. AINSWORTH: Yes.

11 VICE CHAIR ZIMMER: Okay.

12 MR. AINSWORTH: Yeah, I believe that was
13 the one, yes.

14 VICE CHAIR ZIMMER: Okay. Thank you.
15 Okay. That -- that's helpful.

16 Okay. So with -- with regard to this issue
17 of making the right call on the -- the -- the land
18 use change, this also reminds me of other cases that
19 have come up in the last year or so, and the
20 difficulty we've had. We have expressed that we
21 would like to see and that we think that ultimately
22 it will be most practical in these very expensive
23 areas of the coastal zone, especially, to be -- to
24 be able to be refurbishing existing lower-cost
25 accommodations in the hope that they would remain

1 relatively lower cost. The Long Beach Hotel case
2 was one in which we struggled with that.

3 And then the other land use change, the
4 Seal Beach issue that has not yet been resolved,
5 neither of those have been resolved, so this has
6 just been an ongoing problem, and a very difficult
7 issue which is even more difficult because we
8 haven't been able to zero in on our own completion
9 of this lower-cost accommodations workshop process.

10 So I think we need to be looking to the
11 extent cases keep coming up before we've set a tone
12 or set a direction for the Commission, I think we
13 need to be looking very, very carefully about each
14 of these individual ones.

15 So on this one, I would like to know, and
16 forgive me if this is somewhere in the staff report,
17 but this Topanga Motel, how many miles is that from
18 the project site?

19 MR. AINSWORTH: Oh, boy, I -- I would say,
20 I'm not sure, five, six miles, maybe, down coast.
21 You know, it's on the -- the --

22 VICE CHAIR ZIMMER: Okay.

23 MR. AINSWORTH: -- far down coast end of
24 Malibu. Right as you get out of the city limits.

25 VICE CHAIR ZIMMER: Okay.

1 MR. AINSWORTH: Right at Topanga Canyon
2 Road.

3 VICE CHAIR ZIMMER: And then how far is
4 this site to -- call it Point Hueneme, to -- to
5 the -- I've forgotten the name of those beautiful
6 state camp -- state campgrounds up there.

7 MR. AINSWORTH: Well, there's to the north
8 probably ten miles or so, you know --

9 VICE CHAIR ZIMMER: And there's no hotel or
10 motel accommodation between this site and that
11 county line, is there?

12 MR. AINSWORTH: Oh, no, there are -- there
13 are --

14 VICE CHAIR ZIMMER: There are?

15 MR. AINSWORTH: There are.

16 VICE CHAIR ZIMMER: Really? Motel? Oh,
17 okay.

18 MR. AINSWORTH: Oh, yeah, there are motels
19 and some hotels.

20 VICE CHAIR ZIMMER: Okay.

21 MR. AINSWORTH: I mean, they're not
22 particularly --

23 VICE CHAIR ZIMMER: Not within the --

24 MR. AINSWORTH: -- cost, but they're --

25 VICE CHAIR ZIMMER: Okay.

1 MR. AINSWORTH: There are some --

2 VICE CHAIR ZIMMER: All right.

3 MR. AINSWORTH: Lower --

4 VICE CHAIR ZIMMER: Okay.

5 MR. AINSWORTH: Relatively lower cost
6 motels.

7 VICE CHAIR ZIMMER: So how many -- now, you
8 talked about cabins at the Topanga site. And then
9 renovation of the existing motel. How many units is
10 that existing motel?

11 MR. AINSWORTH: Well, I don't remember off
12 the top of my head how many units.

13 VICE CHAIR ZIMMER: And is that -- it's not
14 currently functioning, it's just --

15 MR. AINSWORTH: No, it's dilapidated.

16 VICE CHAIR ZIMMER: Not there -- it's just
17 the structure is still there.

18 MR. AINSWORTH: Yeah, and State Parks is
19 looking right now at tent cabins. Of course,
20 we're -- we would also like to see a var -- a range
21 of kind of uses, maybe they're tent cabins, and a
22 progression of nicer cabins, you know, to serve a
23 number of constituents.

24 VICE CHAIR ZIMMER: And then do you have
25 any sense of whether the -- well, whether this, the

1 existing motel is going to have to be renovated --
2 excuse me, whether it's -- whether it can be
3 renovated or whether it's going to have to be
4 demolished and rebuilt? And I'm -- I'm asking this
5 because con -- you brought up the issue of potential
6 conflicts with historic resources and how difficult
7 and expensive and time consuming it can be to obtain
8 approvals, to go through the necessary processes to
9 be able to alter identified historic resources.

10 MR. AINSWORTH: In State Parks they are
11 still doing that analysis. But the -- the existing
12 structures are in such terrible shape, dry rot and
13 termites, it's -- it's likely it's going to be torn
14 down and a new facility will be built that will
15 replicate that motor inn type thing.

16 But I can't say for sure at this point
17 because the State Parks has to do that analysis, and
18 that's why it was important that these, you know, we
19 could do something immediately with regard to the
20 cabins to get those in there in a timely way. And
21 then phase in the improvements to the -- to the
22 motor in.

23 VICE CHAIR ZIMMER: Uh-huh. Yeah, I can
24 see that you would be able at a -- you know, in --
25 with a limited cost to bring in RV cabins, for

1 instance, you don't have to be building permanent
2 structures, even, I don't think to get those kind of
3 accommodations, but I guess I'm harkening back, too,
4 to comments that were made on other cases that we've
5 had, forgotten which ones now, but Crystal Cove was
6 specifically called out a couple of times as a
7 project that took a very, very long time and became
8 very, very expensive and also is now providing a
9 relative expensive product for visitors.

10 So I'm -- I'm -- I'm just stating a concern
11 from all of these experiences that before we decide
12 that this is a good path for this particular
13 property, that these -- these kinds of questions be
14 a little bit more thoroughly addressed.

15 And I have a couple of other specific
16 concerns -- well, so -- that what -- the ultimate
17 question there is you've -- you've made this
18 recommendation because you've determined based on
19 all your analysis that this \$2 million contribution
20 will result in the actual provision of new
21 lower-cost accommodations, and that's obviously the
22 goal, and I'm very concerned that we know that that
23 will occur, so can you wait until I -- or is there
24 something that will help me right now?

25 MR. LESTER: I was just going to say that

1 we made our, in the first instance, decision based
2 on a recommendation based on the analysis of the
3 land use and the feasibility of visitor-serving on
4 the site, in conjunction with the proposed
5 mitigation. And there are some details that aren't
6 worked out, as Jack said, on the mitigation.

7 VICE CHAIR ZIMMER: Okay. Well, so I -- I
8 just want to put on the record exploring what some
9 of those issues and concerns might be, and actually
10 if we were to go this direction in actually reaching
11 the goal that that -- we say we have and that we
12 think we can achieve.

13 So that all goes to the question of, you
14 know, what is the \$2 million going to buy us, and
15 how likely is it that we're going to have an
16 affordable or a lower cost product to offer the
17 visiting public in this area.

18 Now, I have this escrow agreement that was
19 attached to the addendum, and I don't -- I don't
20 think we saw that before, and there are a couple
21 things in here that triggered some additional
22 questions, one being the time of the owner's
23 obligation to pay this money, and in -- the -- the
24 obligation appears only to be triggered after all
25 final entitlements, and those are listed to include

1 tract map approval, certification of EIR, and all
2 other government approvals required for the
3 development and construction, and all related
4 utilities, et cetera, et cetera, et cetera, plus the
5 standard language about litigation.

6 My concern here is if -- if the owner's
7 obligation to pay those fees, whatever the mechanism
8 is, isn't triggered until, I'm reading this to say
9 building permits are issues. They're going to have
10 a tract map, a final map that's recorded that's
11 going to allow for the sale, lease and financing of
12 five separate lots for individual homes, and the
13 obligation to pay into this, to pay this money is
14 not going to arise until potentially building
15 permits.

16 There's -- there's -- I'm coming off of
17 experience on a case in Santa Barbara where there
18 was an obligation imposed by the Commission to pay
19 an in lieu fee to the County, but the obligation to
20 pay was only triggered after building permits or
21 final CVP or building permits were -- were issued.

22 And then that project became derailed,
23 partly as a result of the recession, partly as a
24 result of multiple changes of ownership and multiple
25 modifications to the plans by the owner. All of

1 which were subsequently approved but all of which
2 resulted in extending the entitlements at the local
3 level.

4 So I -- I want to -- and that -- that case
5 worked out well in the end because the owner agreed
6 to go ahead and pay the fee earlier than he would
7 have otherwise been required to, and in fact the
8 County did go out and build the lower cost facility,
9 so it all worked out, but not without a lot of
10 effort. And I want to avoid that kind of situation
11 here, that this owner will end up with a tract map
12 that allows five mansions to be built by whoever,
13 and there's a lot of its, ands or buts in terms of
14 when this money comes, so I'd like to take a harder
15 look at that.

16 And then the other thing that really struck
17 me in this escrow agreement is that there's a
18 provision in here, this agreement is supposedly for
19 the benefit of the Coastal Commission and the
20 Coastal Commission has the authority to try to
21 enforce it if an owner or subsequent owner
22 defaulted, but there's a provision in here for
23 attorneys' fees, for prevailing party attorneys'
24 fees that it would seem to me puts the state at
25 unnecessary risk in the event that there is an

1 interpretation question on the obligations of this
2 agreement, and that attorneys' fees clause is at
3 page 26 of our addendum, and we had this discussion,
4 a related discussion last week, little bit different
5 about indemnification and who was going to end up
6 paying attorneys' fees.

7 And maybe I'll be corrected, but my read of
8 this is that if the Commission got into litigation
9 about the interpretation or enforcement of this
10 agreement, the way this reads, we'd be defended by
11 our attorneys, or the attorney general, but if we
12 were to lose, and in this one it says even if it
13 doesn't go to judgment, we would be paying
14 Mr. Kaufmann's fees, too.

15 You know, I don't begrudge him anything,
16 but I -- that's a lot -- that could be a lot of
17 money for the state to eat. So I -- I don't want to
18 see this kind of provision in an agreement like
19 this. Am I wrong about my concern here?

20 MR. AINSWORTH: Looking at it --

21 VICE CHAIR ZIMMER: Well, I'd like to have
22 that clarified.

23 CHAIR KINSEY: You have to ask -- you have
24 to ask the question. Maybe you can move down your
25 list. We do have a number of commissioners.

1 VICE CHAIR ZIMMER: Okay. Well, I'll move
2 down my list. Mr. Pederson.

3 MR. PEDERSON: I -- prior to your
4 attorneys' fees question, you asked, or made some
5 comments which I wasn't sure if you had specific
6 questions. I could explain the overall process, and
7 I think we'd like to look a little bit more closely
8 at the --

9 VICE CHAIR ZIMMER: Okay.

10 MR. PEDERSON: -- attorneys' fees and
11 see --

12 VICE CHAIR ZIMMER: Okay. Well, I -- I --
13 would just -- you don't -- you don't need to answer
14 me this minute. I would just like for you to look
15 at it and see if you're comfortable from your
16 perspective and talk about that later.

17 The other question I had on this, and
18 again, this goes to -- well, I have to say I got an
19 e-mail from a reporter wanting me to comment, which
20 I did not do, on this case, and the e-mail was
21 framed as people are saying that the Coastal
22 Commission is selling off the coast to the highest
23 bidder, coming off of this \$2 million offer.

24 And so this is -- this is the impression
25 that we want to avoid, and that's why I'm so

1 concerned with the details of whether this proposal
2 makes -- makes sense and will effectuate our
3 policies. So the other question I had on this was
4 what if -- what if -- you know, on other kinds of
5 fees we've had this discussion, too, fees are
6 collected, and a project doesn't go forward for one
7 reason or another.

8 Do we have a deadline by which State Parks
9 needs to use this money and -- and achieve this
10 goal, or it goes to some other, it goes back into a
11 fund or goes into some other project?

12 MR. AINSWORTH: Typically what we do in our
13 memorandum of understanding with the State Parks is
14 set some sort of timeline for the use of the funds.
15 If those funds are not used, the ED has some
16 discretion usually to extend those for good cause.
17 If they're not used within a certain time frame,
18 they're redirected to another public entity for that
19 use.

20 VICE CHAIR ZIMMER: And is that part of the
21 agreement here?

22 MR. AINSWORTH: Well, that will be part of
23 the MOU that we're working out with State Parks, and
24 that has not been completed yet.

25 VICE CHAIR ZIMMER: Okay. And then I also

1 had some questions on the waste water plant. Oh,
2 well, I'm sorry, I do have questions about this
3 consulting study, and I don't want to try anybody's
4 patience, but this is the same kind of study we've
5 looked at in the past that on the Seal Beach case we
6 were -- we had concerns, and I have a lot of
7 questions about this. I'm not -- I'm not a real
8 estate economist, by any -- by a long shot, and I'm
9 having a lot of trouble with the fact that we do not
10 have any way of independently analyzing the
11 conclusions in this study.

12 We've talked about this before, but I just
13 need to put out on the table, you know, this -- the
14 conclusions that are reached here are -- talk about
15 construction costs, site preparation costs, I don't
16 know much of this 13.5 million is for this waste
17 water plant that may or not have to be constructed
18 on the site. I don't know how they've come to the
19 conclusions they've come to on the per key land
20 basis at 98,000. In one place they say it's 83 to
21 91,000 per room, in another place they say 98. In
22 the comparable number one for luxury coastal
23 resorts, it says land purchase price at 78. This
24 isn't that different.

25 The cost of land in the coastal zone is

1 supposedly the key factor that keeps us from being
2 able to develop lower cost accommodations, so I --
3 you know, I just -- I don't know what to do about
4 this. This talks about the Mt. Rancho Malibu site
5 as being a large contiguous base. Is that the
6 mortuary site now?

7 MR. AINSWORTH: That's right.

8 VICE CHAIR ZIMMER: So I don't know how
9 that relates at this point. I don't -- have they
10 had a land use change that they are now going to be
11 a mortuary?

12 MR. AINSWORTH: No. Not at this point.
13 They're trying to --

14 VICE CHAIR ZIMMER: Okay. So --

15 MR. AINSWORTH: (Inaudible.)

16 VICE CHAIR ZIMMER: -- and it goes to the
17 question of alternatives, it goes to the question of
18 appropriate comparables, and so I'm not comfortable
19 that I have the information I need at this point.

20 CHAIR KINSEY: Thank you. Commissioner
21 McClure.

22 COMMISSIONER MCCLURE: Yes, thank you.
23 I -- I'm -- I'm hoping that my idea may be of
24 assistance to the Commission, and that my idea is
25 that we actually move into the motions and put the

1 motions on the table, and the any kind of tweaking
2 that -- that commissioners desire to have happen
3 with this project could happen through amendments,
4 and that that will get the ball, will start pushing
5 the ball down the road in relationship to finding
6 out exactly where we stand, you know, if somebody is
7 going to suggest an amendment possibly that lot 2
8 should be a single story or what, you know, I think
9 that we could start to actually get into the meat of
10 the -- of the dilemma that we're facing.

11 So I would like to make a motion. I move
12 that the Commission certify amendment
13 LCP-4-MAL-14-0408-1 to the City of Malibu land use
14 plan as submitted by the City of Malibu, and I ask
15 for a no vote.

16 COMMISSIONER TURNBULL-SANDERS: Second.

17 COMMISSIONER MCCLURE: So now my question
18 is do I keep going through all four of the
19 amendment -- all four of the motions or do we just
20 leave it there?

21 MR. PEDERSON: Commissioner McClure, you
22 would first have the vote on, of whether or not to
23 certify the land use plan as submitted, and then
24 depending on the outcome of that motion, then you
25 could go on to the motion -- a motion regarding

1 suggested modification.

2 COMMISSIONER MCCLURE: Okay. Because I'm
3 trying to just drill down to where we can get to
4 discussion of finding solutions.

5 CHAIR KINSEY: So your suggestion is to go
6 with, you've made a motion and you have a second. I
7 think that we could have that vote at this time, and
8 I would ask if there's any unwillingness for
9 unanimous yes vote. I mean, excuse me. A unanimous
10 vote.

11 COMMISSIONER MCCLURE: No vote.

12 CHAIR KINSEY: I apologize. A unanimous
13 note vote, and what this would do is deny as
14 submitted and set the stage for other motions that
15 might approve the project with different conditions.

16 COMMISSIONER MCCLURE: Correct.

17 CHAIR KINSEY: Is there any unwillingness
18 for a unanimous no vote? Seeing none, then as
19 submitted we do not approve the project. Carry on,
20 Commissioner McClure.

21 COMMISSIONER MCCLURE: Okay. I then would
22 like to move that the Commission certify amendment
23 LCP-4-MAL-14-0408-1 to the City of Malibu Land Use
24 Plan if modified as suggested in the staff report,
25 and I recommend a yes vote.

1 COMMISSIONER TURNBULL-SANDERS: Second.

2 CHAIR KINSEY: Do you care to speak to your
3 motion?

4 COMMISSIONER MCCLURE: I -- I think I want
5 to leave it as is, because I think that the -- I
6 think that staff has done a very admirable job in
7 trying to figure out the conflicting land use and
8 the -- is it visitor-serving, is it -- is it planned
9 development, and I think that that has been a good
10 job.

11 I also just, and I forgot to talk to this
12 in my ex parte, but I did have quite a discussion
13 about the septic systems, and it's my understanding
14 that the applicant is wanting to be one of the first
15 in line as opposed to waiting for residential
16 requirements that don't kick in until like 2020
17 something. And so that to me was a -- a sign that,
18 you know, because I'm looking at water quality
19 thinking I want to make sure that that bluff water
20 is not getting into the -- into the sea and failed
21 septics are notorious for putting bad things into
22 the ocean.

23 So I'm -- I was glad about that. I also
24 would like to just temporarily comment on what Jack
25 made reference to is that sometimes the models that

1 we get from the Applicant and from the Appellant,
2 they show different visions of what the house is
3 going to be, and I would just encourage everyone to
4 take it back and look at what -- what staff
5 presented, because staff also went the extra mile to
6 identify the landscaping plans and also the color
7 palette of the buildings, because when we get
8 something from an Appellant that, you know, is
9 bright orange, it's hard to know how that's going to
10 blend with the -- with the terrain.

11 So I just want to commend staff for doing a
12 good job, and I'm hoping that we will be creative
13 from the dais and can maybe solve this problem and
14 get something going. Thank you.

15 CHAIR KINSEY: Thank you. Would you care
16 to speak to your second?

17 COMMISSIONER TURNBULL-SANDERS: I would,
18 thank you. I guess my intent in -- in seconding the
19 motion was to agree with I think the solution that's
20 set forth by the staff in the staff report, but I
21 just wanted to comment on some of my concerns with
22 it, because as is the case with many of the things
23 before us, we don't have easy solutions sometimes to
24 challenging problems.

25 And I'm particularly, as other

1 commissioners have mentioned, I particularly lament
2 the loss of low cost visitor-serving sites along the
3 coast. I think we are seeing a lot more development
4 and there are fewer and fewer places where I think
5 working class people and the working poor can go to
6 enjoy a day at the beach and can enjoy a nice view.

7 That said, I don't know if alternate uses
8 such as the ones proposed like an equestrian center
9 is necessarily low cost visitor-serving. I
10 understand that there are a number of, you know,
11 working class folks in Topanga Canyon that own
12 horses, but I don't know that that by and large is
13 going to be the types of, or categories of folks
14 that would come to an equestrian center.

15 And I think staff set forth, you know,
16 their reasoning for the in lieu fees based on the
17 fact that they determined in 2002 that it wasn't
18 really feasible to have low cost visitor-serving
19 uses at the site, and that the \$2 million in lieu
20 fee was probably as good as we were going to get.
21 I'm not sure, you know, I think there have been some
22 questions about how those calculations were -- were
23 made, but I think in this case we have a tangible
24 opportunity to look at the Topanga Canyon, Topanga
25 Ranch Motel and apply in lieu fees and get some

1 rooms that will be available to working class folks.

2 The challenge that I see is that in dealing
3 with historic sites, a lot of development can be
4 delayed as Commissioner Zimmer had mentioned, and
5 I'm concerned that if -- if the Topanga Ranch is
6 designated as a historic site, what alternatives do
7 we have, and is there a way to earmark those funds
8 for any alternate plan for use by the State Parks
9 for low cost visitor-serving uses.

10 And so that -- that would be the only
11 potential friendly amendment that I would want to
12 make if -- if that were possible.

13 MR. AINSWORTH: And just to clarify, this
14 is -- the terms of the -- what facilities would be
15 placed on the site would be pursuant to this
16 memorandum of understanding that we have directly
17 with State Parks. So we can build in any
18 contingency we think is appropriate as far as timing
19 on these improvements.

20 So that's why we came up with the idea of
21 the cabins first, they can be put in immediately, if
22 in fact the motel or the improvements to the Topanga
23 Ranch Motel lag, or it becomes infeasible, then
24 those moneys we could have provisions in there that
25 direct money to additional cabins, for example, or,

1 you know, other low cost visitor-serving
2 combinations in the Malibu area with State Parks.

3 So that could all be built into that
4 memorandum of understanding.

5 COMMISSIONER TURNBULL-SANDERS: This is
6 probably discussion for a later day, but is it
7 possible that we could combine some of our in lieu
8 fees that we already have for low cost visitor
9 accommodations to do something -- something more
10 creative at that site?

11 MR. LESTER: We're -- we're looking at that
12 question right now with existing fees that we have.
13 Not just for this area, but statewide, how we might
14 maximize the use of those funds. Each one has a
15 specific origin and set of conditions and
16 memorandums potentially, so all of that would need
17 to be figured out.

18 CHAIR KINSEY: Okay. Commissioner Vargas.

19 COMMISSIONER VARGAS: My challenge with this
20 particular issue is that we're looking at, as staff
21 has -- and first of all, a lot of respect for the
22 years of effort that our staff has spent trying to
23 work out an agreement in this case, but my challenge
24 is that as staff has pointed out, we're really --
25 our executive director pointed out, we're really

1 talking about a land use plan here, and we're
2 basically, if we agree to what's in front of us,
3 we're agreeing to a land use plan that basically
4 sets in stone the lowest common denominator of -- of
5 public use possible. Five mega mansions. And I
6 understand that, you know, other type of facilities
7 that are contemplated aren't necessarily low cost
8 visitor-serving, but there's certainly a large range
9 of options between low cost visitor-serving facility
10 and five mega mansions, you know, so it -- it would
11 be great to try to encourage something.

12 I understand maybe -- maybe I'm the only
13 one that believes that up here, and that boat may
14 have sailed, so we're -- we're left with what we
15 have here, but I'm also very, very concerned about
16 consistency issues.

17 A few months ago we had a case before us in
18 Santa Barbara's Gaviota Coast where a developer had
19 30 acres of land, I believe, or something like that,
20 and we worked out an agreement where 27 acres of the
21 land went to open space, and three acres of the land
22 was used for two homes. This is almost the opposite
23 of that. It's -- it's just amazing to me that --
24 that, you know, I feel like we need to kind of step
25 back and -- and realize what we're here for.

1 I mean, I understand that this was a
2 difficult agreement to get to, but to me, it's
3 really hard for me to swallow something like this
4 when it seems to not really embody what we're
5 supposed to be protecting in terms of protecting the
6 coast as much as we can, preserving the coast as
7 much as we can. I feel like we have this -- we have
8 this issue where, and I under -- again, I understand
9 that where, you know, maybe it doesn't block ocean
10 views, and maybe it doesn't block mountain views.
11 And maybe it doesn't, you know, block all of these
12 specific views, but I wish somebody would have
13 written down protect, you know, pristine coastal
14 bluff views, because it's an awe -- that's the last
15 pristine coastal bluff in -- in -- maybe even in
16 southern California.

17 And it's -- it's unfortunate that the
18 public -- that the public -- that the public is
19 going to lose out on the amazing -- this amazing gem
20 of a site. The other consistency part for me is
21 that, you know, I know we're working on this
22 Sweetwater Mesa project, and that doesn't block
23 coastal views, but we've -- we've certainly worked a
24 lot with them to -- to -- to mitigate their --
25 their -- I guess their obtrusion of people's -- of

1 people's mountain views.

2 So it's just -- it's tough for me. I would
3 love to -- I don't know if it's appropriate to make
4 amendments at this point, but I would love to
5 suggest as I think Jack, our deputy, was suggesting
6 that lots 1 and 2 are really kind of the most
7 troublesome lots when it comes to blocking views, I
8 would like to make an amendment that we reduce the
9 size of these -- of this development plan.

10 COMMISSIONER MCCLURE: Oh, you've got a
11 hand.

12 VOICE: Second.

13 COMMISSIONER VARGAS: Sorry.

14 VOICE: Can we see those slides --

15 MR. PEDERSON: Excuse me. Just to clarify,
16 the submittal currently has both the LUP component,
17 the land use plan components, and the IP
18 implementation program components. It's the IP
19 component that goes into a good deal of detail about
20 the standards regarding specific development of the
21 sites. If you look at page 9 of the staff report,
22 that shows what the LUP component is doing, which is
23 largely deleting one superceded provision, and then
24 adding some general description about the planned
25 developments' land use designation, so that LUP

1 amendment that's before us is using very general
2 terminology.

3 You certainly may propose an amendment to
4 that language if you would like, but it's the IP
5 component that currently has the detail regarding
6 individual houses.

7 COMMISSIONER VARGAS: And we're not -- we're
8 not -- so we're not dealing with the LIP right now?
9 I'm sorry.

10 MR. PEDERSON: Currently the motion on the
11 floor is regarding the suggested modifications to
12 the LUP. We haven't yet gotten to the IP.

13 COMMISSIONER VARGAS: But we will get to
14 that?

15 CHAIR KINSEY: Yes.

16 MR. PEDERSON: Yes, we will get to the IP.

17 CHAIR KINSEY: Commissioner Vargas, I mean,
18 I think it's appropriate to put your concern in
19 play, and then --

20 COMMISSIONER VARGAS: I'll throw 'em out.
21 Yeah.

22 CHAIR KINSEY: -- we'll come back to that
23 after we've resolved whether the land use itself --

24 COMMISSIONER VARGAS: Very good.

25 CHAIR KINSEY: -- is the appropriate use.

1 But I -- are there other comments you would like to
2 make at this time?

3 COMMISSIONER VARGAS: Yes. I was -- I was
4 going to comment that it sounds -- lot -- lot 1 and
5 lot 2 are the kind of the most troublesome lots in
6 terms of views that we remove those and -- I guess
7 not remove them, but create that area to be part of
8 the conservation easement that goes to the mountains
9 and recreation conservation authority. I would -- I
10 would suggest that, if at the very least I would
11 suggest that we consider reducing the height limits
12 of the -- of the properties to 18 feet. Those would
13 be my two suggestions, but I would certainly prefer
14 the first over the -- over the second.

15 CHAIR KINSEY: Thank you. Commissioner
16 Shallenberger, then Commissioner Cox.

17 COMMISSIONER SHALLENBERGER: Thank you.
18 This is why I hate, hate, hate project-driven LCP
19 amendments. You know, we do not, if we -- to
20 Commissioner Bochco's point, if we make this change
21 to the LCP and this project as it is being described
22 before us is approved by the City, it will by
23 definition be consistent with the LCP, and therefore
24 there will be no grounds to appeal it on. Or at
25 least none that will allow us to find a substantial

1 issue.

2 So we're really in a box on this, and it's
3 nobody's fault, it's a clever move on developer's
4 part, and it's not the first time we've seen it,
5 and -- and I hate being in boxes.

6 So having said that, I also am struggling
7 with this project a lot. I don't like the change in
8 the designation, I do think it's a beautiful,
9 beautiful bluff, and should be used for
10 visitor-serving recreational, but there isn't
11 anything in that -- in that zoning designation that
12 requires there be affordable or low income.

13 So as we talk about the change, it's not a
14 change from low income to mega mansions. And my
15 worry about this is something Jack said, is kind of
16 be careful what you wish for. If we turn t his down
17 and it's still zoned for commercial -- commercial
18 visitor-serving and we end up with a hotel before
19 us, which is high end, at that point it is
20 consistent with the zoning, and I don't know what we
21 would do with that. I can guess, but I'm -- so my
22 inclination is to work with what's before us.

23 In order to get my support, it would need,
24 and just to point out the other box we're in is
25 exactly what Commissioner Vargas brought up. The

1 next motion is to approve the LCP, and in order to
2 want to approve the LCP, I really want to know
3 what's going to be in the LIP. And we can't do
4 that.

5 So it's a problem. Consequently, I don't
6 know how I will vote on the motion before us. If I
7 were to vote yes on the LIP, there would have to be
8 a number of amendments, and one is I would certainly
9 support Commissioner Vargas' idea of reducing the
10 number of houses on this project to -- so that those
11 first two lots were open space instead of houses.
12 That certainly takes serious, goes a long way toward
13 taking care of the visual impacts.

14 And I would certainly like to see a
15 reduction in height of the other houses as well. I
16 just think that this is -- it's such a fabulous
17 place, and when it's gone, it's gone. And these
18 houses are just too big.

19 So in reducing the height, I would also
20 want to do something to be sure that they didn't
21 keep the same square footage so we ended up just
22 shorter and covering a much larger portion of the
23 lot.

24 And the second one, it may be small and it
25 may be symbolic. For me, the gate would have to go.

1 I just do not believe that gated communities, gated
2 whatever, on our coast, even though it's a gate to
3 protect private property, there's just, it's the
4 wrong message to send. So the gate would have to go
5 for me.

6 And finally, this isn't necessarily a deal
7 breaker, but I disagree with Jack's assertion/guess
8 that if an actual analysis were done that it would
9 be hard to imagine that more than 2 million would be
10 required for adequate mitigation. This is a large
11 and beautiful property. And it's -- we're losing
12 by -- by changing the zoning and knowing that the
13 result of changing of the zoning is that most of
14 this becomes private property, we're losing a huge
15 public benefit.

16 So I would actually like to see the amount
17 that goes toward the -- the mitigation fees for
18 what's lost to be increased above 2 million. I --
19 this has been talked -- it was talked about the last
20 time this was before us, and the value of putting
21 this money into the Topanga Canyon Motel, whatever
22 it's called, I think that's a huge gain for
23 affordability of access to the coast.

24 We have agreements like this with parks up
25 and down the coast, I'm confident that it's, that

1 our staff can do an agreement that will result in
2 actual on-the-ground access. So those are the three
3 things that I would need in order to support this
4 project. And even then I'd do it with some
5 hesitation, but I am concerned about the potential
6 of something much worse coming before us if we don't
7 take this.

8 CHAIR KINSEY: Thank you. Commissioner
9 Cox. Then -- yes, go ahead.

10 COMMISSIONER COX: Thank you, Mr. Chairman.
11 I -- I think all of us are having some problems
12 with -- with this particular project in trying to
13 figure out what's -- what's the right answer.

14 I'm going to -- I'm going to make a wild
15 guess that this is -- this is what, a 24-acre site
16 and what's being proposed is -- is five
17 single-family dwellings, they're going to be 10,000
18 square feet roughly each. The \$2 million obviously
19 when you figure that out, they're paying a
20 mitigation fee of \$400,000 per dwelling that would
21 go into a fund to provide low cost accommodations,
22 so I'm going to make a wild guess that these are
23 going to be fairly expensive homes.

24 And when you -- when you look at the
25 alternative, visitor-serving accommodations which

1 could be allowed to be on that property, I don't
2 know what the number of units would be, but, you
3 know, if you took, let's say 400 units, something
4 comparable to a Four Seasons or something like that,
5 when we -- when we've been dealing with low cost
6 visitor-serving accommodations, there's not a
7 precise formula, I realize, but it's usually what, I
8 think we've looked at 25 percent of the units would
9 be charged \$30,000 per unit, so, you know, just
10 doing the math it would be about \$3 million that
11 would be available for low cost visitor-serving
12 accommodations.

13 I -- I understand the concerns of the
14 residents in the area and the concerns about the
15 view shed, but I've got to believe that a, if it was
16 a 400-unit Four Seasons, the mass and size and scale
17 of what that would be would be more than 18 feet or
18 more than 28 feet and have a much more significant
19 impact on -- on the view shed on the property.

20 So I really think given the cards that we
21 are dealt, the staff has done I think a remarkably
22 good job working with the property owner, and let's
23 face it, it is privately owned property, so if we
24 want to see, you know, more of it or all of it, put
25 into some sort of public usage, then we ought to

1 figure out a way to buy it. Or have somebody buy it
2 and turn it into either a public park or some sort
3 of other conservation area that -- that would
4 preclude development in the future.

5 Barring that, I think what has been put
6 together and the mitigation fee that has been
7 negotiated by staff, having that \$2 million go to
8 the Topanga Park, Topanga State Park, and I think
9 the -- what staff has proposed with the cabins and
10 perhaps some renovations, the old ranch house, I
11 think is going to do a lot more to provide low cost
12 visitor-serving accommodations than if this was
13 developed for a -- a hotel site.

14 Because again, I -- I would suspect it's
15 not going to be a low cost visitor-serving
16 accommodation hotel. I would imagine it would be,
17 while these are mega mansions, I would imagine these
18 would be mega -- mega hotel rooms in the 350 to \$500
19 a night rate. So I guess I'm at the point where I
20 think, you know, given what we have before us, I
21 think this is a reasonable compromise and I would be
22 voting in support of the motion before us. Thank
23 you.

24 CHAIR KINSEY: Thank you. Commissioner
25 Groom.

1 COMMISSIONER GROOM: Thank you, Mr. Chair.
2 I think -- I also think that -- that this is --
3 we're very close to having something that's doable,
4 but I think that all the houses should be 18 feet.
5 And I thought that Mr. Vargas' suggestion was very
6 good to eliminate two, but I think that probably
7 financially would not work. And I really would like
8 to preserve the Topanga Canyon offer. And to build
9 some affordable units there.

10 The other thing is that reading the
11 feasibility study for a new hotel, it was pretty
12 clear that this is not a great hotel site, based
13 on -- based on whether it's a three star or a five
14 star, that the numbers just don't work to build
15 enough rooms on this site that could -- that could
16 be profitable. So I'm not even sure what kind of
17 hotel would end up here. It probably would, you
18 know, maybe be a boutique or something which
19 probably wouldn't meet the needs of -- so I think
20 that if we can get the heights reduced to 18 feet on
21 all five houses, we could -- and preserve the
22 Topanga Canyon offer, I think that would be a
23 reasonable thing for me.

24 CHAIR KINSEY: Thank you. I'm going to
25 speak, and then I have, we'll go around again for

1 other commissioners that would like -- oh,
2 Commissioner Mitchell, had you given us your name?
3 I apologize. Go ahead, please. We're not going to
4 be done, but I'm fine to have you speak first.

5 COMMISSIONER MITCHELL: That's very kind.
6 I'm just down here at the kiddie table. So, oops,
7 sorry.

8 CHAIR KINSEY: That's why.

9 (Laughter.)

10 COMMISSIONER MITCHELL: So true. So true.

11 CHAIR KINSEY: They need adult supervision.

12 COMMISSIONER MITCHELL: So I wanted to say
13 also thank you to the staff, and to the property
14 owner for the \$2 million mitigation fee offer in the
15 last round of discussions. I do think it's -- it
16 goes a long way. I kind of end up where
17 Commissioner Vargas is, though, only in that this is
18 an amazing piece of property. I think you can get
19 an sufficient ROI on your -- if you have three
20 houses instead of five, or, you know, four houses.

21 So I -- and I think that we're not getting
22 a ton of public space out of this for developing
23 huge homes. I don't have a problem with the houses,
24 and I don't -- I don't actually have a problem with
25 the height only because it's not going to change the

1 view situation according to Jack, and I trust his --
2 I trust his judgment.

3 So I also think that, you know, having some
4 other visitor-serving, could be big box retail, you
5 know, something else there that could -- that could
6 cause us more consternation down the road. So I
7 don't actually have a problem with this being
8 residential. I just want to make sure that the size
9 and scale is sufficient and that we have some sort
10 of public access and a larger conservation easement
11 on this site.

12 CHAIR KINSEY: Thank you. I would just add
13 a few of my own thoughts to it. I am going to be
14 supportive of the LUP for the land use transition.
15 And understand the rationales for that.

16 I do have concerns about several things. I
17 would be supportive of the lower height limits,
18 because I think that anything we can do to reduce
19 the visible impacts is useful, and that with these
20 being relatively large homes, there certainly isn't
21 going to be a sense that we're kind of squishing
22 down the character of the homes themselves.

23 The -- one of the most important parts of
24 this to me, if we're going to make this trade-off,
25 is to assure the lower cost visitor accommodations,

1 and so I wondered, is there a representative from
2 the State Parks who is here?

3 VOICE: No, there's a letter in the
4 addendum supporting this idea, kind of laying out
5 the detail.

6 CHAIR KINSEY: Okay. So my concern is they
7 have a general management plan, they've identified
8 the need to upgrade their own waste treatment
9 facilities, they talk about the cabins being -- and
10 you mentioned the cabins being kind of a quicker way
11 to get to the visitor-serving, but we're sitting on
12 17 or \$19 million worth of lower cost funds, and we
13 don't have the lower cost accommodations.

14 So it would be very important to me to
15 actually have some commitment of time delivery from
16 State Parks, not just the desire and the will and
17 the general management plan, but what is it going to
18 take to actually get those units operational, and I
19 believe that they can be. I know that State Parks
20 has really started to implement a program of cabins
21 even in my own county, I'm seeing these on State
22 Park sites like Samuel P. Taylor, and -- and I think
23 they're great.

24 I think that Topanga Ranch Motel, that
25 sounds to me like almost every homeowner's nightmare

1 where you have a big, great idea but you don't have
2 the money to get it done, and so I need to know more
3 about how realistic that is, do they have any kind
4 of a budget for that, is it just a pipe dream.

5 And then I think that the question around
6 the entitlement that Vice Chair Zimmer raised, I
7 think that ultimately I'm going to be interested in
8 what our council tells us about that, because
9 clearly we wouldn't want to get caught with the
10 entitlement process holding up the one significant
11 thing that is there as a trade-off for this project.

12 And then lastly, perhaps I could ask
13 Mr. Gold or some other representative of the project
14 to come forward. I have a question about lot 6, and
15 the gate house and the package treatment, and I'm
16 trying to understand whether I'm reading the drawing
17 correctly. And if we could get the site plan up to
18 be able to refer to, Bill. The site property, site
19 plan that showed the lots. Thank you.

20 And so my question to you is as I see this
21 here, you turn off Pacific Coast Highway, and you
22 can go forward to get into the recreational lot 7,
23 or you can make a left in advance of that, and you
24 almost immediately come to a gate house, and there
25 are some other kind of squares and boxes there, some

1 I believe are like parking for staff of the gate
2 house or others.

3 But is it -- is that also where you intend
4 to have the package treatment facilities in that
5 upper area?

6 MR. GOLD: So if we do put in a package
7 treatment plant, which we hope we are not going to
8 have to put in, it would be in the upper corner
9 right at PCH, the upper left-hand corner. And
10 that's -- that's what you see. Right. Correct.
11 Thank you.

12 And then next to that are I think whatever
13 the required parking is, I think it's two parking
14 spots. The seepage pits for the property would be
15 located in lot 7, in the, I guess the right field
16 portion. Yeah. A little lower. Right around
17 there.

18 And as Commissioner McClure said, we have
19 elected to participate in the City's community
20 facilities district, which the City formed
21 approximately two and a half, three years ago, to
22 fund the design and development the EIR for the
23 City's municipal treatment plan, and we're one of
24 the three residential properties that are in that
25 community facilities district.

1 So when that facility comes on line, we
2 would -- we would be hooked up, you know, hopefully
3 initially and not even put in the -- the waste water
4 treatment plant. So that's where, and the City
5 studied the viability of the seepage plants at that
6 location, and you can see -- and so when you come
7 in, the guard house is about 95 feet out off of the
8 main road. But you can see how the shared access
9 works.

10 CHAIR KINSEY: Yes. Thank you. So I guess
11 the -- the concern that I have is that in, you know,
12 first of all, there are a number of folks who are
13 concerned about the gated character, and, you know,
14 I share that concern. I understand in a highly
15 competitive parking environment why, you know,
16 protecting these relatively expensive homes from the
17 public overwhelming them with parking along their
18 streets and so forth may be the motivation for that,
19 but the question I had is why would you not be able
20 to move it closer to lot No. 5, and reconfigure that
21 to make it feel much more public as you come into
22 that area there around the Bluffs Park? Was there a
23 design motivation for holding the entire frontage?

24 MR. GOLD: The design motivation was simply
25 you can see that's the widest portion of the road,

1 so it allows for circulation of the cars, if cars
2 came in and they were going the wrong way, they --
3 there would be sufficient room for cars, even if
4 there were quite a number of cars, because Bluffs
5 Park does have events such as movies during the
6 summer, so if there were a number of cars, we wanted
7 to be able to have cars circulating, going back out.

8 So the road does get more narrow, and then
9 the fire department required access, the width of
10 the road, I think it's 34 feet in total, so it
11 becomes pinched as you go in towards the property.
12 So that -- that's why we put it there.

13 CHAIR KINSEY: Okay. Thank you. I
14 appreciate it. Thank you very much.

15 MR. GOLD: Thank you.

16 CHAIR KINSEY: So you know, I still have a
17 sense that if there was going to be a gated
18 entrance, that there would be a way to work with lot
19 6 and 7 to reduce the sort of overall impression
20 along the entire frontage that it is an exclusive
21 gated community there with the bluffs tucked in
22 behind it. But it's not at a level right now where
23 I'd try and convert that into any kind of amendment
24 to the IP, but I am going to bring that up for my
25 fellow commissioners' awareness that that's a

1 concern.

2 So with that, we will come back to
3 Commissioner Vice Chair Zimmer and we do have a
4 motion on the LUP on the table. I know that. Thank
5 you.

6 VICE CHAIR ZIMMER: I -- I want to inquire
7 at this point procedurally to try and find a way to
8 deal with commissioners' concerns which we're
9 hearing some refrains on. And the requirement that
10 we consider the LUP before we consider the IP. And
11 I'm wondering at this point whether we might be best
12 served by continuing this and asking staff to work
13 with the applicant to address these individual
14 items, and I -- so -- I -- that would -- I would
15 make a motion for continuance for that purpose.

16 MR. AINSWORTH: Yes, and we -- we just had
17 a conversation with the Applicant and the City, and
18 they would agree to that continuance. We want to
19 make sure we understand the direction from the
20 Commission, though on those items. So we need
21 clarity on those, on the, where we want to go with
22 this amendment.

23 VICE CHAIR ZIMMER: Well, I'll -- and we
24 can go around again, so for clarity purposes from my
25 perspective, I would list out the issues as I've

1 heard them, and those are to address further the
2 height issue with the possible elimination of lots 1
3 and 2, the reduction in height overall to the City's
4 general maximum of 18 feet, I thought it was 18. I
5 know, but the -- what -- what other commissioners
6 have suggested was to consider going down to 18.
7 Okay.

8 To perhaps have a better sense of what
9 would go into this MOU with State Parks to address
10 the timing and certainty issues or relative
11 certainty issues. Those -- those are the three main
12 ones I had and concurred with.

13 What? Oh, and the issue of not making this
14 a gated community. And, you know, people are free
15 to add in.

16 CHAIR KINSEY: Thank you. So I'm just -- I
17 want to get clear. So then with the concurrence
18 from the Applicant to -- and the City, to continue,
19 then we would make a motion to continue; is that
20 correct? If we're prepared to do that.

21 MR. PEDERSON: That's correct. A motion to
22 continue would be in order. The City and the
23 Applicant did indicate they wanted to hear all of
24 the feedback that the commissioners have, so if any
25 commissioners would like to provide more feedback

1 than Commissioner Zimmer and Shallenberger just
2 summarized, it would be appropriate to do that prior
3 to a vote on the motion.

4 CHAIR KINSEY: Right. Okay. All right.
5 Then so why don't we -- so we have -- Vice Chair
6 Zimmer made a motion for continuance. If -- Is
7 there a second for that?

8 VOICE: Second.

9 CHAIR KINSEY: And then -- second. Okay.
10 So we have a motion and a second now. We're being
11 asked to provide any additional areas of concern or
12 consideration that we would like the City and the
13 Applicant to work with our staff on, and also you,
14 individual commissioners could respond to some of
15 the suggestions they've heard from others to either
16 agree or disagree as they choose to.

17 I think it would most helpful if we can
18 give them as much clarity as we can today on what
19 our preferences would be, and I'll start with
20 Commissioner Turnbull-Sanders.

21 COMMISSIONER TURNBULL-SANDERS: I think
22 everything that was stated by Commissioner Zimmer I
23 would be in support of having that looked at. The
24 other thing was just the possibility of increasing
25 the in lieu fees that was mentioned by a couple of

1 Commissioners in terms of determining a workable
2 formula for doing that based on the potential
3 reduction and so forth.

4 CHAIR KINSEY: Thank you. Commissioner
5 McClure.

6 COMMISSIONER MCCLURE: Thank you. I have a
7 couple of other suggestions, and -- and one is
8 the -- I would like to see that any mitigation fee
9 that is paid is paid as soon as the agreement is
10 made, rather than at the end of the building of the
11 projects. So somehow I would like that language.

12 And then I -- I -- the idea of putting the
13 conservation easement and expanding it to lots 1 and
14 2 is intriguing to me, and I like that idea, but I
15 would also be open to a -- the possibility, and I
16 don't know what the planned community development
17 requirements are for the city of Malibu, but is
18 there a possibility of additional clustering that
19 could happen that could still allow the Applicant to
20 possibly have five houses rather than -- and -- and
21 exclude lots 1 and 2 since they seem to be the
22 problematic lots.

23 It's not a deal breaker for me to go from
24 the 18 to the 28. Primarily because I know that
25 many times an 18-foot house is just a box. It

1 doesn't -- it doesn't -- it doesn't become
2 interesting and it doesn't adjust to when you're
3 looking at it that, you know, many times it's just
4 a flat top box. And so the -- the additional square
5 footage, the additional height requirement sometimes
6 is more aesthetically pleasing.

7 But -- so to me it wouldn't be a deal
8 breaker, but I like the idea of the possibility of
9 those conservation easements being expanded. And I
10 also -- it's intriguing to think that there could be
11 a possibility that there could be additional dollars
12 for the -- the campground and the trailers, because
13 I'm kind of excited about those.

14 So I think that's all I have as -- as
15 additional information. I don't -- I don't know
16 what that septic on-site system, how invasive it
17 would be to the public to the eye, you know, if it
18 looks like a sewer treatment plant or if it just
19 looks like a lift station. So I -- I'm a little
20 apprehensive about that being right up on the
21 highway, and I liked Commissioner Kinsey's idea of
22 is there any way that we could roll it down, still
23 using the -- still using the leach fields on the
24 recreation site, but actually moving it down so it's
25 not part of the -- it's not part of the buildings

1 that one would see from Pacific Coast Highway. They
2 wouldn't have to look at a sewage treatment plant,
3 but I don't know how big it is, and it may be
4 something that staff could work out or move it or if
5 it just looks like a lift station, that's a whole
6 different discussion, so.

7 CHAIR KINSEY: Thank you. Commissioner
8 Mitchell?

9 COMMISSIONER MITCHELL: I would just say,
10 echoing what Commissioner McClure said about, you
11 know, clustering the lots, if that works, to give us
12 more of a conservation easement, I am not supportive
13 of removing the gate, although modifications based
14 on Commissioner Kinsey's recommendation to give them
15 more open space, I would support that. And those
16 are the main, I just wanted to clarify that there
17 was discussion of removing the gate, but I don't --
18 there's not support from that from this seat.

19 CHAIR KINSEY: Thank you. Other
20 commissioners at this point? Commissioner Bochco.

21 COMMISSIONER BOCHCO: I have a point of
22 order. I just wanted to make one suggestion.
23 Everybody's thoughts, that's okay, too. I was just
24 thinking that perhaps rather than designation lot 1
25 and 2 as the ones that we'd like to see remaining

1 open, that staff be allowed with the Applicant to
2 figure out which lots are the most visually
3 obstructive -- obstructive.

4 So, and then allow a little flexibility in
5 how they redo that. Rather than us designating
6 which ones, perhaps they can really look at this.
7 Because I know certain people were complaining about
8 views from the -- from the Bluffs Park, which I
9 think is lots (sic) 5. So perhaps there is a way to
10 reconfigure it so that it's just less visually
11 impactful from a lot of different places. I don't
12 know if that suits everyone, but I just thought I'd
13 bring it up.

14 CHAIR KINSEY: Thank you. So yeah, I
15 would -- I would just make one additional comment,
16 and that is that I too think that the more important
17 thing than identifying a lot to be taken or taken
18 away is that we really like the sweeping views of
19 the Necklace, as it was referred to, and to the
20 extent that you could configure the -- the lots and
21 where the houses are within those, understanding
22 that the envelopes are fairly well defined by the
23 topography and the other constraints.

24 But it's really about maintaining expansive
25 views, and I would say that as an individual

1 commissioner, I'm less concerned about reducing the
2 number of lots or the number of houses and more
3 interested in how they impact the views. If -- if
4 removing them is the solution, so be it. Size,
5 maybe size variation, and even -- even though I said
6 the 18-foot height was workable for me, I would say
7 that in some instances a more compact footprint with
8 some higher elevation that keeps more open views
9 could also achieve the higher purpose that we're
10 trying to get, so I don't want to have the staff
11 feel like it's rigid from my perspective, although I
12 do prefer the idea that the lower, the less visible,
13 and that certainly would allow for architectural
14 elements to break above it as long as it doesn't
15 look like a lighthouse in Newport Beach or something
16 like that.

17 (Laughter.)

18 CHAIR KINSEY: Okay. Commissioner
19 Shallenberger.

20 COMMISSIONER SHALLENBERGER: Yes, I just
21 had a point of order. Assuming that we pass this
22 continuance, what does it mean for the timing of
23 when -- what kind of constraints are we putting on?

24 MR. AINSWORTH: Yeah, we've got plenty of
25 time. This time limit has been extended a year, so

1 we're --

2 COMMISSIONER SHALLENBERGER: Okay.

3 MR. AINSWORTH: -- not even close to the
4 year.

5 COMMISSIONER SHALLENBERGER: All right. And
6 my second one is to ask staff to please think about
7 when it comes back to us, to give us a way to,
8 assuming that it's not just a total love fest up
9 here and everybody thinks it's terrific, a way to
10 voice, to get a sense of the commission on any LIP
11 changes before we're forced to vote on the LUP.
12 It's just a -- it's -- I don't know how to do it,
13 I'm just asking you to work on that and figure out
14 some way that folks who are only comfortable with
15 the LUP if they knew what the LIP was going to be in
16 it. Thank you.

17 CHAIR KINSEY: Very good. So just before
18 we vote, I do want to thank everyone, the public of
19 course most importantly, we appreciate the benefits
20 of public comment and guidance, but I also want to
21 thank the City and the Applicants for recognizing
22 that this is a remarkable site, you do have an
23 important project, and we have a responsibility as
24 well. So I think the continuance is a way to keep
25 this conversation moving in a direction that could

1 work for everyone.

2 And with that, I'm going to ask, is there
3 any unwillingness for unanimous yes vote on
4 continuance? Seeing none, no opposition, we will
5 continue this to a future date. Thank you.

6 (End of item.)

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1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF FRESNO)

3

4 I, SHELLEY LAW, hereby certify:

5 That said transcript was transcribed
6 from electronic audio and video files downloaded
7 from the California Coastal Commission website, and
8 thereafter reduced to computerized transcription. I
9 did not attend the hearing.

10 I further certify that I am not
11 interested in the event of the action.

12

13 WITNESS this day of ,
14 2015.

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SHELLEY LAW

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ESCROW AGREEMENT

This Escrow Agreement (this “**Agreement**”) is entered into as of August __, 2015 by PCH Project Owner, LLC, a Delaware limited liability corporation (“**PCH**”) and the California Coastal Commission, a California state agency (the “**Commission**”). Each of PCH and the Commission is referred to herein as a “**Party**” and together they are referred to as the “**Parties**”.

RECITALS

A. PCH is the owner of an approximately 24-acre vacant parcel in the City of Malibu, California (the “**City**”), adjacent to Malibu Bluffs Park, commonly referred to as the “Crummer Trust” parcel and located at 21420 Pacific Coast Highway (APNs 4458-018-018, 4458-018-019, 4458-018-002) (the “**Property**”).

B. PCH has applied to the City to develop five single-family residences and ancillary facilities (the “**Project**”) on the Property. On February 24, 2014, the Malibu City Council took the following actions with respect to the Project: (i) adopted Resolution 14-11 certifying a Final Environmental Impact Report for the Project, (ii) adopted Resolution 14-12, approving a Vesting Tentative Tract Map No. 070038 (“**VTTM**”) and a Coastal Development Permit (“**CDP 07-144**”) for the subdivision of the Property, (iii) adopted Resolution 14-13, approving a Local Coastal Program Amendment (“**LCPA**”) deleting LUP Policy 2.78 and amending land use designations (collectively, “**LCPA 12-001**”), and (iv) adopted Ordinance No. 379, approving LCPA 12-001, amending the Local Implementation Plan to specify the type, density, uses, and development standards for the Property, and amending the Malibu Municipal Code to establish the Malibu Coast Estate Planned Development District on the Property.

C. On May 19, 2014, the Malibu Planning Commission conditionally approved Coastal Development Permits for five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 07-145, 07-146, 07-147, 07-148 and 07-149 (together with CDP 07-144 and such CDPs may be amended in a manner acceptable to PCH in its sole and absolute discretion, the “**City CDPs**”).

D. The City submitted LCPA 12-001 (also referred to as “**LCPA 4-MAL-14-0408-1**”) to the Commission on April 21, 2014. On June 6, 2014, the Executive Director of the Commission determined that the City’s LCP amendment submittal was in proper order and legally adequate to comply with the requirements of Coastal Act Section 30510(b).

E. The Commission staff recommended that the Commission adopt certain modifications to LCPA 12-001, which modifications are shown on Exhibit 2 attached hereto (the “**Suggested Modifications**”).

F. In connection with LCPA 12-001, PCH has proposed to (i) make an in lieu payment of Two Million Dollars (\$2,000,000.00) (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the Mountains Recreation and Conservancy Authority (“**MRCA**”) in the general area of the Property, (ii) deliver to the MRCA a Grant of Conservation Easement substantially in the form of

Exhibit 4 attached hereto (the “**Grant**”) to convey an open space conservation easement to the MRCA on behalf of the people of the State of California over an approximately 6.23 acre area including all of the bluff slopes and approximately 2 acres of the canyon area of the Property as depicted on Exhibit 5 attached hereto, for the purpose of habitat protection (the “**Conservation Easement**”), and (iii) provide the MRCA with a payment of Twenty Five Thousand Dollars (\$25,000) as an endowment to monitor the Conservation Easement (the “**Easement Endowment**”). In addition, PCH shall work cooperatively with the MRCA to minimize fuel modification and identify habitat restoration opportunities within the 6.23 acre easement area. PCH and the Commission desire to establish and utilize an escrow so that, upon the fulfillment of all conditions stated in this Agreement, the In Lieu Payment, the Grant and the Easement Endowment shall be implemented in a self-executing manner.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Deposit of the In-Lieu Payment.** No later than two (2) business day prior to the Commission hearing on LCPA 12-001, presently scheduled for August 12, 2015, PCH shall provide proof to the Commission that PCH has deposited the In Lieu Payment and the Easement Endowment into a deposit account with Chicago Title Company (“**Escrow Agent**”), which Escrow Agent is acceptable to both PCH and the Commission. Escrow Agent will establish an interest bearing escrow account for the In Lieu Payment. PCH and the Commission acknowledge and agree that the additional escrow instructions (“**Escrow Instructions**”) attached hereto as Exhibit 1 are incorporated herein. PCH and the Commission shall execute such supplemental instructions and other documents and instruments as requested by Escrow Agent in connection with establishing the escrow. Escrow Agent’s fees and costs shall be paid by PCH.

2. **Deposit of Declaration of Covenants and Grant.** In order to provide further assurances to the Commission regarding the eventual payment of the In Lieu Payment, PCH has executed that certain Declaration of Covenants in the form of Exhibit 3 attached hereto (the “**Declaration of Covenants**”) and deposited it with Escrow Agent to be handled in accordance with this Agreement. In addition, PCH has deposited the Grant with Escrow Agent to be handled in accordance with this Agreement. Neither the Declaration of Covenants nor the Grant shall be delivered or otherwise effective until it is recorded in the Official Records of Los Angeles County in accordance with this Agreement.

3. **Conditions Precedent to Disbursement of In Lieu Payment.** Pursuant to this Agreement, Escrow Agent shall release the In Lieu Payment to the MRCA only upon the occurrence of the following: (i) written confirmation from the Commission staff to Escrow Agent, and (ii) written confirmation from PCH to Escrow Agent, in each case confirming that all of the following conditions precedent have been satisfied (the Parties’ duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met):

- a. The Commission has approved and certified LCPA 12-001 (including the Suggested Modifications);

- b. If the Commission has modified or otherwise adopted changes to LCPA 12-001 (other than the Suggested Modifications) (such modifications or changes being the “**Commission Modifications**”), PCH has determined, in its sole and absolute discretion, that such modifications or changes are acceptable to allow the Project to continue and has communicated its determination in writing to the Commission;
- c. The City Council of the City: (i) has accepted and agreed to the Suggested Modifications (or, if PCH has notified the Commission of its acceptance of the Commission Modifications in the manner specified in subsection 3(b) above, the City Council has accepted and agreed to both the Suggested Modifications and the Commission Modifications) as required and approved pursuant to the Commission’s certification of LCPA 12-001, and (ii) taken whatever formal legal action is required to incorporate the Suggested Modifications (and, as appropriate, the Commission Modifications) to LCPA 12-001 into the City’s Local Coastal Plan;
- d. The Executive Director of the Commission has determined that the City’s actions described in Subsection (c) above are legally adequate to satisfy the Commission’s certification of LCPA 12-001, the Executive Director has reported such determination to the Commission, the Commission has not objected to such determination, and notice of effective certification of LCPA 12-001 has been filed with the Secretary of the Natural Resources Agency for posting (the “**Final Certified LCPA**”);
- e. Any applicable appeals period and the statutes of limitation period for lawsuits and any other legal challenges to LCPA 12-001 have expired without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been commenced, or any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (i) such adjudication or resolution has upheld, in its entirety, the validity of LCPA 12-001, or (ii) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of LCPA 12-001 (as modified), but such actions are acceptable to PCH in its sole and absolute discretion such that the LCPA 12-001 is final, valid and in full force and effect;
- f. Following the foregoing actions of the City Council of the City and the Commission as set forth in in Subsections 3(a), (b), (c) and (d) above, the City has issued Notices of Final Action as to the City CDPs, without modification unless PCH has notified the Commission in writing of its determination, in its sole and absolute discretion, that such modifications are acceptable for the continuance of the Project; and
- g. Either (i) the applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits, petitions and any other legal challenges to the City CDPs, the Final Environmental Impact Report and the other City approvals have expired without any Legal Challenges having been commenced, or (ii) any and all Legal

Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (A) such adjudication or resolution has upheld, in their entirety, the validity of the City CDPs, the Final Environmental Impact Report and the other City approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the City CDPs, the Final Environmental Impact Report and the other City approvals, but such actions are acceptable to PCH in its sole and absolute discretion and PCH has indicated such in writing.

Upon the satisfaction of all of the foregoing conditions precedent and the written confirmation by PCH and the Commission delivered to Escrow Agent, Escrow Agent shall (i) disburse the In Lieu Payment to the MRCA in accordance with instructions to be delivered to Escrow Agent by the Commission, (ii) disburse the interest earned on the In Lieu Payment to PCH in accordance with instructions to be delivered to Escrow Agent by PCH, (iii) record the Grant in the Official Records of the County of Los Angeles, (iv) disburse the Easement Endowment in accordance with the agreement between PCH and the MRCA, and (v) record the Termination of Declaration as defined in Section 4 below.

4. **Recordation of the Declaration of Covenants.** If the conditions precedent set forth in Subsections 3(a), (b), (c) and (d) above are satisfied and the Final Certified LCPA is in effect and the Commission and PCH have delivered written confirmation (the Parties' duty to inform the Escrow Agent shall be ministerial once all conditions precedent have been met), Escrow Agent shall concurrently (i) cause the Declaration of Covenants to be recorded in the Official Records of the County of Los Angeles, and (ii) provide conformed copies of the Declaration of Covenants to PCH and the Commission evidencing such recordation. If the conditions precedent set forth in Section 3(a) – (g) are satisfied, the Commission shall execute and deliver to Escrow Agent an instrument in recordable form and approved by PCH as sufficient to terminate and extinguish the Declaration of Covenants (the "**Termination of Declaration**").

5. **Reservation of Rights.** PCH shall have the right (but not the obligation) to elect to terminate this Agreement by delivering written notice (the "**Termination Notice**") to the Commission and Escrow Agent, which election shall be in PCH's sole and absolute discretion, if at any time (i) any of the conditions precedent enumerated in Subsections 3(a), (b), (c), (d), (e), (f) or (g) fail to occur, or (ii) a Legal Challenge covered by Subsection 3(g) has been commenced and PCH determines in its sole and absolute discretion that it does not wish to defend against or otherwise participate in such Legal Challenge and elects to terminate this Agreement. Upon delivery of the Termination Notice to the Commission and Escrow Agent, Escrow Agent shall take the following actions: (1) promptly disburse the In Lieu Payment and all interest earned thereon to PCH, (2) promptly disburse the Easement Endowment and all interest earned thereon to PCH, (3) if the Declaration of Covenants has not been recorded, return the Declaration of Covenants to PCH, (4) return the Grant to PCH, and (5) if a Termination of Declaration has been delivered to Escrow Agent pursuant to the Declaration of Covenants, record the Declaration of Covenants. Upon Escrow Agent taking such actions, the rights and obligations of the Parties hereunder shall terminate. However, nothing in this Agreement shall limit or interfere with the exercise of discretion by the Commission or the City in acting on LCPA 12-001 or the City CDPs. Similarly, except as agreed to in Section 1 and 2 above and the satisfaction of the

conditions precedent to the delivery of the In Lieu Payment, nothing in this Agreement shall limit or interfere with the right of PCH to preserve its legal position that the inclusion of an in-lieu fee mitigation requirement in LCPA 12-001 or as a condition of the CDP 07-144 or the City CDPs would be contrary to applicable state and federal constitutional and statutory law.

6. **Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties. Neither Party may assign this Agreement to any other person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld. If PCH transfers the Property prior to the recordation of the Declaration of Covenants, PCH shall cause the transferee to assume the obligations of this Agreement and the transferee will be bound by such obligations.

7. **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision in the future.

8. **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of California.

9. **Conflict in Agreements.** In the event of a conflict between the general escrow instructions and the terms of this agreement, the terms of this agreement shall take priority.

10. **Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Exhibits attached hereto are incorporated herein by this reference for all purposes.

11. **Time.** Time is of the essence in the performance of this Agreement.

12. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange by facsimile or email counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in Section 15 below.

13. **Further Assurances.** In addition to the acts recited herein and contemplated to be performed, executed and/or delivered by either Party, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

14. **No Third Party Beneficiary.** The provisions of this Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or any of the documents to be executed and delivered in connection herewith.

15. **Notices.** All notices, consents, requests, reports, demands or other communications hereunder shall be in writing and may be given personally, by registered or certified mail, by email or by Federal Express (or other reputable overnight delivery service) as follows:

If to PCH:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, California 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, California 90071
Attn: Cary Kleinman

Paul Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, California 90071
Attn: Alan W. Weakland

If to the Commission:

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attention: Deanna Christensen

with a copy to:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 9410
Attention: Chief Counsel

If to Escrow Agent:

Chicago Title Company
725 S. Figueroa Street, Suite 200
Los Angeles, CA 90017
213-612-4161
joan.hawkins@ctt.com
Attention Joan Hawkins, Commercial Escrow Officer:

or to such other address or such other person as the addressee party shall have last designated by notice to the other party. All notices shall be deemed to have been given when received. All notices given by telecopy shall be followed by the delivery of a hard copy of such notice, provided that such notice shall be deemed to have been given when received by telecopy.

16. **Liability for Litigation Costs and Attorneys Fees.** PCH agrees to reimburse the Commission in full for all Commission litigation costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than PCH against the Commission, its officers, employees, agents, successors and assigns challenging the approval of the LCPA (including those charged by the Office of the Attorney General, and any court costs and attorneys' fees that the Commission may be required by a court to pay).

[Signatures on next page]

SIGNATURE PAGE TO ESCROW AGREEMENT

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

“PCH”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: _____
Richard Ackerman
Authorized Signatory

“Commission”

California Coastal Commission,
a California state agency

By: _____
Name: _____
Title: _____

JOINDER BY ESCROW AGENT:

The undersigned Escrow Agent hereby accepts the foregoing Agreement and agrees to act as Escrow Agent under this Agreement in strict accordance with its terms.

Chicago Title Company

By: _____
Name: _____
Title: _____

Date executed by Escrow Agent:

August ____, 2015

EXHIBIT 1

ESCROW INSTRUCTIONS



725 South Figueroa Street, Suite 200, Los Angeles, CA 90017
Phone: (213) 612-4161 • Fax: (213) 488-4384

1/13/2015

Date: January 13, 2015
Escrow No.:
Escrow Officer: Joan Hawkins

GENERAL PROVISIONS

1. DEPOSIT OF FUNDS

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all findings should be wire transfer. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

Deposit of funds into general escrow account unless instructed otherwise. You may instruct Escrow Holder to deposit your funds into an interest bearing account by signing and returning the "Escrow Instructions -Interest Bearing Account", which has been provided to you. If you do not so instruct us, then all funds received in this escrow shall be deposited with other escrow funds in one or more general escrow trust accounts, which include both non-interest bearing demand accounts and other depository accounts of Escrow Holder, in any state or national bank or savings and loan association insured by the Federal Deposit Insurance Corporation (the "depository institutions") and may be transferred to other such escrow trust accounts of Escrow Holder or one of its affiliates, either within or outside the State of California. A general escrow trust account is restricted and protected against claims by third parties and creditors of Escrow Holder and its affiliates.

Receipt of benefits by Escrow Holder and affiliates. The parties to this escrow acknowledge that the maintenance of such general escrow trust accounts with some depository institutions may result in Escrow Holder or its affiliates being provided with an array of bank services, accommodations or other benefits by the depository institution. Some or all of these benefits may be considered interest due you under California Insurance Code Section 12413.5. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations, and other benefits shall accrue to Escrow Holder or its affiliates and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations, interest or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Chicago Title Company. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.

3. SUPPLEMENTAL TAXES

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this escrow. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

4. UTILITIES/POSSESSION

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

5. PREPARATION AND RECORDATION OF INSTRUMENTS

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

6. AUTHORIZATION TO FURNISH COPIES

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Brokers and Lender(s) named in this escrow.

7. RIGHT OF CANCELLATION

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver, one copy of such notice to each of the other principals at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH DELIVERY, YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

8. PERSONAL PROPERTY

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested. By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

9. RIGHT OF RESIGNATION

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow. Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

11. ACTION IN INTERPLEADER

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the

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principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

12. TERMINATION OF AGENCY OBLIGATION

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due **Chicago Title Company**, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

13. CONFLICTING INSTRUCTIONS

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

14. DELIVERY/RECEIPT

Delivery to principals as used in these instructions unless otherwise stated herein is to be by hand in person to the principal, regular mail, email or fax to any of the contact information provided in these instructions. If delivered by regular mail receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned may be delivered to the contact information shown herein. All notices, change of instructions, communications and documents are to be delivered in writing to the office of **Chicago Title Company** as set forth herein.

15. STATE/FEDERAL CODE NOTIFICATIONS

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the County in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said County and Escrow Holder shall debit the account of Buyer for same at close of escrow.

16. NON RESIDENT ALIEN

The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations thereunder, provide in part, that a transferee (buyer) of a U.S. real property interest from a foreign person (non-resident alien) must withhold a tax equal to ten percent (10%) of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service within twenty (20) days after the transfer. **Chicago Title Company** has not and will not participate in any determination of whether the FIRPTA tax provisions are applicable to the subject transaction, nor act as a Qualified Substitute nor furnish tax advice to any party to the transaction. **Chicago Title Company** is not responsible for determining whether the transaction will qualify for an exception or an exemption and is not responsible for the filing of any tax forms with the Internal Revenue Service as they relate to FIRPTA. **Chicago Title Company** is not the agent for the Buyer for the purposes of receiving and analyzing any evidence or documentation that the Seller in the subject transaction is a U.S. citizen or resident alien. The Buyer is advised they must independently make a determination of whether the contemplated transaction is taxable or non-

taxable and the applicability of the withholding requirement to the subject transaction, and should seek the advice of their attorney or accountant. **Chicago Title Company** is not responsible for the payment of this tax and/or penalty and/or interest incurred in connection therewith and such taxes are not a matter covered by the Owner's Policy of Title Insurance to be issued to the Buyer. The Buyer is advised they bear full responsibility for compliance with the tax withholding requirement if applicable and/or for payment of any tax, interest, penalties and/or other expenses that may be due on the subject transaction.

17. ENCUMBRANCES

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

You are authorized, without the need for further approval, to debit my account for any fees and charges that I have agreed to pay in connection with this escrow, and for any amounts that I am obligated to pay to the holder of any lien or encumbrance to establish the title as insured by the policy of title insurance called for in these instructions. If for any reason my account is not debited for such amounts at the time of closing, I agree to pay them immediately upon demand, or to reimburse any other person or entity who has paid them.

18. ENVIRONMENTAL ISSUES

Chicago Title Company has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. **Chicago Title Company** is released of any responsibility and/or liability in connection therewith.

19. USURY

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

20. DISCLOSURE

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

21. FACSIMILE SIGNATURE

Escrow Holder is hereby authorized and instructed that, in the event any party utilizes "facsimile" transmitted signed documents or instructions to Escrow Holder, you are to rely on the same for all escrow instruction purposes and the closing of escrow as if they bore original signatures.

22. CLARIFICATION OF DUTIES

Chicago Title Company serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

23. FUNDS HELD IN ESCROW

When the company has funds remaining in escrow over 90 days after close of escrow or estimated close of escrow, the Company shall impose a monthly holding fee of \$25.00 that is to be charged against the funds held by the Company.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

CHICAGO TITLE COMPANY CONDUCTS ESCROW BUSINESS UNDER CERTIFICATE OF AUTHORITY NO. 350 ISSUED BY THE CALIFORNIA DEPARTMENT OF INSURANCE.

CreoPro

EXHIBIT 2

LCPA 12-001

[INSERT FULL TEXT OF LCPA WITH SUGGESTED MODIFICATIONS]

EXHIBIT 3

FORM OF DECLARATION OF COVENANTS

[INSERT DECLARATION OF COVENANTS]

EXHIBIT 4

FORM OF GRANT OF CONSERVATION EASEMENT

[INSERT FORM OF GRANT OF CONSERVATION EASEMENT]

EXHIBIT 5

LOCATION OF CONSERVATION EASEMENT

[INSERT MAP SHOWING LOCATION OF CONSERVATION EASEMENT]

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

California Coastal Commission
South Central Coast District
89 South Ventura Street, Suite 200
Ventura, California 93001
Attn: Deanna Christensen

ABOVE SPACE RESERVED FOR RECORDER'S USE ONLY

DECLARATION OF COVENANTS

This Declaration of Covenants (this “**Declaration**”), is made as of _____, 201__, by **PCH PROJECT OWNER LLC**, a Delaware limited liability company (“**Owner**”) for the benefit of the **CALIFORNIA COASTAL COMMISSION**, a California state agency (together with its successors and assigns, the “**CCC**”).

RECITALS

A. Owner owns certain real property located in the City of Malibu, State of California, which real property is more fully described and shown in the attached Exhibit A (the “**Real Property**”).

B. The term “**Owner**” as used herein means Owner and each of Owner’s successors in interest, including heirs, successors and assigns, and including all successors-in-interest to all or any portion of the Real Property, including portions or parcels resulting from the subdivision of the Real Property.

C. The City of Malibu (the “**City**”) has approved and submitted to the CCC its Local Coastal Plan Amendment 12-001 also referred to as “**LCPA 4-MAL-14—408-1** (the “**LCPA**”) for approval and certification which, *inter alia*, allows the Real Property to be improved with five single-family residences totaling 49,611 square feet and 1.74 acres of park and open space (collectively the “**Residential Entitlement**”).

D. On May 19, 2014, the City of Malibu Planning Commission conditionally approved Coastal Development Permits and granted other approvals for the development of five single-family residences consistent with the development standards contained in LCPA 12-001 and the Malibu Municipal Code, known as CDPs 07-145, 07-146, 07-147, 07-148 and 07-149 (which, together with CDP 07-144 approved by the Planning Commission on January 6, 2014, are collectively referred to as the “**City CDPs**”) for the Real Property.

E. On _____, 2015, the CCC approved the LCPA with certain suggested modifications. Subsequently, the City Council of the City accepted and approved the LCPA with such modifications and the LCPA became final, valid and in full force and effect (the “**Final Certified LCPA**”).

F. In connection with the CCC approval of the LCPA, Owner has agreed to make an in lieu payment of Two Million Dollars (\$2,000,000.00) under certain conditions (the “**In Lieu Payment**”) to allow for rehabilitation and/or development of lower cost visitor serving coastal amenities, including necessary infrastructure for such amenities, at a site owned, managed, or otherwise controlled by the Mountains Recreation and Conservancy Authority (“**MRCA**”) in the general area.

G. In connection with the In Lieu Payment, Owner has agreed to execute and record this Declaration to assure CCC that the In Lieu Payment will be made under certain conditions specified herein.

H. Owner desires to enter into and record this Declaration to ensure that all subsequent owners of any portion of the Real Property will acquire such interests with full knowledge of and subject to the obligations set forth in this Declaration.

I. Owner, as declarant under this Declaration, declares that the Real Property is, and shall be, held, conveyed, hypothecated, encumbered, licensed, leased, rented, used and occupied subject to the following covenants. All of the covenants, conditions and restrictions set forth in this Declaration shall run with the land, and shall be binding upon the Real Property and the Owner and all parties having or acquiring any right, title or interest in the Real Property, or any portion thereof, and shall inure to the benefit of CCC and the successors and assigns of CCC.

J. This Declaration shall not have any legal effect until it has been recorded in the Official Records of the County of Los Angeles.

ARTICLE I

COVENANTS REGARDING THE ENTITLEMENT OF THE REAL PROPERTY

1. **Owner’s Obligation.** If, at any time, the Real Property receives valid Final Entitlements for the development and use of the Real Property for a proposed residential development, including, without limitation, the Residential Entitlement, then Owner shall pay to the MRCA Two Million Dollars (\$2,000,000), within fifteen (15) business days after the Final Entitlements are achieved (the “**Obligation**”) (which amount shall be increased annually on July 1 of each year in accordance with increases in the Consumer Price Index (CPI) California – All Urban Consumers, with July 2015 used as the base year) . As used herein, “**Final Entitlements**” means the Final Certified LCPA, issuance of the requisite Coastal Development Permits, site plan approval, tract map approval, certification of the Final Environmental Impact Report and all other governmental approvals required for the development and construction of the residential units and all related roads, utilities and other infrastructure (the “**Entitlements**”), together with the expiration of all applicable appeals period as to appeals and the applicable statutes of limitation for lawsuits and any other legal challenges to such Entitlements without an appeal, lawsuit, petition or other legal challenge (collectively, “**Legal Challenges**”) having been

commenced, or (ii) any and all Legal Challenges that were commenced have been finally adjudicated to completion (and all appeal periods have expired) or otherwise resolved, and either (A) such adjudication or resolution has upheld, in their entirety, the validity of such Entitlements and any other City or the CCC approvals, or (B) such adjudication or resolution has resulted in a partial reversal, invalidation or modification of the Entitlements and the other City and the CCC approvals, but such actions are acceptable to Owner in its sole and absolute discretion.

2. **Collection of Obligation, Liens.**

A. **Right to Enforce.** CCC may enforce the Owner's Obligation to pay the amounts provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or CCC may foreclose by judicial proceedings (including, without limitation, injunctive relief) or through the exercise of the power of sale pursuant to Section 2.C enforce the lien rights created or pursue any other lawful remedy. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien rights.

B. **Creation of Lien.** If Owner fails to satisfy the Obligation to pay within the time period stated in Section 1 above, together with the late charge described in Civil Code Section 5650(b), interest at the rate permitted in such Section, and all costs that are incurred by CCC or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against Real Property upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to Owner as provided in Civil Code Section 5675(e).

C. **Notice of Default; Foreclosure.** CCC or its authorized representative may record a notice of default and may cause the Real Property with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under Civil Code Sections 2924, 2924b and 2924c, or through judicial foreclosure, and as provided in Civil Code Sections 5700 through 5715. However, as a condition precedent to the holding of any such sale under Section 2924c appropriate publication shall be made. In connection with any sale under Section 2924c CCC is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

D. **Termination of this Declaration.** This Declaration shall automatically terminate and be of no further force or effect, if (i) the payment of the In Lieu Payment is made by Owner to the MRCA, or (ii) at any time the Final Certified LCPA is invalidated, repealed or modified, whether by judicial action or a legislative action by the City, so as to not permit residential development on the Real Property in accordance with the Residential Entitlements. Concurrently with the occurrence of either of the foregoing events, CCC shall execute and deliver to Owner one or more instruments or documents in recordable form as requested by Owner to terminate this Declaration and to release Owner for any liability in connection with this Declaration (a "**Termination of Declaration**").

3. **Sale of Property.** If, at any time after the recordation of this Declaration in the Official Records of the County of Los Angeles, Owner sells the Real Property or any portion thereof to an unaffiliated third party purchaser in an arms' length transaction, CCC shall have the right (but not the obligation) to deliver written notice to Owner declaring the Obligation to be due and payable, in which event Owner shall pay the Obligation to CCC concurrently with the closing of the sale of the Real Property.

ARTICLE II

MISCELLANEOUS

1. **General Provisions.** Except as set forth in Article IV and unless specifically otherwise provided to the contrary in this Declaration, all notices, requests, demands, or other communications required under this Declaration (collectively, "**Notices**") shall be in writing and delivered (a) personally; (b) by certified mail, return receipt requested and postage prepaid; or (c) by overnight courier (such as UPS, FedEx, or Airborne Express) (any such notice shall be deemed delivered one (1) business day following deposit with such an overnight courier). The initial addressees for any notices to Owner and to CCC shall be as set forth below. All notices given in accordance with the terms hereof shall be deemed given when received as provided above, or upon refusal of delivery.

2. **Notices to Owner.** Notices to Owner pursuant to this Declaration shall be directed as follows:

BRP, LLC
315 S. Beverly Hills, Suite 211
Beverly Hills, CA 90212
Attn: Richard Ackerman and Robert Gold

With Copies to:

Oaktree Capital Management
333 South Grand Avenue, 28th Floor
Los Angeles, CA 90071
Attn: Cary Kleinman

Paul, Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Attn: Alan W. Weakland

or to such other address as Owner provides in writing CCC at the address(es) set forth in Section 3, below.

3. **Notices to CCC.** Notices to CCC pursuant to this Declaration shall be directed as follows:

South Central Coast District

California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001
Attention: Deanna Christensen

4. **Change of Address(es)**. The addresses above may be changed by providing the new address to the other notice recipients in accordance with Section 1.

5. **Applicable Law**. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

6. **Counterparts**. This Declaration may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one (1) and the same agreement.

7. **Exhibits**. All of the exhibits to this Declaration are hereby incorporated as though fully set forth herein.

8. **Liberal Construction**. The provisions of this Declaration shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

9. **Headings**. The headings used in this Declaration are for convenience and reference only and the words contained herein shall not be held to expand, modify, or aid in the interpretation, construction or meaning of this Declaration.

10. **Incorporation of this Declaration into Deeds**. Any deed or other instrument by which all or any portion of the Real Property is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration and any instrument of conveyance shall be deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

11. **Successors and Assigns**. The provisions of this Declaration shall be binding upon all persons acquiring an interest in the Real Property, whether it be fee, easement, leasehold or otherwise, and each of their successors and assigns, and shall be for the benefit of CCC. The Obligations of Owner hereunder are personal to CCC and may not be assigned to any person or entity without Owner's prior written consent, which may be granted or withheld in its sole and absolute discretion.

12. **Severability**. If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

13. **Time of Essence**. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

[Signatures on next page]

IN WITNESS WHEREOF, Owner has executed this Declaration, as of the date first written above.

“Owner”

PCH Project Owner, LLC,
a Delaware limited liability company

By: Coast Estates Project Owner, LLC,
a Delaware limited liability company,
its sole Member

By: CTBMC, LLC,
a Delaware limited liability company
its Manager

By: _____
Richard Ackerman
Authorized Signatory

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are 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 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

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

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 2 IN THE WESTERLY BOUNDARY OF PARCEL 1 AS DESCRIBED IN DEED FROM MARBLEHEAD LAND COMPANY, TO STATHAM INSTRUMENTS, INC., RECORDED DECEMBER 30, 1957, AS INSTRUMENT NO. 1542 IN BOOK 56325 PAGE 391, OF OFFICIAL RECORDS OF COUNTY OF LOS ANGELES, CALIFORNIA, THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, NORTHWESTERLY ALONG A TANGENT CURVE (A TANGENT AT SAID CORNER BEARING SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 130 FEET THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 204.20 FEET; THENCE TANGENT TO SAID CURVE SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 130 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 204.20 FEET TO A POINT IN THE WESTERLY BOUNDARY OF SAID PARCEL 1; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST ALONG SAID WESTERLY BOUNDARY 75.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON, BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 2:

BEGINNING AT A POINT IN THE CENTER LINE OF THE STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY DESCRIBED IN PARCEL 1 OF THE DEED TO THE STATE OF CALIFORNIA, RECORDED ON MARCH 22, 1944 AS INSTRUMENT NO. 1279 IN BOOK 20743 PAGE 271, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING IN THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS HAVING A BEARING AND LENGTH OF NORTH 85 DEGREES 35 MINUTES 30 SECONDS EAST 5221.78 FEET AND BEING MARKED BY A BRASS CAP MONUMENT "SOLSTICE CANON L-B", AS SHOWN IN THE COUNTY OF LOS ANGELES SURVEYOR'S FIELD BOOK 1652 PAGES 67 AND 68 ON FILE IN THE OFFICE OF

THE COUNTY SURVEYOR OF SAID COUNTY; THENCE ALONG SAID CENTER LINE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 370.32 FEET; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 50.00 FEET TO THE TRUE POINT OF BEGINNING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND; THENCE CONTINUING SOUTH 5 DEGREES 24 MINUTES 30 SECONDS EAST 437.77 FEET; THENCE SOUTH 31 DEGREES 48 MINUTES 00 SECONDS EAST 119.06 FEET; THENCE SOUTH 38 DEGREES 14 MINUTES 53 SECONDS EAST 249.12 FEET; THENCE SOUTH 18 DEGREES 51 MINUTES 46 SECONDS EAST 71.80 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO CECILE A. TREBAOL, ET AL., RECORDED AUGUST 27, 1943 AS INSTRUMENT NO. 705 IN BOOK 20185 PAGE 361, OF SAID OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE DEED TO MARK R. MILLER AND WIFE, RECORDED NOVEMBER 12, 1943 AS INSTRUMENT NO. 883 IN BOOK 20375 PAGE 377 OF SAID OFFICIAL RECORDS , NORTH 73 DEGREES 42 MINUTES 05 SECONDS EAST 305.76 FEET TO THE NORTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO CARL R. HENDERSON AND WIFE RECORDED ON MAY 21, 1943 AS INSTRUMENT NO. 184 IN BOOK 20004 PAGE 197 OF SAID OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE LAST MENTIONED DEED AS FOLLOWS: SOUTH 78 DEGREES 21 MINUTES 55 SECONDS EAST 210.16 FEET; NORTH 86 DEGREES 45 MINUTES 34 SECONDS EAST 315.61 FEET AND NORTH 77 DEGREES 35 MINUTES 06 SECONDS EAST 214.39 FEET TO THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO CLICERIO MINORINI AND WIFE, RECORDED ON FEBRUARY 11, 1942 AS INSTRUMENT NO. 576, IN BOOK 19075 PAGE 301, OFFICIAL RECORDS, SAID SOUTHWEST CORNER BEING A POINT IN THE NORTHERLY LINE OF THE LAND DESCRIBED IN PARCEL 1 OF THE DEED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 2, 1939 AS INSTRUMENT NO. 668, IN BOOK 16845 PAGE 253, OF SAID OFFICIAL RECORDS; THENCE ALONG THE WESTERLY LINE OF THE LAND DESCRIBED IN THE ABOVE MENTIONED DEED TO MINORINI, NORTH 20 DEGREES 00 MINUTES 23 SECONDS WEST 719.46 FEET AND NORTH 14 DEGREES 39 MINUTES 24 SECONDS WEST 118.48 FEET TO THE SOUTHERLY LINE OF SAID STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY; THENCE ALONG SAID PACIFIC COAST HIGHWAY SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 1033.71 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 3:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL 2 ABOVE DESCRIBED, SAID CORNER BEING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND, KNOWN AS PACIFIC COAST HIGHWAY; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 433.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 25 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES AN ARC DISTANCE OF 39.27 FEET; THENCE TANGENT TO SAID CURVE, NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 303.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY , HAVING A RADIUS OF 130 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES ARC DISTANCE OF 204.20 FEET TO A POINT IN THE WESTERLY BOUNDARY

OF SAID PARCEL 2, DISTANT THEREON SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 255.00 FEET FROM THE NORTHWEST CORNER OF SAID PARCEL; THENCE NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST 255.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953, IN BOOK 42846 PAGE 432, OFFICIAL RECORDS.

PARCEL NO. 4:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 1 ABOVE DESCRIBED, SAID CORNER BEING THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO CECILE A. TREBAOL, ET AL., RECORDED AUGUST 27, 1943 AS INSTRUMENT NO. 705 IN BOOK 20185 PAGE 361, OFFICIAL RECORDS; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 2, NORTH 18 DEGREES 51 MINUTES 46 SECONDS WEST 71.80 FEET; NORTH 38 DEGREES 14 MINUTES 53 SECONDS WEST 249.12 FEET, AND NORTH 31 DEGREES 48 MINUTES 00 SECONDS WEST 119.60 FEET TO AN ANGLE POINT IN SAID WESTERLY BOUNDARY, SAID POINT BEING ALSO IN THE EASTERLY LINE OF THE STRIP OF LAND 60 FEET IN WIDTH, HEREINAFTER DESCRIBED AS PARCEL 4; THENCE ALONG SAID EASTERLY LINE AS FOLLOWS: SOUTHEASTERLY ALONG A CURVE, (A TANGENT AT SAID POINT BEARING NORTH 05 DEGREES 24 MINUTES 30 SECONDS WEST) CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 70 FEET THROUGH A CENTRAL ANGLE OF 14 DEGREES 30 MINUTES 00 SECONDS AN ARC DISTANCE OF 17.72 FEET, TANGENT TO SAID CURVE SOUTH 19 DEGREES 54 MINUTES 30 SECONDS EAST 87.68 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 160 FEET; SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 79 DEGREES 50 MINUTES 35 SECONDS AN ARC DISTANCE OF 222.96 FEET; TANGENT TO SAID CURVE SOUTH 59 DEGREES 56 MINUTES 05 SECONDS WEST 113.92 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 120 FEET; SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30 DEGREES 30 MINUTES 00 SECONDS AN ARC DISTANCE OF 63.88 FEET TANGENT TO SAID CURVE SOUTH 29 DEGREES 26 MINUTES 05 SECONDS WEST 163.25 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 120 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09 DEGREES 28 MINUTES 27 SECONDS AN ARC DISTANCE OF 19.84 FEET; THENCE RADIAL TO SAID CURVE, SOUTH 70 DEGREES 02 MINUTES 22 SECONDS EAST 13.61 FEET TO THE MOST WESTERLY CORNER OF SAID LAND DESCRIBED IN DEED TO CECILE A. TREBAOL, ET AL., THENCE NORTH 44 DEGREES 41 MINUTES 05 SECONDS EAST ALONG THE NORTHERLY LINE OF THE LAND DESCRIBED IN SAID DEED 204.39 FEET; THENCE NORTH 82 DEGREES 01 MINUTES 05 SECONDS EAST 355.14 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, WITHOUT RIGHT OF ENTRY ON THE SURFACE OF SAID LAND, AS CONVEYED TO R.R. ADAMSON BY DEED RECORDED OCTOBER 5, 1953 IN BOOK 42846 PAGE 432, OF OFFICIAL RECORDS.

SAID FOUR PARCELS ABOVE MENTIONED OF LAND IS SHOWN ON CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 31, 1985 AS INSTRUMENT NO. 85-1293123.

PARCEL NO. 5:

AN EASEMENT FOR ROADWAY PURPOSES AND PURPOSES OF INGRESS AND EGRESS OVER A STRIP OF LAND 60 FEET IN WIDTH LYING 30 FEET ON EACH SIDE OF AND PARALLEL WITH THE FOLLOWING DESCRIBED CENTER LINE, TO WIT:

COMMENCING AT A POINT IN THE CENTER LINE OF THE STRIP OF LAND 100 FEET WIDE, KNOWN AS PACIFIC COAST HIGHWAY AS DESCRIBED IN PARCEL 1 OF THIS DESCRIPTION, SAID POINT BEING MARKED BY A BRASS CAP MONUMENT "SOLSTICE CANON L-B"; THENCE ALONG SAID CENTER LINE SOUTH 84 DEGREES 35 MINUTES 30 SECONDS WEST 117.98 FEET; THENCE SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 50.00 FEET TO THE TRUE POINT OF BEGINNING IN THE SOUTHERLY LINE OF SAID 100 FOOT STRIP OF LAND THENCE CONTINUING SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 230.00 FEET; THENCE NORTH 84 DEGREES 35 MINUTES 30 SECONDS EAST 358.30 FEET; THENCE SOUTHEASTERLY 157.08 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 05 DEGREES 24 MINUTES 30 SECONDS EAST 107.77 FEET; THENCE SOUTHEASTERLY 25.31 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 19 DEGREES 54 MINUTES 30 SECONDS EAST 87.68 FEET; THENCE SOUTHERLY 181.16 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 130 FEET; THENCE TANGENT SOUTH 59 DEGREES 56 MINUTES 05 SECONDS WEST 113.92 FEET; THENCE SOUTHWESTERLY 79.85 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET; THENCE TANGENT SOUTH 29 DEGREES 26 MINUTES 05 SECONDS WEST 163.25; THENCE SOUTHWESTERLY 41.45 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET THENCE TANGENT SOUTH 13 DEGREES 36 MINUTES 05 SECONDS WEST 122.70 FEET; THENCE SOUTHWESTERLY 129.81 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 125 FEET; THENCE TANGENT SOUTH 73 DEGREES 06 MINUTES 05 SECONDS WEST 154.35 FEET; THENCE SOUTHWESTERLY 27.26 FEET ALONG THE ARC OF TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150 FEET; THENCE TANGENT SOUTH 62 DEGREES 41 MINUTES 19 SECONDS WEST 112.34 FEET; THENCE SOUTHERLY 138.32 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100 FEET; THENCE TANGENT SOUTH 16 DEGREES 33 MINUTES 55 SECONDS EAST 18.67 FEET TO A POINT IN THE NORTHERLY LINE OF THE 60 FOOT STRIP OF LAND KNOWN AS MALIBU ROAD, SAID POINT BEING SOUTH 73 DEGREES 26 MINUTES 05 SECONDS WEST 1431.32 FEET AND NORTH 16 DEGREES 33 MINUTES 55 SECONDS WEST 30.00 FEET, FROM ENGINEER'S CENTER LINE STATION 903 71.78 B.C. LINE 1, AT THE EASTERLY EXTREMITY OF THAT CERTAIN CENTER LINE COURSE SHOWN ON LOS ANGELES COUNTY SURVEYOR'S MAP F.M. NO. 11698, SHEET 3, AS NORTH 73 DEGREES 29 MINUTES 00 SECONDS EAST.

APNS: 4458-018-002, 018, 019